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Tuesday
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 5 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am

WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]

WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

RESERVATIONS: 206–526–6507

Contents

Federal Register

Vol. 60, No. 228

Tuesday, November 28, 1995

Separate Parts In This Issue

Parts II through LXVI
The Regulatory Plan and Unified Agenda of Federal Regulations, 59504–61192

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 228
Tuesday, November 28, 1995

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG82

Prevailing Rate Systems; Abolishment of Marquette, MI, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Marquette, MI, nonappropriated fund (NAF) Federal Wage System wage area and add Dickinson County, MI, and Marquette County, MI, as areas of application to the Lake, IL, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

EFFECTIVE DATE: December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On July 10, 1995, OPM published an interim rule to abolish the Marquette, MI, nonappropriated fund (NAF) Federal Wage System wage area and add Dickinson County, MI, and Marquette County, MI, as areas of application to the Lake, IL, NAF wage area for pay-setting purposes. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on July 10, 1995 (60 FR 35467), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–28908 Filed 11–27–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV95–905–3IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule makes a change in regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1995–96 season.

DATES: Effective on November 13, 1995; comments received by December 28, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883–2276; telephone: 813–299–4770; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905 (7 CFR part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

This interim final rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 12,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers, producers, and importers of Florida citrus may be classified as small entities.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

This interim final rule invites comments on a change to the order's rules and regulations to relax the minimum size requirement for red seedless grapefruit allowing for the continued shipment of size 56 grapefruit. The Committee met September 14, 1995, and unanimously recommended this action.

This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) for the period November 13, 1995 through November 10, 1996. Absent this change, the size will revert back to size 48 (3$^{9}/_{16}$ inches diameter), on November 13, 1995.

Section 905.52, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23,1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1995–96 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1995–96 season, and will provide for the maximization of shipments to fresh market channels.

There are several exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) for the period November 13, 1995, through November 10, 1996, to reflect the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in § 905.306 (7 CFR 905.306) under Marketing Order No. 905.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as

hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the minimum size requirements that would otherwise be in effect November 13, 1995, for grapefruit grown in Florida, (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) Florida grapefruit shipments began on September 1, 1995, and the season will be well underway by November 13, 1995; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.306 is amended by revising the entries for grapefruit in paragraph (a), Table I, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* *	* *	* *	*
Grapefruit			
Seeded, except red	On and after 9/01/94	U.S. No. 1	3 12/16
Seeded, red	On and after 9/01/94	U.S. No. 1	3 12/16
Seedless, red	11/24/94–11/12/95	U.S. No. 1	3 5/16
	11/13/95–11/10/96	U.S. No. 1	3 5/16
	On and after 11/11/96	U.S. No. 1	3 9/16
Seedless, except red	On and after 9/01/94	U.S. No. 1	3 9/16

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.106, paragraph (a) is revised to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to Section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Seeded	On and after 09/01/94	U.S. No. 1	3 12/16
Seedless, red	11/24/94–11/12/95	U.S. No. 1	3 5/16
	11/13/95–11/10/96	U.S. No. 1	3 5/16
	On and after 11/11/96	U.S. No. 1	3 9/16
Seedless, except red	On and after 09/01/94	U.S. No. 1	3 9/16

* * * * *

Dated: November 20, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28925 Filed 11–27–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1220

[No. LS–95–014]

Technical Amendments to the Soybean Promotion and Research Order and Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and Termination Order.

SUMMARY: A review of the Soybean Promotion and Research Order (Order) and rules and regulations implementing the soybean promotion and research program identified a number of changes to eliminate sections which are duplicative or obsolete and will avoid current and future conflict, and correct an administrative error. The revisions eliminate certain sections dealing with membership on the United Soybean

Board (Board), obtaining refunds, and other miscellaneous provisions.

EFFECTIVE DATE: December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS, USDA; PO Box 96456; Washington, DC 20090–6456; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION: This rule amends the Order and Rules and Regulations (7 CFR part 1220). The Order and regulations are effective under the Soybean Promotion, Research, and Consumer Information Act (Act).

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule was reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the changes are primarily to remove obsolete and duplicate material and to correct an administrative error.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1220 have been previously approved by OMB and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements are imposed as a result of this rule.

Background and Proposed Changes

A review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of paragraphs were identified that could be removed without adverse impact to the program. The amendments eliminate sections which are duplicative or obsolete or will avoid conflicting information.

Sections which are obsolete or are duplicated in other sections involve initial membership on the Board (§ 1220.500–560) and authority for three temporary members on the initial Board (§ 1220.201(f)).

Other sections (§ 1220.224, 225, 226, 227, and § 1220.330 and 331) originally implemented a statutory provision allowing producers to request refunds prior to and after the continuance referendum. These sections became obsolete after a February 1994 referendum in which producers voted in favor of mandatory assessments based on 10 percent escrowed assessments paid at the end of each State's fiscal year.

In July 1995, producers were provided the opportunity to request a refund referendum to determine whether refunds (at 10 percent of escrowed funds) should continue. The number of producers required to cause a referendum to be conducted did not sign the poll. Therefore, a referendum will not be held and refunds were eliminated as of October 1, 1995. Provisions for establishing escrow accounts (§ 1220.212(j); § 1220.228(a)(1) (v) through (vi); and § 1220.228(b)(5) (i) through (6)(iii)) are no longer applicable and should be removed, the sections they pertain to are: Continuance referendum (§ 1220.106); Producer poll (§ 1220.120); and Refund referendum (§ 1220.124).

In addition, § 1220.312(b) has been revised to move Virginia from the monthly column to the quarterly column to correct an error.

After consideration of all relevant material with regard to the termination of the provisions as hereinafter set forth, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to implementing this action because: (1) The sections being removed are either duplicative or obsolete and removal will not alter any aspect of the program; and (2) changing the status of Virginia from monthly to quarterly for remittance of assessments is an action to correct an error that will not affect program implementation.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

§§ 1220.106, 1220.120, 1220.124, 1220.224–1220.227 [Removed and reserved]; §§ 1220.201, 1220.212 and 1220.228 [Amended]

2. In part 1220, §§ 1220.106, 1220.120, 1220.124, 1220.201(f), 1220.212(j), 1220.224 through 1220.227, 1220.228(a)(1) (v) and (vi), 1220.228(b)(5) (i) and (b)(6)(iii) are removed and reserved.

§ 1220.312 [Amended]

3. Section 1220.312 is amended in paragraph (b) by removing the word ''Virginia'' in the Monthly column and adding the word ''Virginia'' in the Quarterly column, in alphabetical order, immediately following the word South Dakota.

Dated: November 20, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–28923 Filed 11–27–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

[No. LS–95–013]

Technical Amendments to the Pork Promotion, Research, and Consumer Information Order and Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and Termination Order.

SUMMARY: A review of the Pork Promotion, Research, and Consumer Information Order (Order) and rules and regulations implementing the pork promotion and research program identified a number of changes to eliminate sections which are duplicative or obsolete and will avoid current and future conflict. The revisions eliminate certain sections dealing with membership on the National Pork Producers Delegate Body (Delegate Body), obtaining refunds, and other miscellaneous provisions.

EFFECTIVE DATE: December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Room 2606–S, Livestock and Seed Division, AMS, USDA, PO Box 96456, Washington, DC 20090–6456; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION: This rule amends the Order and Rules and Regulations (7 CFR part 1230). The Order and regulations are effective under the Pork Promotion, Research, and Consumer Information Act (Act).

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule was reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the changes are primarily to remove obsolete and duplicate material.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1230 have been previously approved by OMB and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements are imposed as a result of this rule.

Background and Proposed Changes

A review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of paragraphs were identified that could be removed without adverse impact to the program. The amendments eliminate sections which are duplicative or obsolete.

Sections which are obsolete or are duplicated in other sections involve initial membership on the Delegate Body and the Board (§ 1230.30; § 1230.31; and §§ 1230.501–.512).

Other sections (§ 1230.72 and § 1230.77) originally implemented a statutory provision allowing producers to request refunds prior to the referendum. These sections became obsolete after a May 1988 referendum in which producers voted in favor of mandatory assessments.

After consideration of all relevant material with regard to the termination of the provisions hereinafter set forth, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to 7 U.S.C. 553, it is also found and determined that upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or engage in further public procedure prior to implementing this action because the sections being removed are either duplicative or obsolete and removal will not alter any aspect of the program.

List of Subjects in 7 CFR Part 1230

Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—[AMENDED]

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§ 1230.30 [Amended]

2. In § 1230.30, paragraphs (b)(2) and (c)(2) are removed and reserved and in paragraphs (b)(3) and (c)(3) the word ''thereafter'' is removed.

§ 1230.31 [Amended]

3. In § 1230.31, paragraph (a) is removed and reserved and the first three words ''for each subsequent'' and the comma '','' after Body of paragraph (b) are removed.

§ 1230.72 [Amended]

4. In § 1230.72, paragraph (a) in the second sentence the words ''less the amount of refunds paid to producers in that State'' are removed and in paragraph (b) in the first sentence the words ''and to which no refund was received'' are removed.

§ 1230.77 [Removed and reserved]

5. Section 1230.77 is removed and reserved.

§§ 1230.501–1230.512 [Removed and Reserved]

6. Sections 1230.501 through 1230.512 are removed and reserved.

Dated: November 20, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–28924 Filed 11–27–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1260

[No. LS–95–012]

Technical Amendments to the Beef Promotion and Research Order and Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and Termination Order.

SUMMARY: A review of the Beef Promotion and Research Order (Order) and rules and regulations implementing the beef promotion and research program identified a number of changes to eliminate sections which are duplicative or obsolete and will avoid current and future conflict. The revisions eliminate certain sections dealing with membership on the Cattlemen's Beef Promotion and Research Board (Board), obtaining refunds, and other miscellaneous provisions.

EFFECTIVE DATE: December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS, USDA; P.O. Box 96456; Washington, DC. 20090–6456; telephone 202/202–1115.

SUPPLEMENTARY INFORMATION: This rule amends the Order and Rules and Regulations (7 CFR part 1260). The Order and regulations are effective under the Beef Promotion and Research Act of 1985 (Act).

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule was reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 11 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the changes are primarily to remove obsolete and duplicate material.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1260 have been previously approved by OMB and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements are imposed as a result of this rule.

Background and Proposed Changes

A review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of paragraphs were identified that could be removed without adverse impact to the program. The amendments eliminate sections which are duplicative or obsolete or will avoid conflicting information.

Sections which are obsolete or are duplicated in other sections involve initial membership on the Board (§ 1260.580 and § 1260.590). Other sections (§ 1260.150, 151, 173, 174, and 181) originally implemented a statutory provision allowing producers to request refunds prior to the May 1988 referendum and provided for establishing escrow accounts to pay refunds. These sections became obsolete after a referendum in which producers voted in favor of mandatory assessments.

A definition which is obsolete as a consequence of removing the sections it pertains to is: Referendum (§ 1260.110).

After consideration of all relevant material with regard to the removal of the provisions as hereinafter set forth, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to implementing this action because: The sections being removed are either duplicative or obsolete and removal will not alter any aspect of the program.

List of Subjects in 7 CFR Part 1260

Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for part 1260 is revised to read as follows:

Authority: 7 U.S.C. 2901–2911.

2. In part 1260, §§ 1260.110, 1260.150(i) and (j), 1260.151(c), 1260.173, 1260.174, 1260.181(b)(5), 1260.580, and 1260.590 are removed and reserved.

§§ 1260.110, 1260.173, 1260.174, 1260.580, and 1260.590 [Removed and reserved]

§§ 1260.150, 1260.151, and 1260.181 [Amended]

Dated: November 20, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–28926 Filed 11–27–95; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 705 and 741

Requirements for Insurance and Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final rule consolidates all current regulations and requirements that apply to federally insured state-chartered credit unions (FISCUs) in one place, the regulations on requirements for insurance. The rule does not impose any new requirements on FISCUs. This rule will aid FISCUs by simplfying the process of determining which regulations they must follow.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Groth, State Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360 or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

In August 1995, the NCUA requested comments on proposed changes to part 741 of its regulations. 60 FR 39274 (August 2, 1995). Part 741 applies to all credit unions whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). It applies to federal credit unions (FCUs), FISCUs and credit unions making application for insurance of accounts. Part 741 also serves as a reference for FISCUs in determining which NCUA rules apply to them. Some regulations that apply to FISCUs, however, are not currently included or referenced in part 741. Additionally, the Agreement for Insurance of Accounts, which outlines conditions for state-chartered credit unions obtaining and maintaining federal insurance, contains requirements that are not included in part 741. This final rule corrects those shortcomings by addressing, in part 741, all regulations and requirements that apply to FISCUs. This revision will aid FISCUs by simplifying the process of determining which regulations they must follow. The revision does not impose any additional requirements or new burdens on FISCUs.

Additionally, the revision reorganizes part 741 into subparts A and B. Subpart A contains requirements that apply to all insured credit unions and are not codified elsewhere in NCUA's regulations. Subpart B contains requirements that are set forth in various other parts of NCUA's regulations affecting FCUs and that are, by incorporation in part 741, applicable to FISCUs as well.

Summary of Comments

Two FISCUs, four trade groups and two credit union leagues responded to the proposal. Five of the commenters expressed total support for the amendments, one expressed qualified support and two objected. The supportive commenters praised the proposal because it simplifies the process for determining which regulations apply, it clarifies items not mentioned elsewhere and it deletes repetitious material. The revised index was cited by one commenter as a particularly useful tool.

One commenter took exception to the following sections of the proposal: Criteria § 741.3, Maximum Public Unit and Nonmember Accounts and Low Income Designation § 741.204, Corporate Credit Unions § 741.206, Management Official Interlocks § 741.209, Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure § 741.213, Records Preservation Program § 741.215, Truth in Savings § 741.217 and Involuntary Liquidation and Creditor Claims § 741.218. The commenter did not object to the substance of the sections. The objection was based on the misperception that NCUA is ''taking more and more authority over state chartered credit unions.'' The NCUA Board notes that all of these provisions currently apply to FISCUs.

Two commenters took exception to the provision in proposed § 741.3 which requires FISCUs to establish an Investment Valuation Reserve Account for those investments owned by FISCUs that do not conform to NCUA's investment regulation for federal credit unions (12 CFR part 703). The reserve must equal the net excess of book value over current market value. If the market value cannot be determined, a reserve equal to the full book value must be reserved. One commenter maintained that this places an undue burden on state-chartered credit unions that are following state law. Further, the commenter argued it will be costly, difficult and time consuming. The commenters also questioned the practice of ''incorporating contractual terms and conditions into a regulation.'' The commenters are apparently under the misimpression that this is a new requirement being imposed on FISCUs. For safety and soundness reasons, this requirement is and for many years has been, imposed on FISCUs by the Agreement for Insurance of Accounts signed and agreed to all insured state chartered credit unions as a condition of federal insurance.

Final Rule

The NCUA Board adopts without change the proposed rule published on August 2, 1995, as the final rule. 60 FR 39274. Further, the Board is making technical corrections to Sections 701.6, 701.21(a), 701.23(b)(2)(iii) and 705.3. These sections reference part 741 and must be revised to reflect the redesignated section numbers in part 741. Since these changes are housekeeping and do not have any substantive effect on credit unions, the Board finds it unnecessary to either issue a proposed rule or delay the rule's effective date.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe the significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final rule is a compilation of existing regulations and requirements already in place for FISCUs. It does not add any additional requirements or burden. Accordingly, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the final rule, if adopted, will not have a significant economic impact on a significant number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The final rule does not impose any new paperwork requirements.

Executive Order 12612

The final rule does not make any substantive changes. Therefore, no new analysis of part 741's effect on state interests is required.

List of Subjects in 12 CFR Parts 701, 705 and 741

Bank deposit insurance, Credit unions, and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 16, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–1610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.6 is amended by revising paragraph (d)(4) to read as follows:

§ 701.6 Fees paid by Federal credit unions.

* * * * *

(d) * * *

(4) If a credit union makes a combined payment of its operating fee and its share insurance deposit as provided in

§ 741.4 of this chapter and such payment is delinquent, only one administrative fee will be charged and interest will be charged on the total combined payment.

3. Section 701.21(a) is amended by revising the fourth sentence to read as follows:

§ 701.21 Loans to members and lines of credit to members.

(a) * * * Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with 12 U.S.C. 3801 *et seq.*, and certain provisions apply to loans made by federally insured state-chartered credit unions as specified in § 741.203 of this chapter. * * *

* * * * *

4. Section 701.23 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(2) * * *

(iii) for purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by § 741.8 of this chapter is obtained before consummation of such purchase.

* * * * *

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

5. The authority citation for part 705 continues to read as follows:

Authority: Public Law 97–35, 42 U.S.C. 9822; Public Law 99–609, note to 42 U.S.C. 9822; Public Law 101–144, 12 U.S.C 1766(k).

6. Section 705.3 is amended by revising paragraph (b) to read as follows:

§ 705.3 Definitions.

* * * * *

(b) For purposes of this part, a ''participating credit union'' means a state- or federally-chartered credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership consists of predominantly low-income members as defined in paragraph (a) of this section or applicable state standards as reflected by a current low-income designation pursuant to § 701.32(d)(1) or § 741.204(b) of this chapter or, in the case of a state-chartered nonfederally insured credit union, under applicable state standards; and has submitted an application for a loan and/or technical assistance and has been selected for participation in the Program in accordance with this part.

7. Part 741 is revised to read as follows:

PART 741—REQUIREMENTS FOR INSURANCE

Sec.

Authority: 12 U.S.C. 1757, 1766, and 1781–1790.

Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.0 Scope.

The provisions of this part apply to federal credit unions, federally insured state-chartered credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act, unless the context of a provision indicates its application is otherwise limited. This part prescribes various requirements for obtaining and maintaining federal insurance and the payment of insurance premiums and capitalization deposit. Subpart A of this part contains substantive requirements that are not codified elsewhere in this chapter. Subpart B of this part lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to federally insured state-chartered credit unions. As used in this part, ''insured credit union'' means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Subpart A—Regulations that Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That are not Codified Elsewhere in NCUA's Regulations

§ 741.1 Examination.

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

§ 741.2 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

§ 741.3 Criteria.

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) *Adequacy of reserves* (1) *General rule.* State-chartered credit unions must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on federal credit unions by Section 116 of the Act and part 702 of this chapter.

(2) *Charges against reserves.* State-chartered credit unions may charge losses, including losses other than loan losses, against the statutory reserve in accordance with either state law or procedures established by the state supervisory authority. However, charges for losses other than loan losses shall be made only after notification to the Regional Director, unless the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. For purposes of this section, capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(3) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in Title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and co-makers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in § 741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term ''undue risk to the NCUSIF'' is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing in this section shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an annual insurance premium.

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

(1) *Insurance year* means the period from January 1 through December 31;

(2) *Insured shares* means the total amount of a credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law). ''Insured shares'' does not include amounts in excess of insurance coverage as provided in part 745 of this chapter; and

(3) *Normal operating level* means a total value of the NCUSIF equity equaling 1.3 percent of the aggregate of all insured shares in insured credit unions as of the end of the preceding insurance year, or such lower value as

established by action of the NCUA Board.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit amount shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Unless waived by the NCUA Board, each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

(e) *Redistribution of NCUSIF equity.* When the NCUSIF exceeds its normal operating level, the NCUA Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the NCUSIF to its normal operating level. Such adjustment will be in the form determined by the NCUA Board and may include a waiver of insurance premiums, premium rebates, and/or distributions from NCUSIF equity.

(f) *Forms 1304 and 1305.* A certified copy of Form 1304 will be provided to all federally insured state-chartered credit unions and Form 1305 to all federally chartered credit unions in connection with the computation and funding of their annual premium payment and any change in their one percent deposit. Form 1305 also includes the annual operating fee. Forms 1304 and 1305 are invoices and are precalculated based on the credit union's previous year's insured shares. The forms provide for any adjustments declared by the NCUA Board, resulting in a single net transfer of funds between the credit union and the NCUA. Additional copies of each credit union's Form 1304 and 1305 may be obtained from the appropriate NCUA Regional Office.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF during an insurance year shall immediately fund its one percent deposit based on the total of its shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

(i) *Mergers of nonfederally insured credit unions.* Where a nonfederally insured credit union merges into a federally insured credit union, the continuing federally insured credit union shall immediately pay to the NCUSIF a prorated insurance premium (unless waived in whole or in part for all federally insured credit unions), and an additional one percent deposit based upon the increase in insured shares resulting from the merger.

(j) *Return of deposit.* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit. Any solvent credit union that is closed due to involuntary liquidation shall be entitled to a return of its deposit prior to final distribution of member shares. Any other credit union whose insurance coverage with the NCUSIF terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the NCUA Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the NCUSIF. This includes termination of insurance due to mergers and consolidations. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union shall pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

§ 741.5 Notice of termination of excess insurance coverage.

In the event of a credit union's termination of share insurance coverage other than that provided by the NCUSIF, the credit union must notify all members in writing of such termination at least thirty days prior to the effective date of termination.

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union with assets in excess of $50,000,000 shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the NCUA Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

§ 741.7 Conversion to a state-chartered credit union.

Any federal credit union that petitions to convert to a state-chartered federally insured credit union is required to apply to the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this part. If the application for continued insurance is not approved, such insurance will terminate subject to the conditions set forth in section 206(d) of the Act.

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured pursuant to Title II of the Act;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1) (iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) Assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

§ 741.9 Uninsured membership shares.

Any credit union that is insured pursuant to Title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745 of this chapter.

§ 741.10 Disclosure of share insurance.

Any credit union which is insured pursuant to Title II of the Act and is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units (or, for low-income designated credit unions, any nonmembers), shall identify such nonmember accounts as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union shall advise any present nonmember share and deposit holders by letter that their accounts are not insured by the NCUSIF. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

§ 741.201 Minimum fidelity bond requirements.

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in § 701.20 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than 35 days prior to the effective date of such termination.

(b) Corporate credit unions must comply with § 704.17 of this chapter in lieu of § 701.20 of this chapter.

§ 741.202 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to Title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13 of this chapter.

(b) Each credit union which is insured pursuant to Title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the financial officer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13 of this chapter.

§ 741.203 Minimum loan policy requirements.

Any credit union which is insured pursuant to Title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of § 701.32 of this chapter will be made and reviewed on the same basis as that provided in § 701.32 of this chapter for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate regional director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.32(d) of this chapter for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) of this chapter must adhere to the requirements stated in § 701.14(c) of this chapter concerning the prior notice and NCUA review. Federally insured state-chartered credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14 (d)(2) and (f) of this chapter. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1) of this chapter.

§ 741.206 Corporate credit unions.

Any corporate credit union insured pursuant to Title II of the Act shall adhere to the requirements of part 704 of this chapter.

§ 741.207 Community development revolving loan program for credit unions.

Any credit union which is insured pursuant to Title II of the Act and is a ''participating credit union,'' as defined in § 705.3 of this chapter, shall adhere to the requirements stated in part 705 of this chapter.

§ 741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.

Any credit union which is insured pursuant to Title II of the Act and which merges with another credit union or non-credit union institution, and any state-chartered credit union which voluntarily terminates its status as a federally-insured credit union, or converts from federal insurance to other insurance from a government or private source authorized to insure member accounts, shall adhere to the applicable requirements stated in section 206 of the Act and parts 708a and 708b of this chapter concerning mergers and voluntary termination or conversion of insured status.

§ 741.209 Management official interlocks.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 711 of this chapter concerning management official interlocks, issued under the provisions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.).

§ 741.210 Central liquidity facility.

Any credit union which is insured pursuant to Title II of the Act and is a member of the Central Liquidity Facility, shall adhere to the requirements stated in part 725 of this chapter.

§ 741.211 Advertising.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements prescribed by part 740 of this chapter.

§ 741.212 Share insurance.

(a) Member share accounts received by any credit union which is insured pursuant to Title II of the Act in its usual course of business, including regular shares, share certificates, and share draft accounts, are insured subject to the limitations and rules in subpart A of part 745 of this chapter.

(b) The payment of share insurance and the appeal process applicable to any credit union which is insured pursuant to Title II of the Act are addressed in subpart B of part 745 of this chapter.

§ 741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable rules of practice and procedures for administrative actions and adjudicative hearings prescribed by part 747 of this chapter. Subpart E of part 747 of this chapter applies only to federal credit unions.

§ 741.214 Report of crime or catastrophic act and Bank Secrecy Act compliance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 748 of this chapter.

§ 741.215 Records preservation program.

Any credit union which is insured pursuant to Title II of the Act shall maintain a records preservation program as prescribed by part 749 of this chapter.

§ 741.216 Flood insurance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 760 of this chapter.

§ 741.217 Truth in savings.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 707 of this chapter.

§ 741.218 Involuntary liquidation and creditor claims.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable provisions in part 709 of this chapter. Section 709.3 of this chapter applies only to federal credit unions.

[FR Doc. 95–28703 Filed 11–27–95; 8:45 am]
BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. 94–ANE–50; Notice No. 35–ANE–01]

Special Conditions; Hamilton Standard Model 247F Propeller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Hamilton Standard Model 247F propeller with electronic propeller and pitch control system. The applicable regulations currently do not contain adequate or appropriate safety standards for constant speed propellers with electronic propeller and pitch control. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 35 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7112; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1993, Hamilton Standard applied for an amendment to the type certificate of Model 247F propeller. The new propeller would use a new electronic propeller and pitch control system in place of the primary governor control and synchrophaser unit.

The existing propeller pitch control is normally monitored by a governor which senses propeller speed and adjusts the pitch to absorb the engine power and therefore maintains the propeller at the correct RPM. When the primary governor fails, the propeller pitch is controlled by an overspeed governor. This type of system is conventional and its airworthiness considerations are addressed by part 35 of the FAR's.

The FAA has determined that special conditions are necessary to certificate a Hamilton Standard electronic propeller and pitch control in place of the primary governor control and synchrophaser unit for the Model 247F propeller. This control is designed to operate with existing mechanical and hydraulic interface of the engine and propeller. Electronic propeller and pitch controls introduce potential failures that can result in unsafe conditions. These types of failures are not addressed by the requirements of part 35. These failures can lead to the following possible unsafe conditions:

(1) Loss of control of the propeller,

(2) Instability of a critical function,

(3) Unwanted change in propeller pitch causing improper thrust/overspeed, and

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Certification issues that must be addressed are possible loss of aircraft-supplied electrical power, aircraft supplied data, failures modes, environmental effects including lightning strikes and high intensity radiated fields (HIRF), and software design.

The FAA finds that under the provisions of § 21.16 of the FAR, additional safety standards must be applied to the Hamilton Standard electronic propeller control for Model 247F propellers to demonstrate that it is capable of acceptable operation.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Hamilton Standard must show that the Model 247F propeller meets the requirements of the applicable regulations in effect on the date of the application. Those FAR's are § 21.21 and part 35, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 35, as amended, do not contain adequate or appropriate safety standards for the Model 247F propeller. Therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Features

Because of the unusual design features of the Hamilton Standard Model 247F propeller with electronic propeller and pitch control, the FAA issues special conditions under §21.16 of the FAR.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Due consideration has been given to the comments received.

One commenter was concerned that the terms ''unsafe conditions'' and ''unacceptable change'' are vague and could lead to multiple interpretations if the terms were not defined in the special conditions.

The FAA agrees, and the term ''unsafe conditions'' is now defined in the special conditions and the term ''unacceptable change'' has been removed and replaced with the term ''unsafe condition''.

One commenter was concerned with system redundancy and stated that FAR 25.1309, its associated Advisory Circular and a Failure Modes Effects Analysis (FMEA) should be applied to the special condition.

The FAA disagrees. The special condition as stated in paragraph (a)(2) addresses the commenter's concern by requiring that the propeller be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components of the propeller control system, result in an unsafe condition. Also, the propeller manufacturer includes a FMEA report as part of the data required for propeller certification. This same report is submitted to the airframe manufacturer for incorporation into aircraft certification documentation to show compliance with FAR 25.1309.

After careful review of the available data, including the comments noted above, the FAA determined that air safety and the public interest require the adoption of these special conditions with the changes discussed previously.

Conclusion

This action affects only Hamilton Standard Model 247F propeller with a new system of electronic propeller and pitch control. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the aircraft.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704; and 14 CFR 11.49 and 21.16.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Federal Aviation Administration (FAA), the following special conditions are issued as part of the type certification basis for the Hamilton Standard Model 247F propeller and pitch control system. Considering that electronic propeller and pitch control systems introduce potential failures that can result in unsafe conditions, the following special conditions are issued:

(a) Each propeller and pitch control system which relies on electrical and electronic means for normal operation must:

(1) Be designed and constructed so that any failure or malfunction of aircraft supplied power or data will not result in an unsafe condition of the propeller pitch setting or prevent continued safe operation of the propeller.

(2) Be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components of the propeller control system, result in an unsafe condition.

(3) Be tested to its environmental limits including transients (variations) caused by lightning and high intensity radiated fields (HIRF) and demonstrate no adverse effects on the control system operation and performance or resultant damage. These tests shall include, but not be limited to, the following:

(i) Lightning strikes, such as multiple-stroke and multiple-burst

(ii) Pin-injected tests to appropriate wave forms and levels

(iii) HIRF susceptibility tests

(4) Be demonstrated by analysis/tests that associated software is designed and implemented to prevent errors that would result in an unsafe propeller pitch setting or an unsafe condition.

(5) Be designed and constructed so that a failure or malfunction of electrical or electronic components in the propeller or control system will not prevent safe operation of any remaining propeller that is installed on the aircraft.

(b) For the purpose of these special conditions, an unsafe condition is considered to exist for each of the following conditions:

(1) Loss of control of the propeller,

(2) Instability of a critical function,

(3) Unwanted change in propeller pitch causing improper thrust/overspeed, and

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Issued in Burlington, Massachusetts, on November 16, 1995.

Jay Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28995 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–10]

Establishment of Class E Airspace; Pinecreek, MN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the description of Piney Pinecreek Border Airport, MN Class E5 airspace published in a final rule on October 18, 1995, Airspace Docket Number 95–AGL–10.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 95–25848, Airspace Docket 95–AGL–10, published on October 18, 1995, (60 FR 53870), established Class E5 airspace at Piney Pinecreek Border Airport, Pinecreek, MN. An error was discovered in the description of the airspace in the latitude. This action corrects the description of the minutes of latitude.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Piney Pinecreek Border Airport, Pinecreek, MN, Class E5 airspace, as published in the Federal Register on October 18, 1995 (60 FR 53870), (Federal Register document 95–25848; page 53871, column 2), is corrected in the incorporation by reference in 14 CFR 71.1 as follows:

Paragraph 6005 The Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * * *

AGL MN E5 Pinecreek, MN [Corrected]

Piney Pinecreek Border Airport, MN
(Lat. 48°59′45″ N, long. 95°58′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Piney Pinecreek Border Airport; excluding that area north of lat. 49°00′00″ N (Canadian-U.S. boundary).

* * * * * *

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–28841 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28391; Amdt. No. 1696]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on November 17, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
08/31/95 ...	NV	Reno	Tahoe Intl	FDC 5/4646	LOC/DME BC Rwy 34L, Amdt 1.
11/02/95 ...	AR	Russellville	Russellville Muni	FDC 5/5993	NDB or GPS–A, Amdt 4.
11/02/95 ...	FL	Fort Lauderdale	Fort Lauderdale Executive	FDC 5/6009	ILS Rwy 8 Amdt 4.
11/02/95 ...	FL	Fort Lauderdale	Fort Lauderdale Executive	FDC 5/6010	NDB Rwy 8 Amdt 8.
11/02/95 ...	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/5999	LOC Rwy 9R, Amdt 3B.
11/02/95 ...	FL	Miami	Dade-Collier Training and Transition	FDC 5/6007	Effective 9 November 1995, 0901 UTC. ILS Rwy 9 Amdt 13.
11/02/95 ...	FL	Miami	Dade-Collier Training and Transition	FDC 5/6008	NDB or GPS Rwy 9 Amdt 12.
11/02/95 ...	FL	Miami	Miami Intl	FDC 5/6002	ILS Rwy 27R Amdt 12.
11/02/95 ...	FL	Miami	Miami Intl	FDC 5/6003	ILS Rwy 27L Amdt 22A.
11/02/95 ...	FL	Miami	Miami Intl	FDC 5/6004	LOC Rwy 30 Amdt 5B.
11/02/95 ...	FL	Miami	Miami Intl	FDC 5/6005	VOR/DME RNAV or GPS Rwy 27R orig.
11/02/95 ...	FL	Miami	Opalocka	FDC 5/6006	VOR/DME RNAV Rwy 27R orig.
11/02/95 ...	FL	West Palm Beach	Palm Beach County Park	FDC 5/6011	VOR or GPS Rwy 15 Amdt 2.
11/02/95 ...	TX	Mesquite	Phil L. Hudson Muni	FDC 5/6015	NDB or GPS Rwy 17, Amdt 4.
11/02/95 ...	TX	Mesquite	Phil L. Hudson Muni	FDC 5/6017	LOC BC Rwy 35, Amdt 1.
11/02/95 ...	TX	Mesquite	Phil L. Hudson Muni	FDC 5/6020	LOC Rwy 17, Amdt 3.
11/03/95 ...	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/6032	NDB or GPS Rwy 5, Amdt 4A. This corrects 5/5962 in TL95–24.
11/03/95 ...	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/6033	NDB or GPS Rwy 19, Amdt 5A. This corrects 5/5963 in TL95–24
11/06/95 ...	OR	Portland	Portland Intl	FDC 5/6052	LOC/DME Rwy 20, Amdt 7.
11/06/95 ...	OR	Portland	Portland Intl	FDC 5/6053	VOR/DME Rwy 20, orig.
11/07/95 ...	CA	Oakland	Metropolitan Oakland Intl Winnsboro/ Fairfield County.	FDC 5/6085	NDB or GPS Rwy 4 Amdt 3A.
11/08/95 ...	FL	Naples	Naples Muni	FDC 5/6095	VOR or GPS Rwy 4 Amdt 4.
11/08/95 ...	FL	Naples	Naples Muni	FDC 5/6096	VOR or GPS Rwy 22 Amdt 5.

FDC date	State	City	Airport	FDC No.	SIAP
11/09/95 ...	DE	Wilmington	New Castle County	FDC 5/6146	Effective 7 Dec 95 at 0901 UTC. VOR Rwy 27 Amdt 3.
11/09/95 ...	DE	Wilmington	New Castle County	FDC 5/6147	Effective 7 Dec 95 at 0901 UTC. VOR or GPS Rwy 19 Amdt 4.
11/09/95 ...	DE	Wilmington	New Castle County	FDC 5/6148	Effective 7 Dec 95 at 0901 UTC. VOR or GPS Rwy 11 Amdt 3.
11/09/95 ...	NY	Albany	Albany County	FDC 5/6123	ILS Rwy 1 Amdt 8.
11/09/95 ...	OK	Ardmore	Ardmore Muni	FDC 5/6121	NDB or GPS Rwy 30, Amdt 4.
11/09/95 ...	OK	Ardmore	Ardmore Muni	FDC 5/6122	ILS Rwy 30, Amdt 3.
11/09/95 ...	WI	Racine	John H. Batten	FDC 5/6135	NDB Rwy 4, Amdt 3. Terminal route.
11/09/95 ...	WI	Racine	John H. Batten	FDC 5/6136	ILS Rwy 4, Amdt 4. Terminal route.
11/13/95 ...	AR	Little Rock	Adams Field	FDC 5/6201	ILS Rwy 4R, orig.
11/13/95 ...	AZ	Douglas Bisbee	Bisbee Douglas Intl	FDC 5/6191	VOR Rwy 17 Amdt 2.
11/13/95 ...	AZ	Douglas Bisbee	Bisbee Douglas Intl	FDC 5/6192	VOR/DME or GPS Rwy 17 Amdt 5.
11/13/95 ...	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/6190	VOR or GPS Rwy 27R, Amdt 10B.
11/13/95 ...	FL	West Palm Beach	Palm Beach	FDC 5/6193	RADAR–1, Amdt 9.
11/13/95 ...	IL	Freeport	Freeport Albertus	FDC 5/6185	VOR/DME RNAV or GPS Rwy 6, Amdt 5.
11/13/95 ...	LA	New Orleans	Lakefront	FDC 5/6195	ILS Rwy 18R, Amdt 11.
11/13/95 ...	LA	New Orleans	Lakefront	FDC 5/6196	VOR or GPS Rwy 36L, Amdt 6.
11/13/95 ...	LA	New Orleans	Lakefront	FDC 5/6197	VOR or GPS–B, Amdt 8.
11/13/95 ...	LA	New Orleans	Lakefront	FDC 5/6198	VOR or GPS Rwy 18R, Amdt 3.
11/13/95 ...	LA	New Orleans	Lakefront	FDC 5/6199	VOR or GPS–A, Amdt 16.
11/14/95 ...	SC	Greer	Greenville-Spartanburg	FDC 5/6217	IL Rwy 21, Amdt 2.

[FR Doc. 95–28840 Filed 11–27–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 799

[Docket No. 951002244–5244–01]

RIN 0694–AB08

Foreign Policy Controls: Specially Designed Implements of Torture

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by expanding foreign policy controls on specially designed implements of torture. Previously, such implements were controlled under ECCN 0A82C of the Commerce Control List, along with handcuffs, police helmets and shields, as crime control and detection commodities. As such, they did not require a validated license for export to member countries of the North Atlantic Treaty Organization (NATO), Australia, Japan or New Zealand. This rule creates a new CCL entry requiring a validated license for export of specially designed implements of torture to all destinations, including Canada. Applications for such exports will continue to be subject to a general policy of denial.

EFFECTIVE DATE: This rule is effective November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 482–0171.

SUPPLEMENTARY INFORMATION:

Background

This rule expands controls on specially designed implements of torture, by moving them from Export Commerce Control Number (ECCN) 0A82C to a new ECCN, 0A83D, and requiring a validated license to all destinations, including Canada. Such items will continue to be subject to a general policy of denial to all destinations. This policy is described in a new section, § 776.19, and § 776.14 has been revised to eliminate references to implements of torture.

Please note that the CCL entries controlled for reasons of Crime Control added in the revision of § 776.14 do not constitute an expansion of control. The additional entries merely extend the control to product groups (i.e., software, technology) within previously existing CCL categories. This completes a process begun in September 1991 by the issuance of the new Commerce Control List and its revised numbering and categorization schemes.

Although the Export Administration Act of 1979 (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions

of the EAA, as amended, shall be carried out under Executive Order 12924 of August 19, 1994, and notice of August 15, 1995 (60 FR 42767), so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the EAA. Under a policy of conforming actions under the Executive Order to those under the EAA, insofar as appropriate, the Department of Commerce notified the Congress of this expansion of foreign policy controls on November 20, 1995.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E. O. 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, 0694–0007, and 0694–0010.

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 section 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 foreign and military 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 Hillary Hess, Office of Exporter Services, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 776 and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 776—[AMENDED]

1. The authority citation for 15 CFR Part 776 continues to read as follows:

Authority: 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; 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); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); 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. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, 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, 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 799—[AMENDED]

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; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); 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. 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, 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).

3. Section 776.14 is amended by revising the section heading and by revising paragraph (a) to read as follows:

§ 776.14 Crime control and detection items.

(a) *Export license requirements.* Pursuant to section 6(n) of the Export Administration Act of 1979, an individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related software and technology, except that authorized under General License GTDA (§ 779.3 of this subchapter) to any destination except Australia, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Turkey or the United Kingdom. Items affected by this requirement are identified on the Commerce Control List under Export Control Classification Numbers (ECCNs) 1A84, 3A80, 3A81, 3D80, 3E80, 4A03 (fingerprint computers only), 4A80, 4D01 (software for the ''development'', ''production'', or ''use'' of fingerprint computers only), 4D80, 4E01 (technology for the ''development'', ''production'', or ''use'' of fingerprint computers only), 4E80, 6A02 (police-model infrared viewers only), 6E01 (technology for the ''development'' of police-model infrared viewers only), 6E02 (technology for the ''production'' of police-model infrared viewers only), 9A80, 0A82, 0A84 and 0E84. Applications for items controlled under this paragraph (a) will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

* * * * *

4. Section 776.19 is added to read as follows:

§ 776.19 Implements of torture.

Pursuant to section 6 of the Export Administration Act of 1979, an individual validated export license is required to export specially designed implements of torture controlled by 0A83 to all destinations, including Canada. Applications for such licenses will generally be denied to all destinations.

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 10, Miscellaneous, ECCN 0A82C is revised to read as follows:

0A82C Saps; thumbcuffs, leg irons, shackles, and handcuffs; straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories, n.e.s.

Requirements

Validated License Required: QSTVWYZ, except NATO, Australia, New Zealand and Japan.
Unit: $ Value.
Reason for Control: FP (see Notes).
GLV: $0.
GCT: No.
GFW: No.

Notes: 1. FP controls for crime control (human rights) apply to items controlled by 0A82 (see § 776.14 of this subchapter).

2. These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

6. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 10, Miscellaneous, a new ECCN 0A83D is added to read as follows:

0A83D Thumbscrews and specially designed implements of torture; and parts and accessories, n.e.s.

Requirements

Validated License Required: QSTVWYZ and Canada.
Unit: $ Value.
Reason for Control: FP (see Note).
GLV: $0.
GCT: No.
GFW: No.

Dated: November 21, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–28887 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DT–P

FEDERAL TRADE COMMISSION

16 CFR Part 3

Duration of Existing Competition and Consumer Protection Orders

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission hereby issues a rule (''Sunset Rule'') that terminates existing administrative orders when certain conditions have been met, consistent with the Commission's ''Policy Statement Regarding Duration of Competition and Consumer Protection Orders'' published in the Federal Register on August 16, 1995. Prior to the issuance of this rule, the Commission could only set aside the provisions of such orders upon petition of the respondent, or pursuant to show-cause proceedings initiated *sua sponte* by the Commission. The rule reduces the administrative expense and burden associated with those procedures by automatically vacating certain order provisions that no longer serve the public interest.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder, Assistant Director for Enforcement, Division of Enforcement, Bureau of Consumer Protection, FTC, (202) 326–3017; Roberta Baruch, Deputy Assistant Director for Compliance, Bureau of Competition, (202) 326–2861.

SUPPLEMENTARY INFORMATION: On September 1, 1994, the Commission published a policy statement that sunsetted Commission competition orders under certain conditions.[1] The Commission requested comment on the policy and on whether a similar policy should be applied to consumer protection orders.

On August 16, 1995, the Commission published a further ''Policy Statement Regarding Duration of Competition and Consumer Protection Orders'' in the Federal Register. 60 FR 42569. Under this Policy Statement, which superseded the Commission's 1994 Policy Statement, the Commission will ordinarily sunset future competition and consumer protection administrative orders automatically after 20 years, unless the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(l) of the Federal Trade Commission Act (''FTC Act''). This policy does not extend to federal court orders. The Commission also announced its intention to sunset existing administrative orders through rulemaking, rather than case-by-case determinations, and published a Notice of Proposed Rulemaking regarding the ''Duration of Existing Competition and Consumer Protection Orders'' in the Federal Register. 60 FR 42481 (August 16, 1995).

The Commission received 22 comments regarding the proposed rule, 21 of which support the issuance of the proposed rule. One comment, filed by the American Association of Retired Persons (''AARP''), opposes the proposed rule.[2] In addition, three of the 21 comments supporting the proposed rule urge the Commission to sunset existing administrative orders in less than 20 years.[3] One of the 21 comments supporting the proposed rule urges the Commission to adopt (1) an expedited process for reviewing petitions to set aside consumer protection orders that are ten years old or older; and (2) a presumption that such petitions should be granted unless substantial contrary evidence is submitted on the record.[4]

[1] ''Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders,'' 59 FR 45286.

[2] AARP opposes the sunsetting of core provisions in consumer protection orders (AARP took the same position when it commented on the Commission's 1994 Policy Statement). However, if the Commission decides to sunset consumer protection orders after 20 years, AARP endorses the proposal to extend the duration of any order where the government has filed a complaint to enforce the order while it remains in force. AARP contends that the proposed rule is unclear as to whether the Commission will be able to impose civil penalties as well as extend an order's duration by filing a complaint. AARP urges the Commission to state unambiguously that civil penalties may be imposed for violations of an order, the duration of which is extended under the proposed rule.

The Commission notes that the issuance of the rule will not affect the Commission's authority pursuant to Section 5(l) of the FTC Act to seek civil penalties for violations of an order that remains in effect. Complaints filed in federal court by the Commission or the Department of Justice pursuant to Section 5(l) of the FTC Act routinely seek civil penalties and will continue to do so.

[3] Another comment supporting the proposed rule requested that the Commission clarify its policy by confirming that the reference date for computing the 20 year sunset period is the date of the order's initial issuance and not the date of any subsequent modification. As the Commission stated in its Policy Statement:

Unless an order modification expressly changes the duration of an order, such modification will not affect the duration of the order as determined by this Policy Statement.

60 FR at 42572 n.9.

[4] One of the three comments described above urges the Commission to adopt a ten year sunset period for competition orders. Another urges the Commission to adopt a ten year sunset period for consumer protection orders. The last one urges the Commission to consider a sunset period shorter than 20 years. The Policy Statement explains why the Commission decided to sunset administrative orders after 20 years, 60 FR at 42573, as does the superseded 1994 Policy Statement, 59 FR at 45288. Furthermore, the Policy Statement explains why the Commission decided to sunset existing orders through rulemaking as opposed to the petitioning process:

The cost of the Commission retaining added discretion as to whether it should retain older orders, thereby requiring a case-by-case analysis with respect to each petition, likely exceeds the benefits of retaining older orders in extraordinary circumstances. By adopting a policy that does not require the Commission to exercise discretion with respect to individual orders, the Commission will conserve scarce resources and ensure equitable treatment of similarly situated respondents now subject to administrative orders.

None of the comments provide any information or express any views that the Commission had not already considered in issuing its Policy Statement and the proposed rule. Accordingly, the Commission has determined to issue the proposed rule with no changes. The rule provides that, in general, all provisions of any existing administrative order will automatically sunset 20 years from the date that the order was issued.[5] The rule establishes an exception, however, where a federal court complaint alleging a violation of an existing order was filed (with or without an accompanying consent decree) within the last 20 years, or where such a complaint is subsequently filed with respect to an existing order that has not yet expired. In that event, the order will run for another 20 years from the date that the most recent complaint was or is filed with the court, unless the complaint was or is dismissed, or the court has ruled or rules that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed (or was or is upheld on appeal). The Commission's order will remain in effect while the court complaint and any appeal is pending.

The filing of a court complaint will not affect the duration of an order's application to any respondent that is not named as a defendant in the complaint. The issuance of this rule does not affect the Commission's ability to consider whether a complaint alleging order violations has ever been filed against a respondent, and any other relevant circumstances, in determining whether to grant or deny a subsequent petition by a respondent to reopen and set aside an order on the basis of changes in law, fact, or the public interest. *See* Commission Rule 2.51, 16 CFR 2.51.

Regulatory Flexibility Act

On the basis of information currently available to the Commission, it is anticipated that the rule will result in the elimination of a substantial number of existing orders that no longer serve the public interest. Many of the comments supporting the issuance of the rule state that it will reduce costs and stimulate competition. Accordingly, the Commission has determined at this time that the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis, because the rule will not have a significant impact on a substantial number of small entities within the meaning of the Act. 5 U.S.C. § 605. This notice serves as certification to that effect for purposes of the Small Business Administration.

Effective Date

The rule will take effect on January 2, 1996. Petitions to stay, in whole or in part, the termination of an order pursuant to the rule shall be filed pursuant to Commission Rule 2.51, 16 CFR 2.51. In the case of orders that have been in effect for at least 20 years, the rule provides respondents with 30 days to file such a petition before the order is automatically terminated by the rule. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations as follows:

PART 3—[AMENDED]

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.72 is amended by adding a new paragraph 3.72(b)(3) to read as follows:

§ 3.72 Reopening.

* * * * *

(b) * * *

(3) *Termination of existing orders.* (i) *Generally.* Notwithstanding the foregoing provisions of this rule, and except as provided in paragraphs (b)(3)(ii) and (iii) of this section, an order issued by the Commission before August 16, 1995, will be deemed, without further notice or proceedings, to terminate 20 years from the date on which the order was first issued, or on January 2, 1996, whichever is later.

(ii) *Exception.* This paragraph applies to the termination of an order issued before August 16, 1995, where a complaint alleging a violation of the order was or is filed (with or without an accompanying consent decree) in federal court by the United States or the Federal Trade Commission while the order remains in force, either on or after August 16, 1995, or within the 20 years preceding that date. If more than one complaint was or is filed while the order remains in force, the relevant complaint for purposes of this paragraph will be the latest filed complaint. An order subject to this paragraph will terminate 20 years from the date on which a court complaint described in this paragraph was or is filed, except as provided in the following sentence. If the complaint was or is dismissed, or a federal court rules or has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed, or was or is upheld on appeal, the order will terminate according to paragraph (b)(3)(i) of this section as though the complaint was never filed; provided, however, that the order will not terminate between the date that such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. The filing of a complaint described in this paragraph will not affect the duration of any order provision that has expired, or will expire, by its own terms. The filing of a complaint described in this paragraph also will not affect the duration of an order's application to any respondent that is not named in the complaint.

(iii) *Stay of Termination.* Any party to an order may seek to stay, in whole or part, the termination of the order as to that party pursuant to paragraph (b)(3)(i) or (ii) of this section. Petitions for such stays shall be filed in accordance with the procedures set forth in § 2.51 of these rules. Such petitions shall be filed on or before the date on which the order would be terminated pursuant to paragraph (b)(3)(i) or (ii) of this section. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

(iv) *Orders not terminated.* Nothing in § 3.72(b)(3) is intended to apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–28554 Filed 11–27–95; 8:45 am]

BILLING CODE 6750–01–P

60 FR at 42572.

[5] Orders that are 20 years old or older will sunset on January 2, 1996. Certain provisions in existing administrative orders will expire, or have already expired, according to their own terms, and the rule will not affect the duration of those provisions. The rule also will not revive any order provision that the Commission has previously reopened and set aside. *See* 16 CFR 2.51 & 3.72. The rule will not apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 95–98]

RIN 1515–AB50

North American Free Trade Agreement—Submission of Certificates of Eligibility for Textile and Apparel Goods Under the Tariff Preference Level Provisions

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On June 20, 1994, T.D. 94–52 was published in the Federal Register (59 FR 31519) setting forth an interim amendment to § 12.132 of the Customs Regulations to require submission of a Certificate of Eligibility in connection with the entry of non-originating textile and apparel goods from Canada or Mexico for which preferential tariff treatment is claimed under the tariff preference level provisions of the North American Free Trade Agreement (NAFTA). The interim amendment to § 12.132 contained in T.D. 94–52 was adopted as a final rule without change on September 6, 1995, in T.D. 95–68 (60 FR 46334) which set forth final regulations implementing the NAFTA. This document discusses the public comments submitted in response to T.D. 94–52 and makes one clarifying change to the regulatory text.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Strategic Trade (202–927–0162).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico entered into the North American Free Trade Agreement (NAFTA), one of the principal purposes of which is to eliminate tariff and other barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the countries. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. On December 30, 1993, Customs published in the Federal Register (58 FR 69460) T.D. 94–1 setting forth interim amendments to the Customs Regulations to implement the Customs-related aspects of the NAFTA. Those interim regulations took effect on January 1, 1994, to coincide with the entry into force of the NAFTA.

The centerpiece of the NAFTA involves the granting of preferential tariff (duty-free or reduced-duty) treatment on goods imported into a NAFTA country from another NAFTA country. As a general rule, such preferential tariff treatment may only be accorded to goods that satisfy the rules of origin standards set forth in Chapter Four of the NAFTA; such goods are referred to as ''originating'' goods for NAFTA purposes. The NAFTA Chapter Four rules of origin are set forth in section 202 of the Act which is codified at 19 U.S.C. 3332.

Under Chapter Three of the NAFTA, Appendix 6.B. to Annex 300–B provides for an exception to the general rule regarding the granting of NAFTA preferential tariff treatment only to originating goods. This exception concerns specified textile and apparel goods which, because of the origin of the materials used to produce the goods in a NAFTA country and/or the nature of the processing used to produce the goods in a NAFTA country, do not meet the Chapter Four rules of origin standards and thus do not qualify as originating goods under the NAFTA. For such non-originating goods, Appendix 6.B. to Annex 300–B provides that they may nevertheless be granted preferential tariff treatment (that is, the duty-free or reduced-duty treatment that would be accorded to the same type of good when it qualifies as an originating good) up to specified annual quantitative ''tariff preference levels'' (TPLs). Once a TPL applicable to a NAFTA country's exports to another NAFTA country has been reached, any further exports of goods of that TPL category to the same NAFTA country during that year may not be accorded NAFTA preferential tariff treatment but rather will be subject to duty at the most-favored-nation rate. The TPL quantitative limits are set forth by category in Schedules 6.B.1. through 6.B.3. of Annex 300–B with reference to imports into each NAFTA country from each of the other NAFTA countries. For U.S. import purposes, the TPL provisions of Appendix 6.B. and Schedules 6.B.1. through 6.B.3. are also set forth in Additional U.S. Notes 3 through 6 to Section XI, HTSUS.

The basic procedures for filing a claim for NAFTA preferential tariff treatment, set forth in § 181.21 of the NAFTA implementing regulations (19 CFR 181.21), are generally applicable in the case of goods for which preferential tariff treatment is sought under the TPL provisions described above. However, there is one principal exception to those procedures as regards goods to which Appendix 6.B. to Annex 300–B applies: as stated in paragraph (a) of that section, there is no requirement that the written declaration (which constitutes the claim for preferential tariff treatment) be based on a Certificate of Origin in the possession of the importer. This exception is necessary because a NAFTA Certificate of Origin has reference only to originating goods (that is, goods which comply with the Chapter Four rules of origin standards) and thus does not cover TPL goods which are, by definition, not originating goods.

Following the publication of T.D. 94–1 and the entry into force of the NAFTA, representatives of the United States, Canada and Mexico continued to have discussions regarding whether additional requirements or procedures should be adopted for purposes of administering the provisions of Annex 300–B of the NAFTA. As a result of those discussions, Canada and Mexico decided on, and implemented, use of a Certificate of Eligibility as the means for monitoring and identifying export shipments eligible for preferential tariff treatment pursuant to the TPL provisions of Appendix 6.B. to Annex 300–B of the NAFTA (no corresponding Certificate of Eligibility has been adopted for purposes of U.S. exports to Canada and Mexico). The Certificate of Eligibility, signed by an authorized official of the Canadian or Mexican government, is issued to the Canadian or Mexican exporter for transmittal to the importer of the goods who then is able to make a claim for preferential tariff treatment based on the Certificate of Eligibility. The United States, Canada and Mexico agreed that presentation of a properly completed and executed Certificate of Eligibility for Canadian and Mexican exports is a prerequisite to the granting of a claim for preferential tariff treatment under the TPL provisions, and failure to present such a Certificate of Eligibility will result in assessment of duty at the most-favored-nation (that is, non-NAFTA) rate. In furtherance of this agreement, Customs implemented the procedure of granting claims for preferential tariff treatment on TPL goods imported from Canada or Mexico only if a properly completed and executed Certificate of Eligibility pertaining to the goods is presented to Customs when the claim is made.

In order to reflect the procedures agreed to by the three countries and implemented by Customs with regard to Canadian and Mexican exports, on June 20, 1994, Customs published T.D. 94–52 in the Federal Register (59 FR 31519) for purposes of amending, on an interim basis, § 12.132 of the Customs

Regulations (19 CFR 12.132), which had been adopted as an interim regulation in T.D. 94–4 discussed above, to require submission of a Canadian or Mexican Certificate of Eligibility in connection with a claim for preferential tariff treatment on goods covered by the NAFTA TPL provisions. Although the interim regulation took effect on the date of publication, T.D. 94–52 prescribed a public comment period which closed on August 19, 1994.

The interim NAFTA regulations set forth in T.D. 94–1 and the interim amendment to § 12.132 set forth in T.D. 94–52 were adopted as a final rule in T.D. 95–68 which was published in the Federal Register on September 6, 1995 (60 FR 46334). Although T.D. 95–68 republished the entire text of interim § 12.132 (that is, the original text contained in T.D. 94–1 as amended by T.D. 94–52), the **SUPPLEMENTARY INFORMATION** portion of T.D. 95–68 stated that Customs would publish a separate document to specifically address T.D. 94–52, including any public comments submitted in response thereto.

Discussion of Public Comments

Three comments were received in response to the interim regulation set forth in T.D. 94–52.

Two of these commenters were primarily concerned with the ability to file a claim after importation and whether or not there would be a sufficient time period to make such a claim, particularly when the U.S. importer is unable to obtain and provide a Certificate of Eligibility at the time of entry.

While a failure to supply the required Certificate of Eligibility will preclude the filing of a claim for preferential tariff treatment and will result in liquidation of the entry at the non-preferential duty rate, Customs believes that importers in most cases will have adequate opportunity, following the date of entry, to submit the Certificate and make the claim when the Certificate is not available at the time of entry. Customs notes in this regard that the importer may supply the necessary documentation and make the claim either at any time prior to final liquidation or in connection with the filing of a protest within 90 days following final liquidation. Moreover, under existing procedures, liquidation is delayed for a minimum of 90 days following the date of entry. Thus, an importer has at least 180 days from the date of entry in which to file a claim through submission of the required Certificate of Eligibility. In addition, on a case-by-case basis, Customs may grant an importer's request for a delay in liquidation so as to afford the importer additional time to submit the Certificate and make the claim if the request explains the reason for the delay in providing the Certificate.

With specific reference to the requirement in § 12.132(b) that the Certificate of Eligibility ''shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter'', the third commenter objected to adoption of the interim rule with an immediate effective date. This commenter stated that the rule should only be implemented after sufficient notice and opportunity for comment are provided to the importing public in accordance with the requirements of the Administrative Procedure Act (APA), arguing that T.D. 94–52 did not set forth an adequate basis for dispensing with the normal APA advance notice and delayed effective date procedures.

Customs believes that T.D. 94–52 set forth an adequate justification, consistent with the provisions of the APA, for dispensing with the normal advance notice, comment and delayed effective date requirements of the APA. T.D. 94–52 specifically cited the foreign affairs function exception to application of the normal APA rulemaking procedures. To the extent that this commenter believes that the failure to provide for a delayed effective date limits the opportunity to obtain preferential tariff treatment on TPL goods that could be the subject of a claim at the time of entry but for the absence of a Certificate of Eligibility, Customs would point out that, as explained in the response to the two other commenters set forth above, there are alternative procedures that may be followed to ensure that such treatment is nevertheless accorded to the goods when the Certificate of Eligibility cannot be presented until after the date of entry.

Customs notes that the last sentence of paragraph (b) of § 12.132, which states that ''[f]ailure to timely submit the required Certificate of Eligibility will result in a denial of the claim'', could be taken to imply that a claim for preferential tariff treatment on TPL goods may be made without simultaneous presentation of the Certificate to Customs. Such a conclusion would be inconsistent with the wording and intent of the preceding paragraph (b) text as discussed above in connection with the public comments. Accordingly, in order to avoid any ambiguity on this point, this document amends § 12.132 by removing the last sentence of paragraph (b).

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this final regulation because it is within the foreign affairs function of the United States. The amendment contained in this document is consistent with procedures agreed to and implemented by the United States, Canada, and Mexico. In addition, because this amendment does not involve a substantive change but rather merely clarifies existing procedures for claiming a tariff preference under the NAFTA, it is determined pursuant to 5 U.S.C. 553(b)(B), that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

Amendment to the Regulations

Accordingly, for the reasons set forth above, Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 12.132 [Amended]

2. In § 12.132, paragraph (b) is amended by removing the last sentence.

Approved: October 24, 1995.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–29001 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–094]

RIN 2115–AE47

Drawbridge Operation Regulations; Merrimack River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules governing the Newburyport US1 Bridge at mile 3.4, over the Merrimack River in Newburyport, Massachusetts, by requiring a one hour advance notice for openings during the winter months. This rule is being changed because the waterway is often frozen during the winter and there have been few requests for bridge openings. This will relieve the bridge owner of the burden of posting personnel at the bridge during the winter months.

EFFECTIVE DATE: December 28, 1995.

ADDRESSES: Documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT:

John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On December 12, 1994 the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Merrimack River, Massachusetts'' in the Federal Register (59 FR 63944). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Newburyport US1 Bridge over the Merrimack River in Newburyport, Massachusetts has a vertical clearance of 35′ above mean high water (MHW) and 42′ above mean low water (MLW). The Merrimack River is frozen during most of the winter and there have been few requests for bridge openings during this period. The previous rule required the bridge to open on signal from May 1 to October 31, 6 a.m. to 10 p.m. This final rule will extend the period during which the bridge will open on signal: from May 1 to November 15, from 6 a.m. to 10 p.m. This final rule will require at least a one hour advance notice for openings at all other times.

Discussion of Comments and Changes

The Coast Guard received no comments on the notice of proposed rulemaking. Therefore, no changes to the proposed rule were made.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the Newburyport US1 Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.605 is amended by revising paragraph (a) to read as follows:

§ 117.605 Merrimack River.

(a) The draw of Newburyport US1 Bridge, mile 3.4, shall open on signal from May 1 through November 15, from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least one hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 6, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–29047 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD07–94–094]

RIN 2115–AE84

Regulated Navigation Area; Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulation requiring certain vessels to make a navigation advisory broadcast when approaching or reaching points within Tampa Bay. The required navigation advisory broadcasts are designed to minimize the hazards associated with navigation in Tampa Bay and enhance safety be making vessel operators aware of the movements of other vessels in the area. This action establishes a permanent regulation which requires vessel navigational advisory broadcasts that have previously been voluntary.

EFFECTIVE DATE: This rule is effective on December 28, 1995.

FOR FURTHER INFORMATION CONTACT: LT Dirk Greene, Coast Guard Marine Safety Office Tampa at (813) 228–2189.

SUPPLEMENTARY INFORMATION: On November 8, 1994, the Coast Guard published a notice of proposed rulemaking in the Federal Register for this regulation (Volume 59, No. 215, FR 55602). Interested parties were requested to submit comments and none were received.

Drafting Information

The drafters of this regulation are LT Dirk A. Greene, project officer for Coast Guard Marine Safety Office, Tampa, and LTJG Julia Diaz, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

Marine Safety Office Tampa did not receive any comments by the end of the comment period, January 9, 1995. The Tampa Bay Pilots Association responded after the comment period was over requesting a minor change in the order of information broadcast. This change has been made. The words ''Navigational Advisory Broadcasts'' replace the words ''Security Broadcasts'' to reflect requirements contained in the Federal Communication Commission regulations. These changes are considered minor and do not change the intent of the regulation as published in the NPRM.

Discussion of Regulations

As the result of marine casualties occurring in the Tampa Bay entrance channels, the existing voluntary navigational advisory broadcast program established in the Coast Pilot will be made mandatory. This navigational advisory broadcast program gives master, pilots, and persons in charge of vessels real-time information on the density of marine traffic in Tampa Bay as required by 33 CFR 164.11 (p)(5). The navigational advisory broadcast program also supplements the Vessel Bridge to Bridge Radiotelephone Regulations contained in 33 CFR 26. The Captain of the Port has determined that these requirements are necessary to reduce the likelihood of any adverse incidents while transiting Tampa Bay. The chance of a collision will be further minimized by requiring masters, pilots, or persons in charge of all vessels over 50 meters in length to make navigational advisory broadcasts when approaching or reaching the broadcast/report points specifically listed under ''Final Regulations.''

Nothing in these procedures would supersede the Navigation Rules or relieve the Master or person in charge of a vessel of responsibility for the safe navigation of the vessel.

Federalism

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

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is not necessary. The security broadcast system has been followed on a voluntary basis for at least five (5) years and all vessels affected are required by 33 CFR 26 to have radiotelephone equipment. Since the impact of this is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion checklist has been prepared and is available.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

1. A new section 165.753 is added to read as follows:

§ 165.753 Regulated navigation area; Tampa Bay, Florida.

(a) The following is a regulated navigation area (RNA): All the navigable waters of Tampa Bay, Hillsborough Bay and Old Tampa Bay, including all navigable waterways tributary thereto. Also included are the waters of Egmont Channel, Gulf of Mexico from Tampa Bay to the seabuoy, Tampa Lighted Whistle Buoy T, LLNR 18465.

(b) The master, pilot, or person in charge of any vessel of 50 meters or greater shall give a Navigational Advisory Broadcast in accordance with 47 CFR 80.331 on VHF–FM channel 13 at the following broadcast/reporting points:

(1) Prior to getting underway from any berth or anchorage;

(2) Prior to entering Egmont Channel from seaward;

(3) Prior to passing Egmont Key in any direction;

(4) Prior to transiting the Skyway Bridge in either direction;

(5) Prior to transiting the intersection of Tampa Bay Cut F Channel, Tampa Bay Cut G Channel, and Gadsden Point Cut Channel;

(6) Prior to anchoring or approaching a berth for docking;

(7) Prior to tending hawser;
(8) Prior to transiting Point Pinellas Channel Light 1 in either direction.
(c) Each Navigational Advisory required by this section shall be made in the English language and will contain the following information:
(1) The words ''Hello all vessels, a Navigational Advisory follows'';
(2) Name of vessel;
(3) If engaged in towing, the nature of the tow;
(4) Direction of Movement;
(5) Present location; and,
(6) The nature of any hazardous conditions as defined by 33 CFR 160.203.
(d) Nothing in this section shall supersede either the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules, as applicable, or relieve the Master or person in charge of the vessel of responsibility for the safe navigation of the vessel.

Dated: October 19, 1995.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 95–29049 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5334–7]

Oregon: Affirmation of Immediate Final Rule To Authorize State Hazardous Waste Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Affirmation of immediate final rule and response to comments.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is responding to a significant adverse comment received in response to EPA's published decision in the Federal Register at Vol. 60, No. 195, FR 52629, October 10, 1995, to grant final authorization of Oregon's hazardous waste program revision under the Resource Conservation and Recovery Act, as amended (RCRA). After consideration of the comment, EPA's decision that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization remains unchanged. Thus, EPA approves Oregon's hazardous waste program revision and authorization of the revised program shall become effective on December 7, 1995.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams. U.S. EPA, M/S HW–105, 1200 Sixth Avenue, Seattle, Washington 98101, Phone (206) 553–2137.

SUPPLEMENTARY INFORMATION:

A. Background

EPA published an Immediate Final Rule in the Federal Register Vol. 60, No. 195 on October 10, 1995, FR 52629, stating that authorization of a revision to Oregon's hazardous waste program ''shall become effective on December 7, 1995, unless significant adverse comments on Oregon's program revision application are received by the close of business on November 8, 1995.'' One significant comment was received on November 8, 1995, by the Technical Staff of the Confederated Tribes of the Umatilla Indian Reservation. EPA's Immediate Final Decision explained that if an adverse comment was received, EPA would publish either ''(1) A withdrawal of the Immediate Final Decision or (2) a notice containing a response to comments which either affirms that the Immediate Final Decision takes effect or reverses the decision.'' EPA does not believe that the significant adverse comment made by the Technical Staff of the Confederated Tribes of the Umatilla Indian Reservation (Technical Staff of CTUIR or Technical Staff) merits a withdrawal of the Immediate Final Decision. However, EPA believes that a response to the Technical Staff of CTUIR is important to address the concerns raised and to affirm that the Immediate Final Decision will take effect as described.

B. Comments Regarding the Immediate Final Decision

The Technical Staff raised five issues concerning the Agency's decision to authorize Oregon's hazardous waste program revision. The heart of the comments go to the Technical Staff's concern over disposal of chemical weapons at the Umatilla Army Depot. To address the underlying concern, EPA reaffirms its role in environmental protection in this country. EPA is firmly committed to protection of human health and the environment and to ensuring that hazardous wastes are managed in an environmentally sound manner. After authorizing a state for a revision to its hazardous waste program, EPA functions in an oversight capacity with a strong mandate to see that the goals of RCRA are met. Based on its decision to authorize a revision to Oregon's hazardous waste program, EPA believes that Oregon can meet its delegated obligation to carry out a hazardous waste program equivalent to the federal RCRA program. EPA does not abdicate its central role in protection of this nation's human health and the environment when it delegates a program to a state. EPA continues to monitor and assess a delegated program and, when necessary, calls upon the Agency's own enforcement authorities to fulfill the goals of RCRA. This core commitment is central to RCRA and no delegation alters the Agency's firm stance on upholding its obligation to protect the environment.

The specific concerns raised by the Technical Staff can be addressed one by one. The first issue is a concern that Tribal staff had neither initiated nor completed an independent Tribal evaluation of Oregon's authority compared to the federal requirements. EPA appreciates the difficulty in evaluating a state's application for revision to its authorized program. This complex task is detailed and resource intensive. To assist interested parties who wish to review a state application, EPA makes the state application available for review and designates staff to be available to respond to concerns. EPA believes that these measures, combined with publication in two of the largest newspapers in the state and in the Federal Register as well as the provision of an opportunity to comment on an authorization decision, are adequate. The Agency makes the decision to authorize a state program based on its findings that a state program is equivalent to the federal program, consistent on a national basis and provides adequate enforcement.

The second issue raised by the Technical Staff is a concern with proposed incinerators on ceded lands. If hazardous waste incinerators are built and permitted under RCRA, Oregon will have primary responsibility for enforcing corrective action requirements for these units. EPA will continue to oversee and assess the delegated program and anticipates working closely with Oregon as Oregon initiates its authorized corrective action program. Through the Memorandum of Agreement (MOA) between Oregon and EPA, the integrity of the delegated program will be maintained. EPA will use the Agency's enforcement authorities where necessary to ensure that human health and the environment are protected. Additionally, where EPA has trust obligations on ceded lands, EPA will act to fulfill those obligations.

The third issue raised is a concern that Oregon lacks a baseline environmental and human health monitoring system to predict, identify or

mitigate operational or accidental impacts. This concern raises a basic authorization issue about the delegated program currently in Oregon. EPA has not identified a similar concern in Oregon's delegated program but appreciates the comment. Although this concern does not effect the immediate decision to authorize this revision to Oregon's program, EPA will assess this concern in light of the existing delegated program.

The fourth issue raises a concern that the Confederated Tribes have interests, such as Natural Resource Trustee authority under CERCLA and Local Reuse of disposal of excess federal property land issues, that are directly impacted by the increased permitting authority available to Oregon upon authorization for this program revision. EPA and Oregon will work closely as Oregon undertakes this new delegation of authority in its hazardous waste program. In its evaluation of Oregon's revision to its delegated program, EPA has no reason to believe that these Tribal interests will not be addressed.

The final issue raises a concern related to emergency preparedness should proposed hazardous waste incinerators be sited as proposed on ceded lands near the Umatilla Reservation. EPA believes that emergency preparedness and planning is very important at all hazardous waste management sites. All appropriate parties should be included as part of the emergency planning coordination process. EPA will encourage Oregon to include all such appropriate parties in this process.

After consideration of these issues, EPA affirms its Immediate Final Decision to grant final authorization for Oregon's hazardous waste program revision.

C. Decision

I conclude that the immediate final decision, as noticed in the Federal Register Vol. 60, No. 195, on October 10, 1995, will take effect on December 7, 1995 as described. Accordingly, Oregon is granted final authorization to operate its hazardous waste program, as revised.

Compliance With Executive Order 12866

The Office of management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 2002(a), 3006 and 7004(b) of the solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 14, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–29036 Filed 11–27–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7174

[MT–930–1430–01; SDM 79849]

Withdrawal of National Forest System Lands for the Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 35 acres of National Forest System lands from location and entry under the United States mining laws for a period of 20 years for the Department of Agriculture, Forest Service to protect the Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect three Forest Service recreation areas:

Black Hills Meridian

Black Hills National Forest

Pactola Visitor Information Center

T. 1 N., R. 5 E.,
Sec. 2, W½SW¼SW¼SE¼.

The area described contains 5 acres.

Pactola Marina South

T. 1 N., R. 5 E.,
Sec. 10, SW¼ of lot 4, and NW¼NE¼SE¼.

The area described contains 20 acres.

Pactola Marina North

T. 2 N., R. 5 E.,
Sec. 34, SE¼SW¼SE¼.

The area described contains 10 acres.

The total areas described above aggregate 35 acres in Pennington County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: November 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–28914 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–DN–P

43 CFR Public Land Order 7175

[NM–010–1430–01; NMNM 90118]

Withdrawal of Public Land and Federal Minerals to Allow Sale of Humate; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 120 acres of public land from surface entry and mining, and 680 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 20 years, for the Bureau of Land Management to protect an area having high potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Margie Martinez, BLM, Rio Puerco Resource Area Office, 435 Montano

Road NE., Albuquerque, New Mexico 87107, 505–761–8907.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 23 N., R. 1 W.,
Sec. 11, NE¼NE¼ and S½NE¼.

The area described contains 120 acres in Rio Arriba County.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described land are hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 23 N., R. 1 W.,
Sec. 11, SE¼SW¼ and SE¼;
Sec. 14, NW¼NE¼, S½NE¼, E½W½, SW¼SW¼, and SE¼.

The area described contains 680 acres in Rio Arriba County.

3. The surface estate of the land described in paragraph 2 is non-Federal. If the United States subsequently acquires this land, the land will be subject to the terms and conditions of this withdrawal.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: November 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–28921 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. 85–15; Notice 17]

RIN 2127–AF62

Replaceable Light Source Information; Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Final rule.

SUMMARY: This fiscal rule adopts amendments to Standard No. 108, the Federal motor vehicle standard on lighting, to facilitate the transfer by NHTSA of all dimensional and specification information on HB Type replaceable light sources for headlamps from the Standard to Docket No. 93–11. This docket has been established as the information docket specified in the regulations for replaceable light source information. This regulatory action is intended to simplify Standard No. 108 while ensuring consistent regulatory treatment of all headlamp replaceable light sources. This final rule also adopts amendments to the regulations for replaceable light source information.

EFFECTIVE DATE: The amendments are effective January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Safety Performance Standards, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: This final rule is based upon a notice of proposed rulemaking (NPRM) that was published on March 16, 1995 (60 FR 14247). The NPRM proposed to amend Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to transfer all dimensional and specification information on HB Type headlamp replaceable light sources from the Standard to Docket No. 93–11, the repository established for information on non-HB Types. Corresponding amendments necessary to implement the transfer were also proposed for the information regulation, 49 CFR part 564. For further information, the reader is referred to the NPRM.

Three comments were received on the NPRM. Two commenters, General Motors Corporation (GM) and the American Automobile Manufacturers Association (AAMA), supported the proposal. Advocates for Highway and Auto Safety (Advocates) opposed it.

GM said that it believes that the rule will simplify the approval process and provide consistent treatment for replaceable light sources. AAMA recommended modifications to address what it believes are minor typographical errors and oversights. One of these oversights was the omission of a sentence from 49 CFR 564.5(c) which stated that ''[u]pon acceptance [of the information submitted], the Associate Administrator files the information in Docket No. 93–11.'' NHTSA is ensuring that the final rule contains the language inadvertently omitted from the NPRM. AAMA also brought the agency's attention to an error in a final rule amending paragraph S7.5(e)(2)(i)(B) published on February 13, 1995 (Docket No. 85–15; Notice 14; 60 FR 8199, at 8201) which referred to the ''upper'' beam in a lower beam context. The paragraph is being amended to refer to the ''lower'' beam.

AAMA also had further comments of a minor nature to which NHTSA is responding with amendments. In its view, the NPRM did not remove and reserve Figure 3, and that if Figure 3 were removed, its reference in paragraph S7.3.8(c)(2) needs to be deleted. NHTSA proposed the removal and reservation of ''Figures 3–1 through 3–11'', intending to encompass the entirety of Figure 3. However, ''Figure 3'' itself is the title to Figures 3–1 through 3–11, and, if not specifically included in the removal language, is apt to remain in the CFR text of Standard No. 108. It is therefore being removed. The reference to ''Figure 3'' in paragraph S7.3.8(c)(2) was erroneous in the first instance, and is being changed to ''Figure 16'', Deflectometer, the Figure originally intended.

Under the NPRM, paragraph S7.7(b) would continue to require the use of a white cover during the measurement of luminous flux for Types HB3 and HB4 replaceable light sources, but would no longer reference the specific HB drawings (Figures 19–1 and 20–1) that depict the cover. To avoid ambiguity, paragraph S7.7(b), as amended, will amplify that the white cover is ''shown in the HB3 and HB4 drawings filed in Docket No. 93–11.''

In addition, AAMA brought to the agency's attention that the proposed revision to Figure 8 did not identify Distance ''A'' referenced in Section S9. Figure 8, as adopted, will define the reference plane and Distance ''A''.

Finally, AAMA asked why it is necessary to specify marking of the base of HB bulbs with HB Type designations, as proposed in paragraph S7.7(a), when the transfer of the applicable Figures to part 564 also transfers the HB

designations in the Figures' titles. Base marking of HB Types has always been required under former paragraph S7.7(f). NHTSA believes that it is important to continue to do so, to assist packages of aftermarket bulbs in proper packaging, and to inform purchasers of the contents of a replacement headlamp bulb package.

Advocates, in essence, advanced the view that, when a manufacturer first submits the specifications for a new design to NHTSA, the public must evaluate the light source photometric performance characteristics to determine if the light source for which specifications are submitted is capable of meeting the photometric requirements of Standard No. 108. NHTSA understands Advocates' continuing concern for sufficient illumination of overhead signs by headlamps. However, Advocates' comment reflects a fundamental misunderstanding of how headlamps provide illumination. Compliance with the photometrics of Standard No. 108 is not based upon performance of the light source alone. It is the product of the partnership of the light source, the reflector, and the lens. Standard No. 108 requires each headlamp to comply to its photometric specifications when the appropriate part 564 light source is used in the lens/reflector assembly. The headlamp will then be certified by its manufacturer as complying with Standard No. 108. NHTSA therefore assures Advocates that the process it recommends is not required for motor vehicle safety. Accordingly, the proposal is being adopted virtually as proposed.

This final rule removes from Standard No. 108 those Figures and text that specify dimensional, performance, and electrical specifications for HB Types 1 through 5. NHTSA is placing this information in Docket No. 93–11. The final rule also redefines ''replaceable light source'' to mean an assembly of a capsule, base, and terminals that is designed to conform to the dimensions, specifications, and marking furnished with respect to it pursuant to Appendix A of part 564. The section on replaceable light sources, S7.7, is revised by removing paragraphs (a) through (e) which refer to the Figures that are deleted. Paragraph (f), which relates to marking, is incorporated into paragraph (h), which is redesignated paragraph (a). Present paragraph (g) is transferred to the introductory text of S7.7, and paragraphs (h) through (k) are redesignated (a) through (d) with minor changes in text. A conforming amendment is made to S9.

In addition, a conforming amendment is made to part 564 to remove the present exclusion of replaceable light sources specified in S7.7 of Standard No. 108.

Effective Date

The effective date of the final rule is January 29, 1996. Because the final rule establishes no additional burden on any party and is primarily of an administrative nature, it is hereby found for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance would be in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that it will not review this rulemaking action under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is an administrative one, to remove regulatory material from Standard No. 108 which the agency will file in a regulatory docket on the subject. Since the rule does not have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon the environment. The design and composition of headlamps or light sources will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons discussed above and below, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, headlamps, and light sources, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new vehicles, headlamps, and light sources will not be impacted.

Executive Order 12612 (Federalism)

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

Civil Justice (Executive Order 12778)

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Parts 564 and 571

Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 564 and 571 are amended as follows:

PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

1. The authority citation for part 564 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Section 564.5 is amended by revising paragraphs (a) and (c) to read as follows:

§ 564.5 Information filing; agency processing of filings.

(a) Each manufacturer of a motor vehicle, original equipment headlamp, or original equipment headlamp replaceable light source, which intends to manufacture a replaceable light source as original equipment or to incorporate a replaceable light source in its headlamps or motor vehicles, shall furnish the information specified in Appendix A of this part to: Associate Administrator for Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, D.C. 20590. Attn: *Replaceable Light Source*

Information Docket No. 93–11, (unless the agency has already filed such information in Docket No. 93–11).

* * * * *

(c) The Associate Administrator promptly reviews each submission and informs the manufacturer not later than 30 days after its receipt whether the submission has been accepted. Upon acceptance, the Associate Administrator files the information in Docket No. 93–11. The Associate Administrator does not accept any submission that does not contain all the information specified in Appendix A of this part, or whose accompanying information indicates that any new light source which is the subject of a submission is interchangeable with any replaceable light source for which the agency has previously filed information in Docket No. 93–11.

* * * * *

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30177, 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by:

a. revising the definition of ''Replaceable light source'' in section S4 to read as set forth below;

b. revising the third sentence of paragraph S7.3.8(c)(2) to read as set forth below;

c. revising paragraph S7.5(e)(2)(i)(B) to read as set forth below;

d. revising paragraph S7.7 to read as set forth below;

e. revising the last sentence of S9 as set forth below; and

f. removing and reserving Figures 3, 3–1 through 3–11, 19, 19–1 through 19–5, 20, 20–1 through 20–5, 23–1 through 23–7, and 24–1 through 24–9.

g. revising Figures 8 and 25 as set forth below.

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 *Definitions.*

* * * * *

Replaceable light source means an assembly of a capsule, base and terminals designed to conform to the dimensions, specifications and markings furnished with respect to it pursuant to Appendix A of part 564 *Replaceable Light Source Information* of this chapter.

* * * * *

S7.3.8 *Type G headlighting system.*

* * * * *

(c) * * *

(2) * * * A special adapter (Figure 22) for the deflectometer (Figure 16) shall be clamped onto the headlamp assembly. * * *

* * * * *

S7.5 *Replaceable bulb headlamp system.*

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17A.

* * * * *

S7.7 *Replaceable light sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:

(a) If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with section VIII of Appendix A of part 564 of this chapter. The base of each HB Type shall be marked with its HB Type designation. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with paragraph S7.2.

(b) The measurement of maximum power and luminous flux that is submitted in compliance with section VII of Appendix A of part 564 of this chapter shall be made in accordance with this paragraph. The filament shall be seasoned before measurement of either. Measurement shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be made with the base covered with a white cover as shown in the drawings for Types HB3 and HB4 filed in Docket No. 93–11. (The white cover is used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low).

(c) The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source (other than an HB Type) shall be that figure furnished for such light source in compliance with Section IV.B of Appendix A of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

(d) After the force deflection test conducted in accordance with S9, the permanent deflection of the glass envelope shall not exceed 0.13 mm in the direction of the applied force.

* * * * *

S9 *Deflection test for replaceable light sources.* * * * Distance 'A' for a replaceable light source other than an HB Type shall be the dimension provided in accordance with Appendix A of part 564 of this chapter, section I.A.1 if the light source has a lower beam filament, or as specified in section I.B.1 if the light source has only an upper beam filament.

* * * * *

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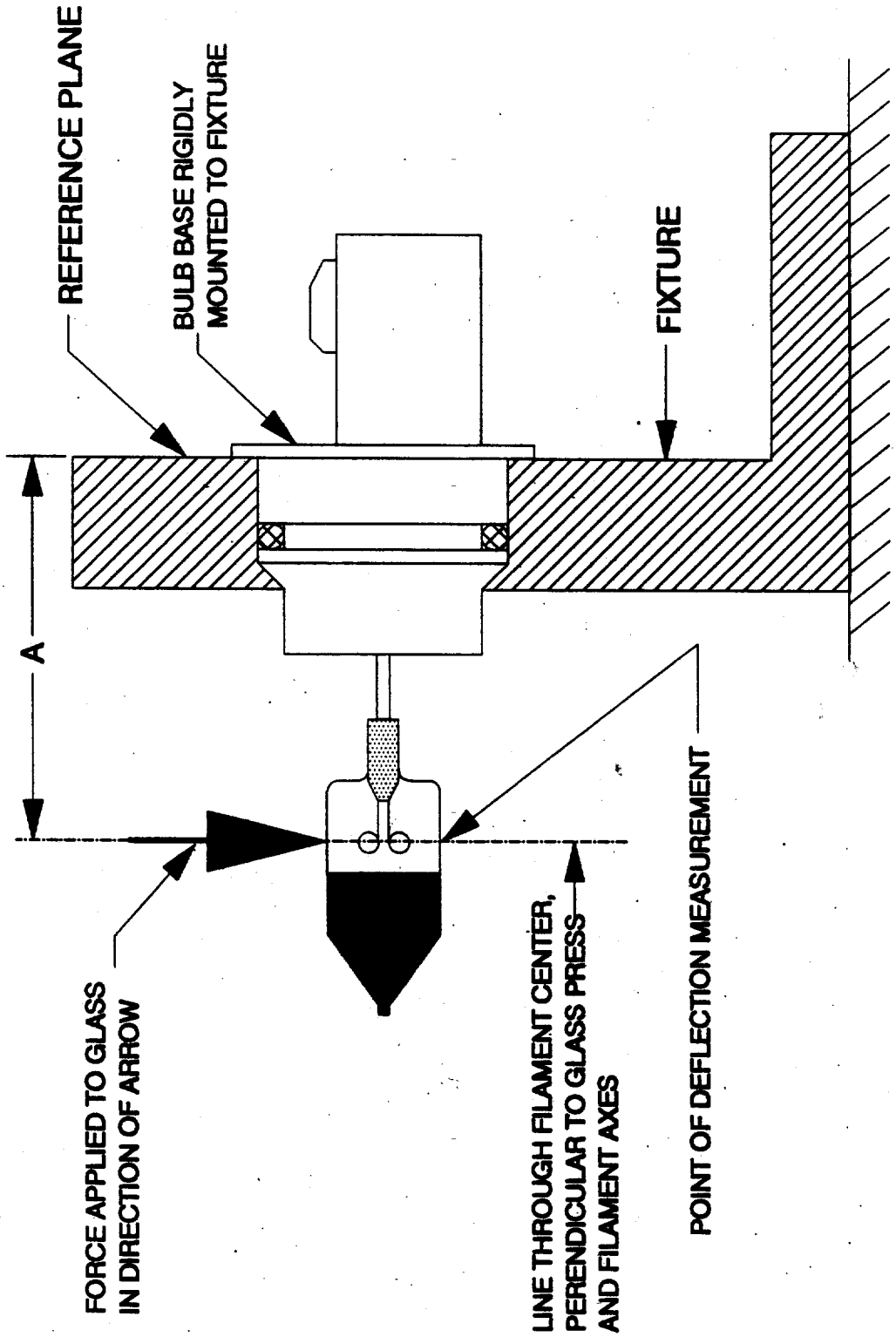
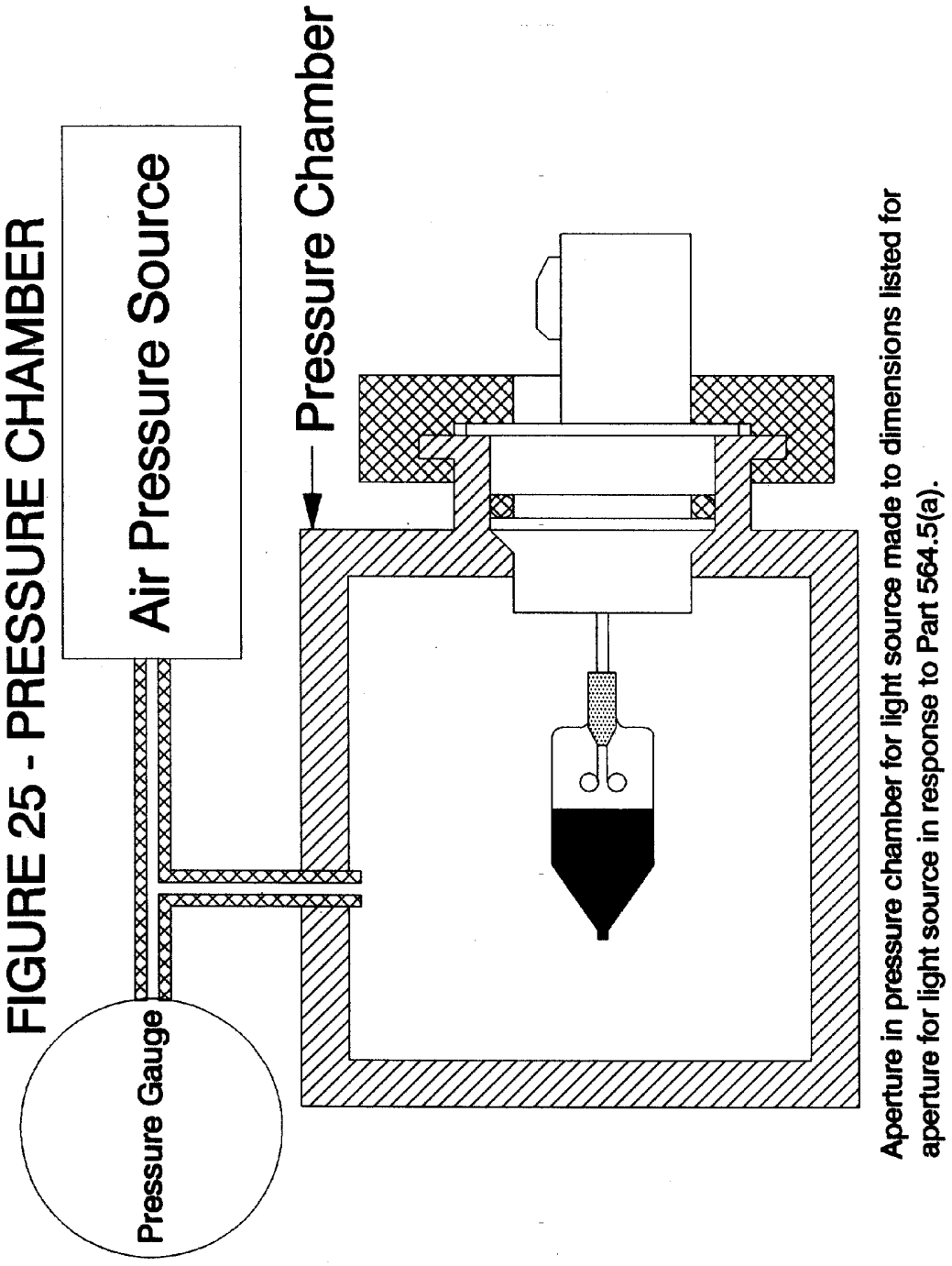
FIGURE 8 - BULB DEFLECTION TEST





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Issued on: November 13, 1995.

Howard M. Smolkin,

Executive Director.

[FR Doc. 95–28464 Filed 11–27–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 111795A]

Pacific Coast Groundfish Fishery; Closure and Trip Limit Reduction

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

ACTION: Closure; fishing restrictions; request for comments.

SUMMARY: NMFS announces the closure of the commercial fishery for thornyheads and trawl-caught sablefish, and a reduction in the trip limit for Dover sole in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The closure and trip limit are designed to keep landings as close as possible to the 1995 harvest guidelines for these species which are caught together, while extending the fisheries as long as possible during the year.

DATES: Effective from 0001 hours (local time) December 1, 1995, until the effective date of the 1996 annual specifications and management measures for the Pacific Coast groundfish fishery, as published in the Federal Register. Comments will be accepted through December 13, 1995.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region (Regional Director), National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: Dover sole, thornyheads (shortspine and longspine), and trawl-caught sablefish are managed together as the DTS complex. Trip landing and frequency limits (hereafter referred to as trip limits) for the complex, and the species which it includes, are designated as routine management measures at 50 CFR 663.23(c). Routine management measures may be adjusted after consideration at a single meeting of the Pacific Fishery Management Council (Council). At its October 1995 meeting in Portland, OR, the Council recommended that the following actions take effect on December 1, 1995, for the reasons stated below.

In 1995, the 1,500 metric ton (mt) harvest guideline for shortspine thornyheads was set higher than the 1,000–mt acceptable biological catch (ABC), largely because of uncertainty in the stock assessment. The harvest guideline for shortspine thornyheads is near the level that would produce the maximum sustainable yield (MSY) and the overfishing level is about 1,800 mt. The longspine thornyhead population remains at or above the level that would produce MSY. However, in 1995, longspine thornyheads have a 6,000–mt harvest guideline, which is below its ABC of 7,000 mt, primarily to protect the fully exploited shortspine thornyheads.

On January 4, 1995, (60 FR 2331, January 9, 1995), the cumulative trip limit for both thornyhead species combined was set at 20,000 lb (9,072 kg) per vessel per month, of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads. The catch of thornyheads is counted toward the cumulative trip limit for the DTS complex (35,000 lb (15,876 kg) per vessel per month north of Cape Mendocino (40°30'00'' N. lat.) and 50,000 lb (22,680 kg) per vessel per month south of Cape Mendocino). A cumulative trip limit is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

The cumulative monthly trip limit for thornyheads was reduced by 25 percent on April 1, 1995, to 15,000 lb (6,804 kg) for thornyheads combined, of which no more than 3,000 lb (1,361 kg) could be shortspine thornyheads (60 FR 16811, April 3, 1995). At its August meeting, the Council stated that, if landings of shortspine thornyheads were not drastically reduced, the entire DTS fishery could be closed before the end of the year. The trip limit for thornyheads combined was reduced again, by almost half, on September 1, 1995, to 8,000 lb (3,629 kg), of which no more than 1,500 lb (680 kg) could be shortspine thornyheads (60 FR 46538, September 7, 1995). At that time, the Council expected that, if the fishery continued to the end of November, the harvest guideline would be exceeded by about 10 percent, but the overfishing level would not be reached.

The best available information at the October 1995 Council meeting indicated that, although 1995 landings of shortspine thornyheads through September were 39 percent lower than in 1994, the 1,500 mt harvest guideline had been reached by September 20, 1995, and would be exceeded by 24 percent by the end of the year if landings were not slowed. The overfishing level of about 1,800 mt was projected to be reached in mid- to late November, but could have been reached earlier depending on assumptions made about trip-limit induced discards.

The best available information at the October Council meeting also indicated that the other species in the DTS complex were approaching their harvest guidelines: The harvest guideline for longspine thornyheads would be reached on December 20, 1995, the limited entry trawl allocation for sablefish would be reached on November 29, 1995, and the harvest guideline for Dover sole in the Columbia Subarea would be reached in late December, although only 76 percent of the coastwide harvest guideline for Dover sole would be taken by the end of the year.

After considerable deliberation, the Council recommended closing the limited entry and open access fisheries for thornyheads and trawl-caught sablefish on December 1, 1995, while allowing a small 3,000–lb (1,361–kg) monthly cumulative limit for Dover sole, because it is caught incidentally in rockfish and Petrale sole fisheries. The overfishing level of shortspine thornyheads will be exceeded by as much as 170 mt and the trawl allocation for sablefish will be reached but not exceeded. However, the harvest guidelines for longspine thornyheads and Dover sole will not be reached in 1995, resulting in a loss to the industry of at least 200 mt of longspine thornyheads and an undetermined amount of Dover sole (possibly as high as 1,000 mt, although catch under the 3,000 lb (1,361 kg) cumulative limit is not known). The overall trip limit for the DTS complex no longer has meaning and is removed.

Other actions were considered by the Council. Further reduction of the cumulative trip limit for shortspine thornyheads was not recommended because it was believed it would only result in increased discards. Closing the thornyhead and trawl-caught sablefish fisheries immediately on November 1, rather than December 1, was not recommended for the following reasons: (1) This was the first year that the two thornyhead species had been managed separately, and landings of shortspine have been reduced considerably, from 3,700 mt in 1993 to 2,700 mt in 1994, to 1,900 mt in 1995 (if landings are not slowed); (2) only about 130 mt of shortspine thornyheads would be saved

by closing the fishery on November 1 rather than December 1, resulting in a loss to the industry of an additional 400 mt of longspine thornyheads, 400 mt of trawl-caught sablefish, and an undetermined amount of Dover sole (since landing rates under the 3,000–lb (1,361–kg) monthly cumulative limit are not known); (3) the harvest guideline for longspine thornyheads already is lower than its ABC to protect shortspine thornyheads; (4) uncertainty in the thornyhead stock assessments also applies to the overfishing level; and (5) aggressive action to further reduce landings of shortspine thornyheads will be taken in January 1996, starting the year with a cumulative trip limit at half the level in 1995. Even with this reduction, the Council agreed that the DTS fishery is unlikely to last longer than 10 months in 1996, and may be shorter.

As stated in the annual management measures (60 FR 2331, January 9, 1995) at paragraph IV.I., a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery or for the same gear and/or subarea in the limited entry fishery. Therefore, landings of shortspine or longspine thornyheads or trawl-caught sablefish in the open access fishery are prohibited, and the cumulative trip limit for Dover sole may not be exceeded. (The only legal trawls in the open access fishery are non-groundfish trawls used to fish for shrimp or prawns, California halibut or sea cucumbers.)

NMFS Action

For the reasons above, the Regional Director concurs with the Council's recommendations and hereby announces the following changes to the management measures for Dover sole, thornyheads, and trawl-caught sablefish. Paragraph IV.E(3)(b) of the annual management measures (60 FR 2331, January 9, 1995, as amended) is replaced with the following:

''(b) *Dover sole, thornyheads, and trawl-caught sablefish.* These provisions apply to Dover sole (*Microstomus pacificus*), shortspine thornyhead (*Sebastolobus alascanus*), longspine thornyhead (*S. altivelis*), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads are also called idiots, channel rockfish, or hardheads.

(i) *Closure.* It is unlawful for any person to take and retain, possess or land shortspine or longspine thornyheads or trawl-caught sablefish. This applies to limited entry and open access fisheries.

(ii) *Trip limits.* No more than 3,000 lb (1,361 kg) cumulative of Dover sole may be taken and retained, possessed, or landed per vessel per calendar month. This limit may not be exceeded by any vessel fishing in the limited entry or open access fishery.''

Classification

These actions are authorized by the FMP, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. Because of the need for immediate action to reduce the harvest of shortspine thornyheads, and because the public had advance opportunity to comment on these actions at the August and October 1995 Council meetings and was notified that a fishery closure could occur before the end of the year, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 663.23(c)(1)(i)(E), (F), and (G), and are exempt from review under E.O. 12866.

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

Dated: November 21, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–29057 Filed 11–27–95; 8:45 am]

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50 CFR Part 676

[Docket No. 951116269–5269–01; I.D. 110795C]

RIN 0648–AD19

Limited Access Management of Federal Fisheries In and Off of Alaska; Interpretation

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

ACTION: Interpretive rule.

SUMMARY: NMFS issues an interpretive rule to clarify the definitions of ''qualified person'' that are published in regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This action is necessary to restate NMFS' consistent practice in applying the definitions to determine a person's qualification for the IFQ Program. This interpretive rule is intended to restate clearly the regulatory language defining the qualifications necessary for entry into the IFQ Program.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a regulatory regime designed to promote the conservation and management of the Pacific halibut and sablefish stocks in and off of Alaska, in accordance with the objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act. The IFQ Program manages the fishing effort for these species by limiting access to halibut and sablefish fixed gear fisheries. The North Pacific Fishery Management Council (Council) developed the IFQ Program and in 1992, under authority of the Magnuson Act, recommended it to NMFS, which approved the program the following year. Further information about the origins and elements of the IFQ Program can be found in the preambles to the proposed and final implementing regulations published December 3, 1992 (57 FR 57130) and November 9, 1993 (58 FR 59375), respectively.

The IFQ Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska implements essentially two separate limited access systems, one for the fixed gear fishery of Pacific halibut (*Hypoglossus stenolepis*) and one for the fixed gear fishery of sablefish (*Anaplopoma fimbria*). The IFQ Program limits access to the fixed gear halibut fishery to persons who qualify for an initial allocation of halibut quota share (QS) or who receive an approved transfer of halibut QS. Similarly, the fixed gear sablefish fishery is limited by the IFQ Program to persons who qualify for an initial allocation of sablefish QS or who receive an approved transfer of sablefish QS.

Qualification for Initial Allocation of QS

To qualify for an initial allocation of halibut QS, a person had to have owned or leased a vessel that made legal landings of halibut during the qualifying years (1988, 1989, and 1990); to qualify for an initial allocation of sablefish QS, a person had to have owned or leased

a vessel that made legal landings of sablefish during the qualifying years. The amount of a qualified person's legal landings of halibut harvested with fixed gear from a vessel that person owned or leased during the halibut base years (1984–90) determined the amount of halibut QS that person received, specific to vessel category and IFQ regulatory area. The amount of a qualified person's legal landings of sablefish harvested with fixed gear from a vessel that person owned or leased during the sablefish base years (1985–90) determined the amount of that person's sablefish QS, specific to vessel category and IFQ regulatory area. The amount of QS a person holds determines the annual amount of halibut or sablefish IFQ that a person may harvest using a specified vessel category and in a specified regulatory area.

The IFQ Program regulations governing the halibut fishery pertain exclusively to Pacific halibut; IFQ Program regulations governing the sablefish fishery pertain exclusively to sablefish. As is evident from the administrative record of the IFQ Program's development, the Council intended to create two clearly distinguished limited access systems, one for the halibut fixed gear fishery and one for the sablefish fixed gear fishery.

NMFS has been informed that this intent may not be entirely clear from the regulatory text at § 676.20(a)(1), which reads as follows:

> As used in this section, a ''qualified person'' means a ''person,'' as defined in § 676.11 of this part, that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any regulatory area in any QS qualifying year. A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year* * *.

This text indicates that qualification for initial allocation of halibut or sablefish QS is limited to persons who, qualifying in all other respects, either owned or leased the fishing vessel when legal landings of halibut and sablefish were made. This text may be misinterpreted to suggest that fixed gear harvest and legal landing of either species will qualify a person for QS of both species. That interpretation would be erroneous.

The use of the phrase ''legal landings of halibut or sablefish, harvested with fixed gear'' delineates in brief the additional qualifications for entry into the IFQ Program and in no instance combines the separate qualifications necessary for halibut QS and sablefish QS. This interpretive rule simply restates NMFS' consistent practice in determining eligibility for halibut QS and sablefish QS.

Classification

This final rule is issued under the Magnuson Act, 16 U.S.C. 1801 *et seq.*

In that this rule merely interprets an existing regulation without creating any new rights or duties, it is not subject to the requirement of notice and opportunity for public comment under 5 U.S.C. 553(b)(A). Similarly, as an interpretive rule, this rule is not subject to a 30-day delay in effective date pursuant to authority set forth at 5 U.S.C. 553(d)(2).

This rule has been determined to be not significant for the purposes of E.O. 12866.

Dated: November 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) is proposing to restructure its existing regulations. This proposed rule is intended to streamline the regulations governing the Small Business Investment Company (SBIC) program. To this end, SBA proposes to eliminate obsolete regulations and to reorganize the remaining regulations in a more readable format.

In addition to changes in organization, the proposed regulations include a number of substantive changes, many of which are intended to reduce the regulatory burden on Licensees, as well as SBA's administrative burden. Other proposed changes would provide additional protection for SBA's position as a creditor of, or investor in, Licensees with outstanding Leverage. At the same time, certain requirements would be made inapplicable to non-leveraged Licensees, which pose no financial risk to the Agency.

DATES: Comments must be submitted on or before December 28, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416, Attn. Part 107.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–6510.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. As a result of its review of the regulations governing the SBIC program, SBA is proposing to eliminate obsolete or redundant regulations, substantively revise others, and reorganize all of Part 107 in a more readable format.

In this proposed rule, all sections are renumbered for purposes of clarity and improved organization, and the regulations are organized into the following new subparts:

(A) Introduction to Part 107.

(B) Definition of Terms Used in Part 107.

(C) Qualifying for an SBIC License.

(D) Changes in Ownership, Control, or Structure of Licensee; Transfer of License.

(E) Managing the Operations of a Licensee.

(F) Record keeping, Reporting, and Examination Requirements for Licensees.

(G) Financing of Small Businesses by Licensees.

(H) Non-leveraged Licensees, Exceptions to the Regulations.

(I) SBA Financial Assistance for Licensees (Leverage).

(J) Licensee's Noncompliance with Terms of Leverage.

(K) Ending Operations as a Licensee.

(L) Miscellaneous.

For convenience, this preamble includes a chart listing the current section numbers in Part 107 and matching them to either a corresponding proposed regulation or indicating that the current section is deleted in the proposed regulations. The chart also identifies the character of any changes to the current regulations.

Following the chart is a two-part analysis of the proposed changes to the SBIC regulations. Part I details regulations that would be eliminated. Part II describes proposed modifications of the current regulations and the policy reasons for them.

PART 107: CURRENT AND PROPOSED SECTION NUMBERS

Current section	Proposed section	Revised (non-substantive)	Revised (substantive)	Deleted	No change
107.1	107.20				X
107.2	107.40		X		
107.3	107.50		X		
107.4	107.160	X	X		
107.101(a)	107.130, 107.230(d)	X	X		
107.101(b)	107.508	X			
107.101(c)				X	
107.101(d)	107.200	X			
107.101(e)	107.210	X			
107.101(f)	107.230(e)	X			
107.101(g)	107.503	X			
107.101(h)	107.504	X			
107.101(i)	107.710	X			
107.102(a)	107.300		X		
107.102(b)	107.400(b), 107.680(b)	X			
107.103				X	
107.104	107.475	X			
107.105	107.1900	X			
107.210(a)–(d)	107.1100–107.1140	X			
107.210(e)	107.509	X			

PART 107: CURRENT AND PROPOSED SECTION NUMBERS—Continued

Current section	Proposed section	Revised (non-substantive)	Revised (substantive)	Deleted	No change
107.210(f)(1)–(4)	107.1700				X
107.210(f)(5)	107.560	X			
107.210(f)(6)	107.550		X		
107.210(g)	107.1710				X
107.210(h)	107.1830–107.1850	X			
107.210(i)	107.1720				X
107.215	107.1200–107.1240	X			
107.215(a)	107.1200(c)		X		
107.215(f)(1)	107.1230(b)		X		
107.220(a)–(b)	107.1150(a)	X			
107.220(c)	107.1150(b)	X			
107.220(d)	107.1150(b)(2)				
107.220(e)	107.1170	X			
107.230(a)	107.1100(b)	X			
107.230(b)	107.1400–107.1430	X			
107.230(c)(1)–(5)	107.1160	X			
107.230(c)(3)(iii)	107.1160(f)		X		
107.230(c)(4)(iv)	107.1160(f)		X		
107.230(c)(6)	107.1170	X			
107.230(d)	107.1100(c)	X			
107.230(e)	107.1350	X			
107.230(f)	107.1450	X			
107.241(a)	107.220	X			
107.241(b)	107.1500(b)(4)	X			
107.241(c)	107.150		X		
107.241(d)	107.140, 107.510		X		
107.241(e)	107.570	X			
107.241(f)	107.1505	X			
107.241(g)	107.1500(e)	X			
107.241(h)	107.1500(f)	X			
107.242	107.1510		X		
107.243	107.1520, 107.1540	X			
107.244	107.1530	X			
107.245(a)	107.1540(a)	X			
107.245(b)	107.1550	X			
107.245(c)	107.1560	X			
107.245(d)	107.1570	X			
107.245(e)	107.1580	X			
107.246	107.1520(g)	X			
107.247	107.1590	X			
107.250	107.1600– 107.1680				X
107.260	107.1800	X			
107.261	107.1810	X			
107.262	107.1820	X			
107.263	107.1910				X
107.301(a)	107.830		X		
107.301(b)	107.845	X			
107.302	107.855		X		
107.303	107.740	X			
107.304(a)	107.610, 107.700	X			
107.304(b)	107.620	X			
107.304(c)	107.630(e)	X			
107.305				X	
107.320(a)	107.800	X			
107.320(b)	107.815(a)	X			
107.321	107.850		X		
107.322				X	
107.401	107.820		X		
107.402(a)	107.825	X			
107.402(b)–(c)				X	
107.402(d)–(e)	107.860		X		
107.402(f)	107.830(d)(3)	X			
107.402(g)	107.855		X		
107.403(a)				X	
107.403(b)(1)	107.835		X		
107.403(b)(2)				X	
107.403(b)(3)	107.828	X			
107.404	107.828		X		
107.501	107.900		X		
107.601	107.410–107.440	X			

PART 107: CURRENT AND PROPOSED SECTION NUMBERS—Continued

Current section	Proposed section	Revised (non-substantive)	Revised (substantive)	Deleted	No change
107.601(e)	107.1120(f)	X			
107.601(g)				X	
107.602	107.460		X		
107.603	107.450	X			
107.701	107.30				X
107.702				X	
107.703	107.500				X
107.704	107.501		X		
107.705(a)	107.240	X			
107.705(b)	107.250	X			
107.706	107.760	X			
107.707(b)	107.828(d)	X			
107.708(a)&(b)	107.530	X			
107.708(c)	107.1000	X			
107.709	107.510		X		
107.710	107.880		X		
107.711	107.750	X			
107.712	107.120	X			
107.801	107.865		X		
107.802	107.585	X			
107.803	107.470	X			
107.804	107.720(e)	X			
107.901(a)	107.720(a)	X			
107.901(b)	107.720(i)	X			
107.901(c)	107.720(c)		X		
107.901(d)	107.720(f)	X			
107.901(e)	107.720(g)		X		
107.901(f)	107.720(b)		X		
107.901(g)	107.720(h)	X			
107.902	107.590		X		
107.903	107.730	X			
107.904	107.885	X			
107.905	107.502	X			
107.906	107.507	X			
107.1001	107.690–107.692		X		
107.1002(a)–(b)	107.600		X		
107.1002(c)–(d)	107.660	X			
107.1002(e)	107.630		X		
107.1003(a)	107.506	X			
107.1003(b)				X	
107.1004	107.680	X			
107.1101	107.670	X			
107.1201	107.1920	X			
107.1202	107.1930	X			

Part I

Eliminated Sections

SBA proposes deletion of the following sections of the current regulations. The effect of the proposed deletion and the reason for the action is provided.

Current § 107.103 would be deleted, eliminating the requirement for giving public notice of license applications. Similarly, § 107.601(g) requiring public notice of an application for a change in a proposed transfer of Control over a Licensee would be deleted. The Agency has received few comments in the past on either type of application and believes these requirements unnecessarily lengthen the application process.

Current § 107.305 would be deleted, eliminating the requirement for Licensees to conduct a ''post closing review'' of each Financing of a Small Business in order to assure that the proceeds were used for the intended purposes. The requirement that Financing documents contain certain standard provisions restricting the use of proceeds, and the requirement for Licensees to report any unauthorized diversion of funds to SBA, would also be eliminated. SBA believes these provisions are burdensome because of the special documentation requirements imposed, and essentially redundant because other regulations require an SBIC to identify and monitor a Small Business's use of financing proceeds. In particular, under proposed § 107.620 (which would replace current § 107.304(b)), a Licensee must obtain information about a Small Business's intended use of proceeds before extending any Financing and must obtain updated financial information sufficient to verify the actual use of proceeds.

Current § 107.322, which allows an SBIC making an equity investment to place restrictions on current and future indebtedness of the financed Small Business, would be deleted. This deletion would not restrict the rights of Licensees in any way, since the practices described are specifically permitted under the Act. See 15 U.S.C. section 684(b).

Part II

1. Subpart A—Introduction to Part 107

As part of its effort to make the regulations more readable, SBA has used ''you'' to refer to a Licensee or a license applicant, as appropriate, throughout Part 107. Proposed § 107.40(c) explains this convention.

2. Subpart B—Definition of Terms Used in Part 107

SBA proposes revising the following definitions currently found in § 107.3 of the regulations.

a. ''Close Relative'' and ''Secondary Relative''

The definition of ''Close Relative'' would be narrowed to cover only immediate relatives (spouses, along with parents, children, brothers and sisters, and their spouses). Other relatives, such as grandparents and grandchildren, aunts, uncles, and first cousins, would be defined as ''Secondary Relatives.'' The two separate categories have been proposed so that a distinction between them can be made in the definition of ''Associate'', which is discussed below. The effect of the change is to limit the circumstances under which concerns with only a peripheral relationship to a Licensee, through a Secondary Relative, become its Associates.

b. ''Associate''

SBA proposes two modifications to the definition of ''Associate'', a key term that appears extensively in the conflict of interest rules (proposed § 107.730), and in various other regulations including proposed §§ 107.150 (management and ownership diversity requirement), 107.865 (Control of Small Businesses), and 107.885 (disposition of assets to Licensee's Associate).

Proposed paragraphs (h) and (i) specify the conditions under which an Associate's involvement in a concern, either through positions held or ownership interests, causes that concern to become an Associate of a Licensee. The two paragraphs are comparable to paragraph (f) of the current definition, with the following exceptions:

First, under paragraph (h), the presence of an Associate as a director of a concern would no longer cause the concern to become an Associate of the Licensee. SBA believes that an Associate functioning as an outside director is unlikely to create a conflict of interest, and often can provide insight into a company that a Licensee may find useful.

Second, under paragraph (i), a concern would not become an Associate of a Licensee because of its relationship with a Secondary Relative, unless that relative had a majority equity interest in the concern (or controlled it through other means), either alone or with other Associates. For example, a concern in which the uncle of the president of the Licensee had a 10 percent equity interest would not be an Associate of the Licensee (as it is under the current definition). However, if the uncle were the majority owner of the concern, it would be an Associate. SBA has proposed this change to exclude from the definition of Associate those concerns that are only marginally related to the Licensee.

c. ''Control Person''

The definition of ''Control Person'' was developed in part to identify persons that might control, or at least influence, a Partnership Licensee's general partner and thus the Licensee itself, even though they themselves might have no direct relationship with the Licensee. This designation is important for regulatory purposes because Control Persons are considered Associates of the Licensee.

A portion of the current definition identifies as a Control Person (1) any investor that has at least a 10 percent ownership interest in a Licensee's general partner and participates in the general partner's investment decisions concerning the Licensee; or (2) any passive investor that has at least a 40 percent ownership interest in a Licensee's general partner.

The proposed rule would make the following change to the definition of Control Person:

Under paragraphs (c) and (d), the same criteria that cause an investor in a Licensee's general partner to become a Control Person would also be applied to a direct investor in the Licensee. For example, under paragraph (d), a 40 percent limited partner in the Licensee's general partner would be a Control Person, and so would a 40 percent limited partner in the Licensee itself. This proposal reflects SBA's belief that a limited partner's potential influence on a partnership Licensee is no different from that of a limited partner with an equivalent ownership interest in a partnership serving as the Licensee's general partner.

d. ''Equity Capital Investment''

A Licensee with Participating Securities must make ''Equity Capital Investments'' in an amount at least equal to the total amount of Participating Securities issued. In addition, the amount of Equity Capital Investments in its portfolio at the end of each fiscal year must remain at least equal to the amount of its outstanding Participating Securities. SBA is not proposing any substantive change in the definition of Equity Capital Investments, but is proposing to clarify that an investment classified as a Debt Security is not precluded from qualifying as an Equity Capital Investment.

There are two general categories of Debt Securities that may qualify as Equity Capital Investments. First, the definition of Equity Capital Investments specifically includes ''subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings.'' Such debt must also be unsecured and non-amortizing in order to qualify.

Second, certain equity interests may qualify as Equity Capital Investments even if they have covenants and/or redemption provisions that require them to be classified as Debt Securities for regulatory purposes. Such an investment may qualify if a Licensee's ability to recover its investment and/or realize returns is subject to essentially the same conditions that apply to a qualifying subordinated debt instrument. For example, a Licensee could purchase the preferred stock of a Small Business, with a provision requiring the issuer to redeem it after five years at its original cost plus any accumulated unpaid dividends. Because of the mandatory redemption provision, the investment would be treated as a Debt Security under proposed § 107.800. However, as long as dividends were payable only from retained earnings, the investment would qualify as an Equity Capital Investment.

e. ''Financing''

In the current regulations, ''Financings'' are defined to include commitments made to Small Businesses in addition to amounts actually invested and amounts guaranteed. The proposed definition would exclude such commitments. SBA is proposing this change to make the definition of Financing more objective, and to eliminate the regulatory compliance issues that sometimes arise when Licensees keep making commitments without actually making investments for an extended period of time.

f. ''Institutional Investor''

The ''Institutional Investor'' definition identifies those investors in a Licensee whose unfunded binding commitments may be included in the Licensee's Private Capital. Institutional Investors may be entities or individuals. SBA proposes three non-substantive changes

to this definition which are intended to clarify the Agency's interpretation:

First, proposed paragraph (a)(6), which permits a qualified employee benefit or pension plan to be an Institutional Investor, would clarify that 401(k) plans are excluded. This treatment is consistent with SBA's interpretation of the current regulation.

Second, proposed paragraph (a)(10) would clarify the circumstances under which an entity that invests the funds of others can qualify as an Institutional Investor. The purpose of the clarification is to reflect more precisely the original intent of this paragraph, which is to allow a ''fund of funds'' to qualify as an Institutional Investor if it is investing on behalf of other entities that also meet the Institutional Investor criteria.

Third, under proposed paragraph (b)(1), an individual with net worth of less than $2 million would qualify as an Institutional Investor only if his/her commitment were backed by a letter of credit from a State or National bank acceptable to SBA. This is a clarification of the current definition, which requires only that the letter of credit be issued by a ''qualified Institutional Investor.'' SBA has proposed the new language to minimize confusion as to the meaning of a ''qualified'' Institutional Investor.

f. ''Lending Institution''

The definition of ''Lending Institution'' is used in proposed § 107.730 (comparable to current § 107.903), which provides an exemption from the conflict of interest rules for certain transactions involving Lending Institutions that are Associates of the Licensee. Under the current definition, a Lending Institution must be an entity subject to federal or state regulation, such as a bank or savings and loan association. SBA recognizes, however, that other types of entities now extend credit in a manner similar to banks. Therefore, SBA proposes that the term ''Lending Institution'' be expanded to include corporations engaged in activities similar to those performed by commercial lenders, if they have assets in excess of $500 million and their shares are publicly traded and listed on a recognized stock exchange or NASDAQ. SBA believes that such entities, although not regulated in the same manner as banks, have sufficient oversight under federal securities laws.

g. ''Disadvantaged Business''

SBA is proposing to change the defined term ''Disadvantaged Concern'' to ''Disadvantaged Business''; however, the Agency is not proposing any change in the definition itself at this time. SBA is reviewing the definition as part of an examination of various issues affecting the SSBIC program, and intends to work with the SSBIC industry to develop a revised definition which will be proposed at a later date.

3. Subpart C—Qualifying for an SBIC License

a. Permitted Forms of Organization for Licensees

Proposed §§ 107.100 and 107.110 describe the permitted forms of organization for Section 301(c) and Section 301(d) Licensees, respectively; these provisions are currently found in § 107.3. The proposed sections would delete limited liability companies as a permitted form of organization because this form is not currently authorized by the Act. SBA plans to seek a legislative change that would permit SBICs to organize as limited liability companies.

b. 1940 Act and 1980 Act Companies

Under proposed § 107.115, SBA would license 1940 and 1980 Act Companies only if they do not elect to be taxed as regulated investment companies under section 851 of the Internal Revenue Code. The same criteria would be applied to existing Licensees seeking to convert to 1940 Act or 1980 Act Companies. This reflects current program policy in the licensing area, and is being formalized because the tax code conflicts with the distribution regulations applicable to Participating Securities as mandated by the Act, and with SBIC program accounting guidelines that limit other profit distributions to the amount of a Licensee's Retained Earnings Available for Distribution. Such distribution regulations are designed to reduce risk to SBA by protecting its investment or creditor position.

c. SBIC management

Proposed § 107.130 would continue the general requirement in current § 107.101(a) that each Licensee must have qualified management approved by SBA. However, two changes are proposed. First, the specific requirement that the manager be ''available to the public during normal business hours'' would be eliminated, giving Licensees greater flexibility in their management arrangements. Second, each Licensee would be required to designate at least one individual as the official responsible for contact with SBA. This change would allow SBA to address communications to a specific person, who would be responsible for routing information to the appropriate persons within the Licensee's organization.

d. SBA approval of initial Management Expenses

Under proposed § 107.140, all new license applicants would be required to obtain SBA approval of their initial Management Expenses. Currently, SBA approves initial Management Expenses only if an applicant plans to issue Participating Securities, or if an applicant plans to issue Debentures and utilizes an Investment Advisor/Manager. Otherwise, SBA approves only management compensation. With the proposed change, SBA seeks to have consistency in controlling excessive expenses of Licensees, regardless of management structure or the type of Leverage an applicant expects to issue.

e. Management and Ownership Diversity

Proposed § 107.150 would require all license applicants planning to obtain Leverage to have diversity between management and ownership. This represents an expansion of current § 107.241(c), which requires such diversity only for applicants that plan to issue Participating Securities. SBA's intent in broadening the diversity requirement is for all new leveraged Licensees to have investors who are independent of management and who have a substantial stake in the Licensee's financial performance. The Agency believes that the presence of such investors will reduce the potential for self-dealing and help to assure that Licensees are operated with the objective of optimizing returns and protecting the interests of all investors. Under current § 107.241(c), the diversity criteria may be satisfied either by a Licensee or by its ''ultimate parent'' (an entity that has an interest in the Licensee's Regulatory Capital of more than 50 percent). Proposed § 107.150 would not change the diversity criteria, but would require them to be satisfied by the Licensee itself unless SBA agreed to accept diversity achieved at the parent level as a substitute. The Agency believes that it must have this discretion in order to assure that a Licensee has genuine diversity between management and ownership, as opposed to an ownership structure that provides ''technical'' diversity but does not satisfy the intent of the regulation.

Finally, under proposed § 107.150, any SBIC that was required to have diversity in order to be licensed would also have to maintain diversity as long as it had outstanding Leverage or Earmarked Assets in its portfolio. A Licensee that failed to maintain

diversity would have to re-establish it within six months.

f. Special Rules for Partnership Licensees

Proposed § 107.160(b) would allow an Entity General Partner to be organized for the sole purpose of serving as the general partner of one or more Licensees. Under the current regulation (§ 107.4), an entity may serve as the general partner of only one Licensee. The proposed change would reduce the expense and administrative burden of general partners that Control more than one company in the SBIC program.

g. Minimum Capital Requirements

Proposed § 107.220 would require any company licensed after the regulation is finalized to have Regulatory Capital of at least $5,000,000 in order to apply for Debentures, unless it demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount. A review of the financial performance of Licensees supports the conclusion that Regulatory Capital below $5 million significantly reduces the likelihood of profitable operation over the long term. Companies licensed before the effective date of the final rule would be grandfathered under proposed §§ 107.210(a) or (b), or § 107.220(c), depending on the date they were licensed.

h. Qualified Non-private Funds

Proposed § 107.230(d) would broaden the definition of ''qualified non-private funds'' which may be included in the Private Capital of Section 301(d) Licensees. Currently, a nonprofit entity that has received state or local government grant funds may invest only the income derived from such grant funds in a Section 301(d) Licensee. The proposed change would allow a nonprofit entity to invest the principal of the grant funds in a Section 301(d) Licensee as long as: (1) the nonprofit entity exercises discretionary authority over such funds, and (2) SBA determines that such funds have taken on a private character and that the nonprofit entity is not simply acting as a conduit for government funds.

i. License Application Fees

Proposed § 107.300 would raise the license application fee in order to reflect the true costs of processing applications and to reimburse SBA for such costs. In accordance with applicable statutory provisions, the Administration has taken into consideration direct and indirect costs to SBA of necessary services performed, value to the recipients, the public policy interest served, and other pertinent factors involved. The base fee would be raised from $5,000 to $10,000 for all applicants. There would be a surcharge of $5,000 for a Partnership applicant and an additional $5,000 surcharge for an applicant planning to issue Participating Securities. Thus, a Partnership applicant that intends to issue Participating Securities would pay a fee of $20,000.

4. Subpart D—Changes in Ownership, Control or Structure of Licensee; Transfer of License

a. Fees for Transfer of Control or Change in Form of Organization

Proposed § 107.410 would raise the processing fee for an application to transfer Control of a Licensee from $5,000 to $10,000. The fee would be the same as the base amount charged for a new license application, as discussed under subpart C. Proposed § 107.470 would require a $5,000 processing fee for a change in a Licensee's form of organization (from a corporation to a partnership, or vice versa) which does not involve a change of Control.

b. Licensees under Common Control

Under current § 107.602, SBA generally must approve common management or ownership of two or more Licensees. Section 301(d) Licensees, however, are exempt from this requirement. Proposed § 107.460(b) would narrow the exemption, limiting it to a Section 301(d) Licensee and its parent Section 301(c) Licensee. SBA considers this to be an issue of safety and soundness which is equally applicable to Section 301(c) and Section 301(d) Licensees.

5. Subpart E—Managing the Operations of a Licensee

a. Identification as a Licensee

Under current § 107.704, a Licensee must identify itself to the public as ''A Federal licensee under the Small Business Investment Act of 1958'' on all written communications. Proposed § 107.501 would limit this requirement only to Financing documents (commitment letters, closing documents, etc.), where SBA believes the requirement is most meaningful. This change would accommodate the increasing number of Licensees that utilize Investment Advisor/Managers, by allowing such managers to handle correspondence on behalf of Licensees using their own letterhead.

b. Responsibility for Licensee's Valuations

Current § 107.101(g)(1) states that a Licensee's board of directors or general partners shall have ''sole responsibility'' for valuing the Licensee's Loans and Investments. This regulation was not intended to mean that SBA would abandon its obligation as a regulatory agency to exercise oversight over this critical area of a Licensee's operations. Therefore, proposed § 107.503(c) would clarify SBA's original intention by stating that the board of directors or general partners are solely responsible for using the Licensee's approved valuation policy to prepare the Licensee's valuations of its Loans and Investments for submission to SBA. The Agency would reserve the right to review or independently establish valuations.

c. Facsimile Receiving Capability

Proposed § 107.505 would require Licensees to be capable of receiving fax messages 24 hours a day. In order to make the most efficient use of limited resources, most communications from SBA to SBICs are done at night through broadcast faxes.

d. Internal Control

Current § 107.100 contains many specific requirements concerning internal control procedures and the safeguarding of a Licensee's assets. Under proposed § 107.506(a), the requirements for dual control over cash disbursements and securities (or alternative bond coverage) would be eliminated. The general requirement that Licensees adopt a plan to safeguard their assets and maintain an adequate internal control environment would remain. SBA believes that proper safeguards and controls are essential if Licensees are to operate soundly and profitably, but that Licensees themselves are in the best position to determine the appropriate procedures.

e. SBA Approval of Contract With Investment Adviser/Manager

Proposed § 107.510 would require SBA's prior approval of a contract with an Investment Adviser/Manager only for Licensees that have Leverage or plan to seek Leverage. Prior approval is currently required for all Licensees. SBA considers this provision to be unnecessary when the Agency has no financial interest to protect.

Although it is not addressed in the regulations, SBA's current policy concerning a Licensee's contract with an Investment Adviser/Manager requires that such contracts contain a provision allowing for termination, without

penalty to the SBIC, on not more than 60 days notice (see SBA Policy and Procedural Release #2001). SBA intends to eliminate this requirement because it believes that such a provision is a matter for negotiation between the two parties.

f. Management Expenses

Current § 107.241(d) requires Licensees with Participating Securities or Earmarked Assets to have their Management Expenses approved by SBA at the time of licensing and before any proposed increases in such expenses. Proposed § 107.520, together with proposed § 107.140 (discussed above), would extend this requirement to Licensees with any type of outstanding Leverage. Under proposed § 107.520(c), a leveraged Licensee whose Management Expenses had not already been approved by SBA would be required to submit such expenses for approval with its SBA Form 468 for its first fiscal year ending after the effective date of the final rule. SBA believes that this review of the expenses of leveraged Licensees is consistent with its obligation to ensure the safety and soundness of the SBIC program.

In evaluating the expenses of Licensees, particularly those that have been in the program for some time, SBA does not intend to impose any specific expense ceiling or formula. Rather, the Agency will compare Licensees with similar profiles to determine whether a Licensee is out of line with its peers in terms of its operating costs.

SBA is also proposing a non-substantive change in the definition of Management Expenses. This proposed rule would delete language from the definition (currently found in § 107.3) which states that Management Expenses do *not* include ''the cost of services provided by any Associate of the Licensee which are not part of the normal process of making and monitoring venture capital financings.'' This language is found in the Act and SBA does not intend to change the meaning of Management Expenses as a result of the deletion. Rather, SBA believes that this exclusion is encompassed in proposed § 107.520(b), which excludes from Management Expenses the cost of services provided by ''specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.'' As SBA interprets this provision, ''outside'' consultants and lawyers may be Associates of the Licensee, so it is not necessary to include a separate provision dealing with Associates in the regulations.

g. Limitations on Third-party Debt

Under current § 107.210(f)(6), Licensees with outstanding Leverage must obtain SBA's prior written approval before incurring secured third-party debt. Under proposed § 107.550(a), expansion of the scope of a security interest or lien associated with existing debt would also require SBA approval. This proposal is intended to address SBA's concern about situations in which SBICs have given blanket liens on all their assets to third-party creditors, even when the amount of money borrowed is very small by comparison.

A similar concern underlies proposed § 107.550(c), which states specifically that SBA would look unfavorably upon any request involving a blanket lien on all assets, or a security interest in the Licensee's unfunded investor commitments in excess of 1.25 times the amount to be borrowed. Under proposed § 107.550(d), proposed borrowings would qualify for expedited approval by SBA only if the security interest given were limited either to the assets acquired with the borrowed funds or to an asset coverage ratio of no more than 1.25 to 1.

h. Activity Requirement

Proposed § 107.590 would revise the test used to determine whether an SBIC is actively making Financings. The current test is based upon the amount of Financings made over an 18-month period relative to a Licensee's average idle funds balance for the period. With the change in the Act made in 1992 that recognized commitments from Institutional Investors as part of a Licensee's Regulatory Capital, along with associated ''lockstep'' takedowns of Leverage, most new SBICs take down funds only when needed, and make distributions to their investors as they realize income or gains on their portfolios. Thus, very little idle funds would be maintained by Licensees.

Proposed § 107.590(a) would institute a two-part activity test. In order to be considered active, a Licensee could have no more than 20 percent of its total assets in idle funds at the end of its fiscal year, and must have invested an amount equal to at least 20 percent of its Regulatory Capital over the previous 18 months. In § 107.590(b), there would be recognized exemptions to the activity tests, taking into account the chronological unevenness of investing and profit-taking by SBICs. For example, a Licensee may have excess idle funds at the end of its fiscal year because it recently received Leverage, raised additional capital, or liquidated an investment.

Under proposed § 107.590(c), the activity requirements would be inapplicable to any Licensee that has filed a ''Wind-up Plan'' approved by SBA. Such a Licensee would no longer be making investments other than follow-on Financings of existing portfolio companies. This new provision accommodates the normal operating pattern of a limited-life investment company.

Proposed § 107.590(d) would provide a phase-in period for the new activity requirements above. During such period, any Licensee that is in compliance with the current regulation would be considered active.

The activity requirements would also be affected by the proposed change in the definition of ''Financing'' that is discussed under Subpart A. As a result of this change, Licensees would no longer be able to meet the activity test by making commitments to invest in Small Businesses; only actual investments (and guarantees) would count.

6. Subpart F—Record keeping, Reporting, and Examination Requirements for Licensees

a. Record Keeping Requirements

For Licensees with more than one business location, proposed § 107.600(b) would clarify that records relating to an individual Financing transaction may be kept at the branch with primary responsibility for the transaction. For all Licensees, paragraph (b)(3) would clarify that a Licensee's securities may be held in a safe deposit box or by a licensed securities broker, provided the securities are covered by the broker's insurance.

Current § 107.1002(b)(1) requires a Licensee to preserve certain business and accounting records for a period of 20 years. Proposed § 107.600(c)(1) would reduce the period to 15 years for a corporation or two years beyond the date of liquidation for a partnership. SBA believes that shorter time periods are adequate to protect the Agency's interests.

Proposed § 107.610 includes two new documentation requirements for Loans and Investments. Paragraph (c) would implement a recent change in the Act by requiring a Section 301(d) Licensee to have a completed ''Financing Eligibility Statement'' (SBA Form 1941) for each Financing, certifying that the concern being financed is a Disadvantaged Business. Paragraph (d) would require each concern being financed to certify its intended use of the financing

proceeds. This change is intended to make it easier for Licensees to satisfy § 107.620 (the equivalent of current § 107.304(b)), which requires that information be obtained regarding a Small Business's intended use of Financing proceeds.

b. Insurance Requirement for Independent Public Accountants

Proposed § 107.630(a)(2) would require all accountants who perform audits of SBICs to carry errors and omissions insurance or be self-insured with a net worth acceptable to SBA. The Agency is proposing this change because, in a number of instances, substandard audits have resulted in a misleading presentation of a Licensee's financial condition. The change would create a source of recovery for monetary damages in the event SBA or the SBIC were injured as a result of an auditor's negligence. SBA recognizes that the regulation, as proposed, does not provide adequate guidance, particularly as far as the amounts of insurance or net worth that would be ''acceptable to SBA.'' The Agency strongly encourages Licensees, accountants, and other interested parties to submit any suggestions on this topic.

c. SBA Access to Accountant's Work Papers

Proposed § 107.691 would require the agreement between a Licensee and the independent public accountant performing its annual audit to allow SBA personnel, including examiners, to have access to the accountant's work papers. Although SBA does not expect to review accountants' work papers on a routine basis, the Agency believes that it needs such access to carry out its regulatory oversight function.

d. Examination Fees

Proposed § 107.692(a) would increase the examination fees charged to SBICs. Fees would continue to be assessed based on total assets of the Licensee, but at higher rates as shown in the table included in the proposed rule. The proposed fee schedule was designed to produce total revenue sufficient to cover the current direct costs to SBA of conducting examinations. The change would help to sustain the examination function, which is a key element in maintaining the integrity of the SBIC program.

Proposed § 107.692 would reflect inflation and the actual costs of delay to SBA, by increasing from $250 to $500 per day the fee imposed if an examination is delayed due to a Licensee's lack of cooperation or based on the condition of its records. Licensees are required to cooperate with SBA's examination; Licensees are also required to maintain their records in a reasonable and businesslike manner. This section is designed as an incentive to SBICs to cooperate with the examination and to compensate SBA for costs incurred if they do not.

7. Subpart G—Financing of Small Businesses by Licensees

a. Financings of Smaller Businesses

Although proposed § 107.710 contains approximately the same wording as current § 107.101(i), the requirement to finance Smaller Businesses would be affected by the proposed change in the definition of ''Financing.'' As discussed under Subpart A, this term would no longer include commitments to make investments. Thus, only actual loans, investments, or guarantees would be counted when measuring the amount of ''Financing'' extended to Smaller Businesses.

Another change is proposed in § 107.710(e), which deals with Licensees that have not achieved the required percentage of Financings to Smaller Businesses. The current regulation states that such Licensees may provide Financing only to Smaller Businesses until they are in compliance. The proposed rule would allow greater flexibility, requiring only that such Licensees reach the required percentage by the end of their next fiscal year.

b. Passive Businesses

Existing § 107.901(f) prohibits the Financing of passive businesses; however, the term ''passive'' is inadequately defined. Proposed § 107.720(b) would provide more specific criteria. For example, the proposed rule would clarify that a business is passive if its employees are not making the day to day operating decisions of the company, or if it passes substantially all of the Financing proceeds through to another entity. The proposed changes are consistent with the public purpose of the SBIC program, which is to provide capital to operating small businesses to stimulate the economy and create jobs.

c. Real Estate Investments

Financing of most real estate leasing and development activities is prohibited or restricted under current §§ 107.901(c) and 107.101(c) since SBA considers that the Section 504 program is specifically designed to finance real estate. In addition, most real estate investments tend to be ''project''-oriented rather than the financing of an on-going long-term business. Proposed § 107.720(c) would recognize these realities by narrowing the range of permitted real estate-related financing. Financing of real estate subdividers and developers (who subdivide and improve building lots), and of ''operative builders'' (who build homes or other buildings) would be prohibited. Currently, these activities are permitted, though only on a limited basis (see current § 107.101(c)). The section would also prohibit financing of businesses that buy real estate for the purpose of improving and reselling it, an activity currently permitted under § 107.901(c)(2)(ii).

However, the Financing of the acquisition of real estate by an operating concern for its own use would still be permitted, and the restrictions in current § 107.101(c) that limit investment in companies that operate hotels and motels would be removed.

d. Project Financing

Proposed § 107.720(d) would prohibit project financing (such as dams, oil and gas wells, and motion pictures). Although this prohibition does not appear in the current regulations, it has been in effect as a matter of policy for more than ten years, reflecting SBA's view that project financing is essentially short-term in nature and is inconsistent with the goals of the Act. An investment is considered project financing if the assets of the business are reduced as the life of the business progresses (as opposed to a continuing business that regularly replenishes its inventory, for example) and the business provides a stream of cash payments to its investors or lenders as assets are sold (for example, payments made as oil is pumped from a well and sold). An investment is also considered project financing if its major purpose is to fund production of a specific item (such as a motion picture), over a limited period of time, by a company whose major activity consists of such production. The company need not have been formed for the specific purpose of carrying out the project, although this is often the case.

e. Foreign Investment

The current § 107.901(e) requires at least 51 percent of the ''assets and activities'' of a Financed Small Business to remain within the United States. The term ''assets and activities'' has never had a definitive interpretation. Proposed § 107.720(g) would clarify the restriction on foreign investment by requiring at least 60 percent of the employees and at least 60 percent of the tangible assets to remain within the United States for one year after the Financing unless the SBIC can demonstrate, to SBA's satisfaction,

that the proceeds were used for a specific domestic purpose.

f. Conflicts of Interest

Proposed § 107.730(a)(4) would permit a Licensee to provide financing that the Small Business will use to repay an obligation to a Lending Institution that is an Associate of the Licensee, provided the obligation was incurred in the normal course of business. The current requirement that such obligations be short-term would be removed, in order to give Small Businesses greater flexibility in meeting their financing needs.

Proposed § 107.730(d) would replace the current rules on ''Joint Financings with Associates'' (which cover investments by a Licensee and its Associate that take place no more than 6 months apart) with new provisions on ''Financings with Associates'' (which cover all situations in which a Licensee and its Associate finance the same Small Business, regardless of when each party invests). The basic requirement for such Financings is that a Licensee be able to demonstrate that the terms and conditions are fair and equitable to the Licensee (paragraph (d)(2)). This reflects SBA's fundamental concern that a Licensee not be disadvantaged relative to its Associates when these parties co-invest. The proposed regulation would also establish certain categories of Financings with Associates that would require SBA's prior written approval (paragraph (d)(1)), and other categories that would be exempt from such requirement (paragraph (d)(3)).

In addition to the specific changes proposed, § 107.730 would also be affected throughout by the proposed changes in the definition of ''Associate'' that are discussed under Subpart A.

g. Overline Limitation

Under current § 107.303(c), a Licensee may increase its ''overline'' limit (the maximum amount it is permitted to invest in any one company) if it has net unrealized appreciation on ''marketable securities.'' Proposed § 107.740 contains the same rule, but would replace the term ''marketable'' with the very similar defined term ''Publicly Traded and Marketable'' used elsewhere in the regulations. The only effect of the change would be on the number of market makers that a non-listed stock must have in order to qualify (two under the proposed rule, compared with three under the current rule).

h. Definition of ''Equity Securities''

Under proposed § 107.800(b), an apparent equity financing would be considered Debt Financing for regulatory purposes if the Financing agreement included covenants or compliance provisions with remedies typical of debt, such as acceleration. This change is consistent with current SBA policy, under which the Agency looks to the substance of an investment rather than its form in order to determine whether it is debt disguised as equity.

Under the current regulation, securities that the Small Business must redeem at a fixed price are classified as Debt Securities rather than equity. Under proposed § 107.800(b) in combination with § 107.850(b), this provision would remain in effect with one clarification: If the fixed redemption price is no higher than the amount the Licensee originally paid for the security, then the security would still qualify as an Equity Security.

As used in proposed § 107.850(b), ''redemption price'' includes all amounts that the Small Business is required to pay at redemption, including accumulated dividends. Thus, if a Licensee purchased the preferred stock of a Small Business for $500,000, and the Financing agreement required the Small Business to pay $500,000 at the time of redemption, the Licensee's investment would be considered an Equity Security. However, if the required payment at the time of redemption was $500,000 plus cumulative dividends of 8 percent per year, the investment would be considered a Debt Security.

i. Options Received from Small Businesses

Proposed § 107.815(a) would require a Licensee to pay some consideration (even if only $1) for any options acquired from a Small Business, in order to establish a basis for such options.

Proposed § 107.815(b) would restrict the ability of a Licensee's employees, officers, directors, or general partners to receive options in a Small Business financed by the Licensee. Such persons could receive options only if they participated in the Financing on the same terms and conditions as the Licensee or if approved by SBA. The Agency believes that officers and partners of SBICs should share in the overall profits of an SBIC, but should not have special beneficial side deals.

j. Guarantees of the Obligations of Small Businesses

Proposed § 107.820 would delete two provisions from the current rules on guarantees. Current § 107.401(a)(6), which permits a Licensee to guarantee a Small Business's obligation to an Associate if approved by SBA under the rules governing conflicts of interest, would be eliminated. This type of arrangement is covered in the conflict of interest provisions and does not need to be repeated in this section. The second proposed change is that guarantees would no longer be limited to 100 percent of Regulatory Capital. Guarantees are considered Financings and are included in a Licensee's overline computation, since the risk to the Licensee is the same whether a cash investment is made or whether a guarantee is utilized. Thus, SBA should not have a preference for one type of Financing over another, so long as a Small Business benefits.

k. Fees Paid to Associate Underwriters

Proposed § 107.828(c) would allow an underwriter who is an Associate of a Licensee to receive fees from Licensees that purchase securities in an initial public offering, including the Licensee with which it has the Associate relationship. However, if the underwriter and the Licensee are Associates, the total fees or charges paid by the Licensee may not exceed the total of the application and closing fees and reimbursable expenses permitted by proposed § 107.860. The current regulations prohibit an underwriter who is an Associate of a Licensee from receiving fees from any Licensee, and thus effectively requires Licensees to purchase from non-Associate underwriters. This proposed regulation recognizes the risks involved in underwriting and allows an underwriter to be compensated.

l. Minimum Term of Financings

Under proposed § 107.830(b), the entire portfolio of a Section 301(d) Licensee could consist of Financings with a minimum term of four years instead of five. Currently, such Financings are limited to 50 percent of a Section 301(d) Licensee's portfolio. This change is intended to give Section 301(d) Licensees greater flexibility in structuring their Financings.

Currently, short-term Financings permitted under § 107.403 are limited, in the aggregate, to 20 percent of a Licensee's ''total adjusted assets'' (total assets minus outstanding Leverage and current liabilities). Proposed § 107.835 would remove this limitation for most types of permitted short-term Financings. For short-term Financings of changes of ownership in a Small Business, the limit would be set at 20 percent of total Loans and Investments (at cost). SBA is proposing these changes to give Licensees greater flexibility to respond to the needs of

Small Businesses. However, Licensees should bear in mind that the purpose of the SBIC program, as stated in the Act, is to provide equity capital and long-term loan funds to Small Businesses. Thus, Licensees should not plan to have the bulk of their portfolios in short-term investments; to do so would constitute engaging in activities not contemplated by the Act.

m. Amortization of Loan Principal

Proposed § 107.845 would establish uniform amortization rules for all Loans and Debt Securities. This change would eliminate the accelerated amortization of principal permitted, to a limited extent, under current § 107.403(b)(2). SBA considers straight-line amortization to be fair to both Licensees and Small Businesses, particularly when coupled with the right of Small Businesses to prepay loans voluntarily at any time.

n. Redemption of Equity Securities

Proposed § 107.850 would provide certain exceptions to the general rule that Equity Securities cannot be redeemed in less than five years. Earlier redemption would be allowed if the Small Business makes a public offering, incurs a change of management or control, files for bankruptcy protection, or materially breaches the Financing agreement. In addition, when a Licensee makes a follow-on investment, the minimum redemption period would be counted from the date of the first closing, so that the follow-on Financing could be redeemed in less than five years.

o. Cost of Money

Under proposed § 107.855, SBA's Cost of Money rules would be substantively revised in some respects and clarified throughout. Paragraph (c) would raise the minimum Cost of Money ceiling for a Loan from 15 percent to 19 percent, allowing an SBIC that does not receive any equity interest in a firm to charge a higher interest rate commensurate with risk. The minimum ceiling for a Debt Security would remain unchanged at 14 percent.

Proposed § 107.855(d) would allow Licensees to recalculate their ''Cost of Capital'' quarterly rather than annually. The proposed term ''Cost of Capital'' replaces the current unwieldy term ''Weighted Average Cost of Qualified Borrowing.'' Paragraph (e) would reduce the paperwork burden by eliminating the current requirement for Licensees to submit their Cost of Capital computations to SBA. However, SBICs would have to document such computations and make them available for SBA's review, upon request.

SBA is aware that many private firms do not want to give up any equity at all to outside shareholders, yet would like to grow faster than retained earnings would allow. At the same time, an SBIC must achieve an equity type return if it is taking equity type risks. To accommodate these needs, proposed § 107.855(g) would permit a Licensee to receive a one-time ''bonus'' from a Small Business at the end of the term of a Debt Financing in lieu of an equity participation, and to exclude such a bonus from the Cost of Money if it meets the criteria in proposed § 107.855(i). Paragraph (g) also explicitly sets forth the fees and expenses that are excluded from Cost of Money calculations; currently, these exclusions are found in the definition of Cost of Money in § 107.3.

Finally, proposed § 107.855(h) would eliminate a great deal of current confusion over how to make the calculations that determine whether an SBIC is in compliance with Cost of Money ceilings. This paragraph would require that the evaluation of compliance with a Cost of Money ceiling always be performed on a discounted cash flow basis, based solely upon actual cash outflows and inflows.

p. Financing Fees Charged to Small Businesses

Proposed § 107.860 would replace the ''processing fee'' that a Licensee may charge under current § 107.402 with an ''application fee'' and ''closing fee'' that are very easy to administer. A Licensee would be able to charge a nonrefundable one percent application fee to review a Financing application, and a two percent (for Loans) or four percent (for Debt or Equity Securities) closing fee when it actually disburses funds to a Small Business. All the complex provisions in the current regulation concerning the circumstances under which a processing fee must be partially or fully refunded would be eliminated.

q. Control of a Small Business

Proposed § 107.865 would modify the restrictions on Control of a Small Business by a Licensee. As in the current regulations, paragraph (b) of the proposed section would establish a presumption of Control based on a Licensee's percentage of ownership. However, proposed paragraph (c) would allow the presumption of Control to be rebutted if the management of the Small Business owns at least 25 percent of the voting securities and can elect at least 40 percent of the board of directors (and Licensees and their Associates can elect no more than 40 percent). By defining conditions under which Licensees can avoid the time-consuming process of seeking a waiver from SBA, this provision is intended to make it easier for Licensee to co-invest with non-SBIC investors.

Proposed paragraph (d) would expand the circumstances under which a Licensee may take temporary Control of a Small Business to include the following: (1) If the Small Business has materially breached the Financing agreement; (2) if there has been during the past two years, or will be as a result of the Financing, a substantial change in the Small Business's operations or products, and the Licensee (or investor group including the Licensee) is the concern's major source of capital; or (3) if the Financing is a Start-up Financing, and the Licensee (or investor group including the Licensee) is the concern's major source of capital. These changes are intended to encourage investment by giving Licensees an increased ability to protect their investment positions, particularly in high-risk areas such as start-ups.

Proposed § 107.865(d) would eliminate the current requirement to file a plan of divestiture when a Licensee takes temporary Control of a concern. Instead, a Licensee would file a ''Control certification'' stating the date on which it took Control and the reason for its action, and the Licensee's agreement to relinquish Control within five years. SBA is persuaded that the typical plan of divestiture represents nothing more than guesswork as to future events, and therefore serves no practical purpose.

r. Assets Acquired in Liquidation of Portfolio Securities

Proposed § 107.880(b)(2) would eliminate the prior approval requirement for reasonably necessary expenditures to improve acquired assets and make them salable, as long as an overline does not occur as a result. Paragraph (c) would limit the prior approval requirement for expenditures involving overlines to leveraged Licensees only. SBA believes that these changes will not adversely affect the Agency's financial interests and will reduce the regulatory burden on Licensees.

s. Management Services Provided to Small Businesses

SBA is proposing to liberalize the rules governing management services provided to a Small Business. Under proposed § 107.900, a Licensee could provide management services to a Financed Small Business without SBA's prior approval, as long as the contract met the criteria in § 107.900(a). The

proposed regulation would not apply at all to services provided to a Small Business not financed by the Licensee; SBA believes that in such cases, any agreement between the parties is likely to be a true arm's-length transaction, in which the Small Business does not require any special protections.

Proposed § 107.900(e) would allow Licensees to charge reasonable ''transaction fees'' for services performed in connection with a public or private offering made by the Small Business or the sale of all or part of the business. In addition, this paragraph generally would allow an Associate of the Licensee to charge market rate investment banking fees to a Small Business in connection with Financing provided by anyone other than the Licensee.

8. Subpart H—Non-Leveraged Licensees—Exceptions to Regulations

The primary purpose of certain regulations is to protect the government's interest as a creditor or investor in a Licensee. If a Licensee does not have outstanding Leverage and has no plans to seek Leverage, the safeguards provided by many regulations are unnecessary.

Proposed § 107.1000 would provide a consolidated listing of those regulatory provisions from which a non-Leveraged Licensee would be exempt. This section would include provisions in the current regulations such as those relating to portfolio diversification (overline) and deposits of idle funds. It would also include several provisions that appeared in a proposed rule published in the Federal Register on February 7, 1994 (59 FR 5552). That proposed rule is hereby withdrawn.

Proposed § 107.1000(a)(4) would exempt non-leveraged Licensees from the limitations on expenses incurred to maintain or improve assets acquired in liquidation of portfolio securities (see proposed § 1007.880).

Paragraph (b)(1) would allow non-leveraged Licensees to reduce their Regulatory Capital by more than two percent per year without SBA approval (see proposed § 107.585).

Paragraph (b)(2) would permit non-leveraged Licensees to dispose of assets to an Associate without SBA approval (see proposed § 107.885).

Paragraph (b)(3) would allow non-leveraged Licensees to contract with an Investment Adviser/Manager without SBA approval; Licensees would only be required to notify SBA of the compensation paid under the contract (see proposed § 107.510).

For ease of reference, proposed § 107.1000 would incorporate the current exemptions for non-leveraged Licensees from the rules governing overline investments, third party debt, and idle funds. Regarding the investment of idle funds, proposed § 107.1000(a)(2) states that non-Leveraged Licensees are exempt from the restrictions in § 107.530, provided they do not engage in activities not contemplated by the Act. SBA is proposing this language in order to emphasize that a licensed SBIC, whether leveraged or not, must be formed for the purpose of making long-term investments in Small Businesses. It is not appropriate under the Act, for example, for a non-leveraged Licensee to invest its ''idle funds'' in commodities futures or financial derivatives to the extent that such investing becomes a major component of its operations.

9. Subpart I—SBA Financial Assistance for Licensees (Leverage)

a. Eligibility for Leverage

Under proposed § 107.1120(a), with respect to determining eligibility for Leverage, a Licensee that had invested at least 50 percent of its Leverageable Capital would be presumed to lack sufficient funds for investment only in connection with its first takedown of Leverage. Currently, the presumption applies to all issuances of Leverage and refers to the investment of ''50 percent of Leverageable Capital and outstanding Leverage.'' Regardless of how this ambiguous wording is interpreted, SBA believes the presumption is not appropriate for later takedowns of Leverage, since a Licensee could be presumed eligible while having a significant dollar amount of uninvested capital.

b. Eligibility For Fourth Tier of Leverage and Second Tier of Preferred Securities

Proposed §§ 107.1160 (c) and (d) would eliminate the current minor distinctions between the types of investments needed for a Section 301(d) Licensee to qualify for a fourth tier of Leverage (currently, ''Venture Capital Financings'') and for a second tier of Preferred Securities (currently, ''Qualified Investments''). The change is intended to simplify the process of establishing and maintaining the required investment amounts and ratios by substituting a single category of qualifying investments (to be called ''Venture Capital Financings'') for use in determining eligibility for both types of Leverage. The proposed definition of Venture Capital Financing would include equity securities and those debt securities that are unsecured and subordinated to all other borrowings of the issuer.

c. SBA Leverage Commitment to Licensees

Proposed § 107.1200 would reduce the minimum amount of a Leverage commitment from $1 million to $500,000; proposed § 107.1230 would make the same reduction in the minimum amount of a Licensee's draw request. These changes are intended to give Licensees greater flexibility and to recognize the current limitations on the availability of Leverage funds.

d. Earmarked Profit computation for Participating Securities issuers

Proposed § 107.1510 would simplify the computation of Earmarked Profit (Loss) for Participating Securities issuers that have both Earmarked Assets and non-Earmarked Assets in their portfolios (currently, there are no such Licensees). The proposed regulation would replace requirements to identify whether certain revenues and expenses are specifically attributable to Earmarked or non-Earmarked Assets with a simpler percentage allocation system. Capital gains and losses would continue to be classified as Earmarked or non-Earmarked based on the specific assets from which they are derived.

e. Computation of the Profit Participation Rate for Participating Securities Issuers

Proposed § 107.1530(e) would clarify the method of computing the ratio of Participating Securities to Leverageable Capital (the ''PLC ratio''), which a Participating Securities issuer uses in determining SBA's Profit Participation Rate for a particular distribution. The current regulation does not always produce a definitive answer when a Licensee increases its Leverageable Capital. The proposed rule also would add a ''lockout period'' of 120 days before the date as of which Profit Participation is computed; increases in Leverageable Capital within that period could not be used to reduce the PLC ratio. SBA considers this change necessary to protect the Agency from a sharp decrease in its Profit Participation when a Licensee increases its capital shortly before performing its distribution calculations.

Proposed § 107.1530(g)(2) would make a technical correction in the method of time weighting outstanding issuances of Participating Securities for the purpose of indexing the Profit Participation Rate. The current method incorrectly causes the Profit Participation Rate to go to zero after all

Participating Securities have been redeemed.

f. ''Payment Dates'' for Participating Securities

This proposed rule would add the defined term ''Payment Dates'' to the regulations for issuers of Participating Securities, reflecting the terms of the public fundings of Participating Securities that have already taken place. Payment Dates have been established as each February 1, May 1, August 1, and November 1 during the term of a Participating Security, and represent the dates on which Trust Certificate holders receive interest payments and any returns of principal to which they are entitled. To accommodate this structure, Participating Securities issuers would be permitted to make distributions only on Payment Dates. SBA recognizes, however, that there is one situation in which this arrangement may present difficulties for Licensees, and is requesting comments and suggestions to help resolve the following issue:

Under proposed § 107.1550 (equivalent to current § 107.245(b)), a partnership Licensee may make an annual ''tax distribution'' to its private investors and SBA. The recipients of this distribution may or may not be taxable investors. However, for those who are taxable and need to receive cash in order to pay taxes by the April 15 filing deadline, the timing of the Payment Dates may present a problem: For a Licensee with a December 31 fiscal year end, it is unlikely that a distribution based on audited year end figures could be made as early as February 1; on the other hand, the next Payment Date (May 1) is after the tax filing deadline. SBA is willing to consider an exception that would permit a tax distribution to be made on a date other than a Payment Date, but is asking interested parties to assist the Agency in developing an effective approach.

10. Subpart J—Licensee's Non-Compliance with Terms of Leverage

a. Capital Impairment Computation

The determination of a Licensee's Capital Impairment would be clarified in two ways. In the computation of Adjusted Unrealized Gain for Capital Impairment purposes, proposed § 107.1840(d)(3) would clarify that a Licensee claiming unrealized appreciation on non-Publicly Traded and Marketable Securities based on subsequent rounds of equity financing at a higher price (''Class 2 Appreciation'') must substantiate, to SBA's satisfaction, that such appreciation meets the required criteria. Proposed § 107.1840(d)(6) would require unrealized gains on securities that are pledged or encumbered to be reduced by the amount of the related borrowing or other obligation. These changes reflect current SBA policy in the administration of the Capital Impairment regulations.

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

SBA certifies that this proposed rule would not be a significant regulatory action for purposes of Executive Order 12866 because it would not have an annual effect on the economy of more than $100 million, and that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The primary purpose of the proposed rule is to streamline the regulations governing the SBIC program by eliminating obsolete regulations and reorganizing the remainder in a more logical and readable format.

Two areas of the proposed regulations would have some economic effect, including possible effects on small entities. First, license application fees and examination fees would be raised. An SBIC license applicant would pay a fee of $10,000 to $20,000, compared with the current $5,000. This increase is not significant relative to the private capital of an average Licensee, which exceeds $10 million. Exam fees would continue to be based on the total assets of a Licensee, but at higher rates. The largest Licensees, generally those with assets of at least $25 million, could experience fee increases of $20,000 or more; however, the number of such Licensees is currently very small.

Second, the proposed changes in the regulations governing ''Cost of Money'' (the maximum amount a Licensee can charge on loans and debt securities) would potentially affect the borrowing costs of small entities. Although the interest rate on loans is determined primarily by market forces, the proposed rule would raise the interest rate ceiling on loans extended by Licensees from 15 percent to 19 percent. The total amount of loans provided to small businesses by Licensees is approximately $240 million per year. Even if the additional four percentage points were charged on the entire balance of such loans, the annual economic impact would be less than $10 million.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements that have not already been approved by the Office of Management and Budget. The ''Financing Eligibility Statement'' (SBA Form 1941) which would be required under proposed § 107.610 has already been approved by OMB under Control Number 3245–0301.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

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

For the reasons set forth above, SBA hereby proposes to amend Part 107 of Title 13 of the Code of Federal Regulations as follows:

1. 107.1 through 107.1202 and all center headings are removed the authority citation for Part 107 continues to read as set forth below, and new subparts A through L are added to read as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Subpart A—Introduction to Part 107

Subpart B—Definition of Terms Used in Part 107

Subpart C—Qualifying for an SBIC License

Organizing an SBIC

Capitalizing an SBIC

* * * * *

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

Subpart A—Introduction to Part 107

§ 107.20 Legal basis and applicability of Part 107.

(a) The regulations in this part implement Title III of the Small Business Investment Act of 1958, as amended. All Licensees, including Section 301(d) Licensees, must comply with all applicable regulations, accounting guidelines and valuation guidelines for Licensees.

(b) Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

§ 107.30 Amendments to Act and regulations.

A Licensee shall be subject to all existing and future provisions of the Act and Parts 107 and 112 of title 13 of the Code of Federal Regulations.

§ 107.40 How to read Part 107.

(a) *Center headings.* All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms. Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 107.50 are capitalized hereafter.

(c) The pronoun ''you'' as used in this Part 107 means a Licensee or license applicant, as appropriate, unless otherwise noted.

Subpart B—Definition of Terms Used in Part 107

§ 107.50 Definition of terms.

Accumulated prioritized payments has the meaning set forth in § 107.1520.

Act means the Small Business Investment Act of 1958, as amended.

Adjustments has the meaning set forth in § 107.1520.

Affiliate or *Affiliates* has the meaning set forth in § 121.401.

Articles mean articles of incorporation or charter for a Corporate Licensee and the partnership agreement or certificate for a Partnership Licensee.

Assistance or *Assisted* means Financing of or management services rendered to a Small Business by a Licensee pursuant to the Act and these regulations.

Associate of a Licensee means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate Licensee;

(ii) A Control Person, employee or agent of a Partnership Licensee;

(iii) An Investment Adviser/Manager of any Licensee, including any Person who contracts with a Control Person of a Partnership Licensee to be the Investment Adviser/Manager of such Licensee; or

(iv) Any Person regularly serving a Licensee in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate Licensee or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership Licensee. However, a limited partner in a Partnership Licensee is not considered an Associate if such Person is an entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the partnership capital of the Licensee and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a Licensee.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1),(2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any Person described in paragraphs (1) through (6) of this definition is an officer; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the Licensee).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) through (7) of this definition.

(10) For the purposes of this definition, if any Associate relationship described in paragraphs (1) through (7) of this definition exists at any time within six months before or after the date that a Licensee provides Financing, then that Associate relationship is considered to exist on the date of the Financing.

(11) If any Licensee has any ownership interest in another Licensee, the two Licensees are Associates of each other.

Capital impairment has the meaning set forth in § 107.1830(c).

Central Registration Agent or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 107.1660 and performing similar functions for Debentures and Participating Securities funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Combined Capital means the sum of Regulatory Capital and outstanding Leverage.

Commitment has the meaning set forth in § 107.825.

Common Control means a condition where two or more Licensees either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more Licensees are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

Control means the possession, direct or indirect, of the power to veto or to direct or cause the direction of the management and policies of a Licensee or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a Licensee, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership Licensee;

(2) Any Person serving as the general partner, officer, director, or manager (in the case of a limited liability company) of any entity that controls a Licensee, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership Licensee or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of the general partner of such Partnership Licensee;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 40 percent of a Partnership Licensee or any entity described in paragraphs (1) or (2) of this definition.

Corporate Licensee. See definition of Licensee in this section.

Cost of Money has the meaning set forth in § 107.855.

Debenture Rate means the interest rate, as published from time to time in the Federal Register by SBA, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee. User or guarantee fees, if any, paid by a Licensee are not considered in determining the Debenture Rate.

Debentures means debt obligations issued by Licensees pursuant to section 303(a) of the Act and held or guaranteed by SBA.

Debt Securities has the meaning set forth in § 107.815.

Disadvantaged Business means a Small Business that is at least 50 percent owned, and controlled and managed, on a day to day basis, by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Distribution means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in a Partnership Licensee, or to shareholders in a Corporate Licensee. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the Licensee's non-SBA partners or shareholders.

Earmarked Assets has the meaning set forth in § 107.1510(b). (See also § 107.1590.)

Earmarked Profit (Loss) has the meaning set forth in § 107.1510.

Earned Prioritized Payments has the meaning set forth in § 107.1520.

Equity Capital Investments means investments in a Small Business in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments must not require amortization. Equity Capital Investments may be guaranteed; however, neither Equity Capital Investments nor such guarantee may be collateralized or otherwise secured. Investments classified as Debt Securities (see §§ 107.800 and 107.815) are not precluded from qualifying as Equity Capital Investments.

Entity General Partner has the meaning set forth in § 107.160(b).

Equity Securities has the meaning set forth in § 107.800.

Financing or *Financed* means outstanding financial assistance provided to a Small Business by a Licensee, whether through:

(1) Loans;

(2) Debt Securities;

(3) Equity Securities;

(4) Guarantees; or

(5) Purchases of securities of a Small Business through or from an underwriter (see § 107.805).

Guaranty Agreement means the contract entered into by SBA which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures or the Redemption Price of and Prioritized Payments on Participating Securities and SBA's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if Licensee obtains a written opinion from an investment banking firm acceptable to SBA stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means:

(1) *Entities.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified below. (See also § 107.230(b)(4) for limitations on the amount of an Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended).

(iv) A holding company of any entity described in paragraph (1)(i), (ii)or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended, excluding plans established under section 401(k) of the Internal Revenue Code of 1986, as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (1)(i) through (1)(ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that SBA determines to be an Institutional Investor.

(2) *Individuals.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended) and whose commitment to the Licensee is backed by a letter of credit from a State or National bank acceptable to SBA.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the Licensee. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth (determined in accordance with paragraph (2)(i)(B) of this definition) is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition *provided* such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a Licensee under a written contract executed in accordance with the provisions of § 107.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or NASDAQ and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associates's sales or business operations.

Leverage means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of a Licensee's Debentures or Participating Securities, or the purchase of a Licensee's Preferred Securities, and any other SBA financial assistance evidenced by a security of the Licensee.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments and Qualified Non-private Funds whose source is Federal funds.

Licensee means either a corporation (Corporate Licensee), or a limited partnership organized pursuant to § 107.160 (Partnership Licensee), to which a license has been granted pursuant to the Act. For certain purposes, the Entity General Partner of a Partnership Licensee is treated as if it were a Licensee (see § 107.160(b)(2)).

Loan has the meaning set forth in § 107.810.

Loans and Investments means Portfolio Securities, Assets Acquired in Liquidation of Portfolio Securities, Operating Concerns Acquired, and Notes and Other Securities Received, as set forth in the Statement of Financial Position of SBA Form 468.

Management Expenses has the meaning set forth in § 107.520.

1940 Act Company means a Licensee which is registered under the Investment Company Act of 1940.

1980 Act Company means a Licensee which is registered under the Small Business Investment Incentive Act of 1980.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participating Securities means preferred stock, preferred limited partnership interests, or similar instruments issued by Licensees, including debentures having interest payable only to the extent of earnings, all of which are subject to the terms set forth in §§ 107.1500 through 107.1590 and section 303(g) of the Act.

Partnership Licensee. See definition of Licensee in this section.

Payment Date means, for a Participating Securities issuer, each February 1, May 1, August 1, and November 1 during the term of a Participating Security.

Person means a natural person or legal entity.

Pool means an aggregation of SBA guaranteed Debentures or SBA

guaranteed Participating Securities approved by SBA.

Portfolio means the securities representing a Licensee's total outstanding Financing of Small Businesses. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means a Small Business Assisted by a Licensee.

Preferred Securities means nonvoting preferred stock issued to SBA by a for-profit Section 301(d) Corporate Licensee, or securities having similar characteristics issued by a Section 301(d) Licensee organized as a nonprofit corporation, or nonvoting preferred limited partnership interests issued by a Section 301(d) Partnership Licensee.

Prioritized Payments has the meaning set forth in § 107.1520.

Private Capital has the meaning set forth in § 107.230.

Profit Participation has the meaning set forth in § 107.1500(c)(3).

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 of the Securities Act of 1933, as amended, by the holder thereof (or in the case of an In-kind Distribution by the distributee thereof), and are of a class which is traded on a regulated stock exchange, or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended, and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Non-private Funds has the meaning set forth in § 107.230.

Redemption Price means the amount required to be paid by the issuer, or successor to the issuer, of Preferred or Participating Securities to repurchase such securities from the holder. The Redemption Price shall be the Original Issue Price less any prepayments or prior redemptions.

Regulatory Capital means:

(1) *General.* Regulatory Capital means Private Capital, excluding non-cash assets contributed to a Licensee or a license applicant, and non-cash assets purchased by a license applicant, unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(2) *Exclusion of questionable commitments.* An investor's commitment to a Licensee is excluded from Regulatory Capital if SBA determines that the collectibility of the commitment is questionable.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a Licensee may distribute to investors (including SBA) as a profit Distribution, or transfer to Private Capital.

SBA means the Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2)of this definition.

Section 301(c) Licensee has the meaning set forth in § 107.100.

Section 301(d) Licensee has the meaning set forth in § 107.110.

Short-term Financing means Financing for a term of less than five years in accordance with the regulations.

SIC Manual means the latest issue of the Standard Industrial Classification Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pa., 15250–7954.

Small Business means a small business concern as defined in section 103(5) of the Act (including its Affiliates), which for purposes of size eligibility, meets the applicable criteria set forth in part 121 of this chapter.

Smaller Business has the meaning set forth in § 107.710.

Start-up Financing means an Equity Capital Investment in a Small Business that—

(1) Engages in technology development or commercialization, manufacturing, and/or exporting;

(2) At the time of Licensee's initial Financing has not existed, in any form, for more than three fiscal years;

(3) Has not had sales exceeding $5,000,000 or positive cash flow in any fiscal year; and

(4) Was not formed to acquire any existing business.

Temporary Debt has the meaning set forth in § 107.570.

Trust means the legal entity created for the purpose of holding guaranteed Debentures or Participating Securities and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Participating Securities are issued by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

Trust Certificates (TCs) means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures or Participating Securities.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

Unrealized Appreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a Licensee's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Venture Capital Financing has the meaning set forth in § 107.1160.

Wind-up Plan has the meaning set forth in § 107.590.

Subpart C—Qualifying for an SBIC License

Organizing an SBIC

§ 107.100 Organizing a Section 301(c) Licensee.

Section 301(c) Licensee means a company licensed under section 301(c) of the Act. It may be organized as a for-profit corporation or as a limited partnership created in accordance with the special rules of § 107.160.

§ 107.110 Organizing a Section 301(d) Licensee.

Section 301(d) Licensee means a company licensed under section 301(d) of the Act that may provide Assistance only to Disadvantaged Businesses. A Section 301(d) Licensee may be organized as a for-profit corporation, a non-profit corporation, or as a limited partnership created in accordance with the special rules of § 107.160.

§ 107.115 1940 Act and 1980 Act Companies.

For license applications received on or after November 28, 1995, SBA will license a 1940 Act or 1980 Act Company only if such company does not elect to be taxed as a regulated investment company under section 851 of the Internal Revenue Code of 1986, as amended. After such date, a request by an existing Licensee to convert to a 1940 Act or 1980 Company will be approved by SBA only if the same criteria are satisfied.

§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

A Section 301(d) Licensee may be licensed to operate as the subsidiary of one or more Licensees (participant Licensee), with or without non-Licensee participation, subject to the following:

(a) *Application.* In reviewing the license application, SBA will consider what effect, if any, a capital contribution to the proposed Section 301(d) Licensee will have on the participant Licensee.

(b) *Participant Licensees.* Each participant Licensee must propose to own at least twenty percent of the voting securities of the proposed Section 301(d)Licensee.

(c) *Capital contribution.* A subsidiary Section 301(d) Licensee must receive capital contributions in cash, in an amount at least equal to the minimum capital requirement under § 107.210. Capital contributed by a participant Licensee in excess of the required minimum may be in the form of securities of a Disadvantaged Business, valued at the lower of cost or fair value. A participant Licensee must treat its entire capital contribution to the subsidiary as a reduction of its Leveragable Capital. The participant Licensee's remaining Leverageable Capital must be sufficient to support its outstanding Leverage.

(d) *No transfer of Leverage.* A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

§ 107.130 Requirement for qualified management.

When applying for a license, you must show, to the satisfaction of SBA, that your current or proposed management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, these regulations and your business plan. You must designate at least one individual as the official responsible for contact with SBA.

§ 107.140 SBA approval of initial Management Expenses.

You must have your Management Expenses approved by SBA at the time of licensing. (See § 107.520 for the definition of Management Expenses.)

§ 107.150 Management and ownership diversity requirement.

You must have diversity between management and ownership in order to be licensed, unless you do not plan to obtain Leverage. To establish diversity, you must meet the requirements in paragraphs (a) and (b) of this section unless SBA approves otherwise.

(a) *Requirement one.* You must satisfy either paragraph (a)(1) or paragraph (a)(2) of this section.

(1) You must have at least three shareholders or limited partners, or at least one acceptable Institutional Investor, in either case with an aggregate ownership interest equal to at least 30 percent of your Regulatory Capital. Such investors must not be your Associates (except for their status as your shareholders or limited partners) or Affiliates of any of your Associates. For purposes of this paragraph (a)(1), the following Institutional Investors are acceptable:

(i) Entities regulated by state or Federal authorities satisfactory to SBA;

(ii) Public or private employee pension funds;

(iii) Trusts, foundations, or endowments which are exempt from Federal income taxation; or

(iv) Other Institutional Investors satisfactory to SBA.

(2) Your common stock or limited partnership interests are publicly traded.

(b) *Requirement two.* Your shareholders or limited partners may not delegate their voting rights to any other Person without prior SBA approval. This restriction does not apply to:

(1) Publicly traded Licensees.

(2) Proxies given to vote at single specified meetings.

(3) Delegations of voting rights by your investors to their investment advisors, provided such advisors are not your Associates (except for their status as your shareholder or partner).

(c) *Diversity based on Licensee's parent company.* If you do not have diversity as defined in paragraphs (a) and (b) of this section, SBA in its sole discretion may accept diversity achieved on the same basis by your parent company as a substitute. As used in this paragraph (c), ''parent company'' means an entity that directly or indirectly has an interest of more than 50 percent of your Regulatory Capital.

(d) Requirement to maintain diversity after licensing. If you were required to have diversity between management and ownership at the time you were licensed, you must maintain such diversity while you have outstanding Leverage or Earmarked Assets, unless SBA approves otherwise. If, at any time, you no longer satisfy the diversity criteria in paragraph (a) or (b) of this section, you must:

(1) Notify SBA within 10 days; and

(2) Re-establish diversity within six months.

(e) *Exception to diversity rule.* This § 107.150 does not apply if:

(1) You received your license before November 28, 1995 and you are not licensed to issue Participating Securities; or

(2) SBA received your license application before November 28, 1995 and, as of such date, you had raised the funds needed to begin operations as contemplated in your business plan.

§ 107.160 Special rules for Licensees formed as limited partnerships.

A limited partnership organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act may apply for a license under section 301(c) or section 301(d) of the Act (''Partnership Licensee'').

(a) *Number of Licensee's General Partners.* If you are a Partnership Licensee, you must have as your general partner(s) at least two individuals, or at least one corporation, partnership, or limited liability company (LLC), or any combination of individuals, corporations, partnerships, or LLCs.

(b) *Entity General Partner of Licensee.* A general partner which is a corporation, limited liability company or partnership (an ''Entity General Partner'') shall be organized under state law solely for the purpose of serving as the general partner of one or more Licensees.

(1) SBA must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner. This provision must be

stated in an Entity General Partner's Certificate of Incorporation, member agreement, Limited Partnership Agreement or other similar governing instrument which must, in each case, accompany the license application.

(2) An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§ 107.1800 through 107.1820, and 107.30, 107.410 through 107.450, 107.470, 107.475, 107.500, 107.510, 107.585, 107.600, 107.680, 107.690 through 107.692, 107.865, and 107.1910 apply also to an Entity General Partner of a Licensee.

(3) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(4) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 107.50.

(5) If your Entity General Partner is a limited partnership, it is subject to paragraph (a) of this section.

(c) *Other requirements for Partnership Licensees.* If you are a Partnership Licensee:

(1) You must have a minimum duration of ten years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership Licensee may be terminated by a vote of your partners. (For purposes of this provision SBA is not considered a partner.)

(2) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;

(3) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (c) in your Limited Partnership Agreement.

(d) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 313 and 314 of the Act and by the conflict-of-interest rules under section 312 of the Act. The term Licensee, as used in §§ 107.30, 107.460, and 107.680 includes all of the Licensee's Control Persons. The term Licensee as used in § 107.670 includes only the Licensee's general partner(s). The conditions specified in §§ 107.1800 through 107.1820 and § 107.1910 apply to all general partners.

(e) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(f) *Reorganization of Licensee.* A corporate Licensee wishing to reorganize as a Partnership Licensee, or a Partnership Licensee wishing to reorganize as a Corporate Licensee, may apply to SBA for approval under § 107.470.

(g) *Special Leverage requirement.* Before the extension of any Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

Capitalizing an SBIC

§ 107.200 Adequate capital for Licensees.

You must meet the requirements of this § 107.200 to qualify for a license, to continue as a Licensee, and to receive Leverage.

(a) You must have enough Regulatory Capital to provide reasonable assurance that:

(1) You will operate soundly and profitably over the long term; and

(2) You will be able to operate actively in accordance with your Articles and within the context of your business plan, as approved by SBA.

(b) In SBA's sole discretion, you must be economically viable, taking into consideration actual and anticipated income and losses on your Loans and Investments, and the experience and qualifications of your owners and managers.

§ 107.210 Minimum capital requirements for Licensees.

(a) *Minimum capital for Section 301(c) Licensees—general rule.* A Section 301(c) Licensee or applicant must have Regulatory Capital (excluding commitments from your investors) of at least $2,500,000.

(b) *Minimum capital for Section 301(d) Licensees—general rule.* A Section 301(d) Licensee or applicant must have Regulatory Capital (excluding commitments from your investors) of at least $1,500,000.

(c) *Exception to general rule—grandfather clause.* The minimum capital requirements in paragraphs (a) and (b) of this section do not apply if you were licensed before October 2, 1990, or if SBA had your license application on file before October 2, 1990 and granted you a license on the basis of such application. If you qualify for this exception, you must have at least the minimum Private Capital required by the regulations in effect on October 1, 1990.

(d) *Additional capital requirements for Licensees seeking Leverage.* If you are a license applicant who intends to seek Leverage, see § 107.220.

§ 107.220 Special minimum capital requirements for Licensees issuing Leverage.

(a) *Participating Securities.* You must have Regulatory Capital of at least $10,000,000 in order to apply for Participating Securities, unless you demonstrate to SBA's satisfaction that you can be financially viable over the long term with a lower amount. You are not permitted under any circumstances to apply for Participating Securities if your Regulatory Capital is less than $5,000,000.

(b) *Debentures.* If you are licensed after the effective date of this regulation, you must have Regulatory Capital of at least $5,000,000 in order to apply for Debentures, unless you demonstrate to SBA's satisfaction that you can be financially viable over the long term with a lower amount.

(c) *Companies licensed before October 2, 1990.* If § 107.210(c) applies to you and your Regulatory Capital (excluding commitments from investors) is below $2,500,000 (for a Section 301(c) Licensee) or $1,500,000 (for a Section 301(d) Licensee):

(1) You are eligible for Leverage (other than refinancing) only if you can demonstrate to SBA's satisfaction that you have been profitable for three out of your last four fiscal years before applying for Leverage and, on the average, have been profitable for all such fiscal years.

(2) Even if you do not satisfy paragraph (c)(1) of this section, you may apply for Leverage needed to refinance any Debenture outstanding on October 2, 1990, as follows:

(i) Any such Debenture which matures on or before December 31, 1995 may be refinanced, one time only, for a term of not more than ten years; and

(ii) Any such Debenture which matures after December 31, 1995, may be refinanced, one time only, for a term of three years.

§ 107.230 Permitted sources of Private Capital for Licensees.

Private Capital means the contributed capital of a Licensee, plus unfunded

binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a Licensee.

(a) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate Licensee, or the partners' contributed capital of a Partnership Licensee, in either case subject to the limitations in paragraph (b) of this section.

(b) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by a Licensee from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for funds invested by a public pension fund and ''Qualified Non-private Funds'' as defined in paragraph (d) of this section.

(4) Any portion of a commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth and is not backed by a letter of credit from a State or National bank acceptable to SBA.

(c) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 107.240 of this section.

(d) *Qualified Non-private Funds.* Private Capital includes ''Qualified Non-private Funds'' as defined in this paragraph (d); however, investors of Qualified Non-private Funds must not control, directly or indirectly, a Licensee's management, or its board of directors or general partner(s). Qualified Non-private Funds are:

(1) Funds directly or indirectly invested in any Licensee on or before August 16, 1982 by any Federal agency except SBA, under a statute explicitly mandating the inclusion of such funds in ''Private Capital'';

(2) Funds directly or indirectly invested in any Licensee by any Federal agency under a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in ''Private Capital'';

(3) Funds invested in any Licensee or license applicant by one or more State or local government entities (including any guarantee extended by such entities) in an aggregate amount that does not exceed 33 percent of Regulatory Capital; and

(4) Funds invested in any Section 301(d) Licensee or such license applicant from the following sources:

(i) A State financing agency, or similar agency or instrumentality, if the funds invested are derived from such agency's net income and not from appropriated State or local funds; and

(ii) Grants made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds, if SBA determines that such funds have taken on a private character and the nonprofit corporation or institution is not a mere conduit.

(e) You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) SBA gives its prior written approval of the capital contribution.

§ 107.240 Limitations on accepting non-cash capital contributions.

Non-cash capital contributions to a Licensee or license applicant are included in Private Capital only if they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Tangible assets used in your operations, priced at no more than their fair market value.

(d) Shares in a Disadvantaged Business received by a subsidiary Section 301(d) Licensee from its parent Licensee, valued at the lower of cost or fair value.

(e) Other non-cash assets approved by SBA.

§ 107.250 Issuance of stock options by Licensees.

(a) *Issuance of stock options.* You may issue stock options. A 1940 Act Company or a 1980 Act Company may issue stock options only as permitted under such Acts or orders issued thereunder.

(b) *Stock options not deemed compensation.* Stock options issued by any Licensee, including a 1940 or 1980 Act company, are not considered compensation and therefore do not count as part of a Licensee's Management Expenses.

Applying for an SBIC License

§ 107.300 License application form and fee.

The license application must be submitted on SBA Form 415 together with a processing fee computed as follows:

(a) All license applicants will pay a base fee of $10,000.

(b) All applicants who will be Partnership Licensees will pay an additional $5,000 fee, for a total of $15,000.

(c) All applicants who will be issuing Participating Securities will pay an additional $5,000 fee, for a total of $15,000, or a total fee of $20,000 if they also intend to be Partnership Licensees.

Subpart D—Changes in Ownership, Control, or Structure of Licensee; Transfer of License

Changes in Control or Ownership of Licensee

§ 107.400 Changes in ownership of 10 percent or more of Licensee but no change of Control.

(a) *Prior approval requirements.* You must obtain SBA's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock or partnership capital.

(b) *Fee.* A processing fee of $200 must accompany each such request for approval of a change of ownership.

§ 107.410 Changes in Control of Licensee (through change in ownership or otherwise).

(a) *Prior approval requirements.* You must obtain SBA's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by SBA.

(b) *Fee.* A processing fee of $10,000 must accompany any application for approval of one or more transactions or events that will result in a transfer of Control.

§ 107.420 Prohibition on exercise of ownership or Control rights in Licensee before SBA approval.

Without prior written SBA approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any shareholders' or partnership meeting);

(c) Permit the proposed new owner(s) to participate in any manner in the

conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 107.430 Notification to SBA of transactions that may change ownership or Control.

You must promptly notify SBA as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your capital. If there is any doubt as to whether a particular transaction or event will result in such a change, report the facts to SBA.

§ 107.440 Standards governing prior SBA approval for a proposed transfer of Control.

SBA approval is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by SBA. As a condition of approving a proposed transfer of control, SBA may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by SBA; or

(c) Require compliance with any other conditions set by SBA.

§ 107.450 Notification to SBA of pledge of Licensee's shares.

(a) You must notify SBA in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged are at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 107.400 or § 107.410, as appropriate.

Restrictions on Common Control or Ownership of Two or More Licensees

§ 107.460 Restrictions on Common Control or ownership of two (or more) Licensees.

(a) *General rule.* Without SBA's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(1) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another Licensee; or

(2) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another Licensee.

(b) *Exception for Section 301(d) Licensees.* This § 107.460 does not apply to common officers, directors, managers, or owners of a Section 301(c) Licensee and its Section 301(d) subsidiary.

Change in Structure of Licensee

§ 107.470 SBA approval of merger, consolidation, or reorganization of Licensee.

(a) *Prior approval requirements.* You may not merge, consolidate, change form of organization (corporation or partnership) or reorganize without SBA's prior written approval. Any such merger or consolidation will be subject to § 107.440.

(b) *Fee.* A processing fee of $5,000 must accompany any application for approval of a change in your form of organization (from corporation to partnership or partnership to corporation).

Transfer of License

§ 107.475 Transfer of license.

You may not transfer your license in any manner without SBA's prior written approval.

Subpart E—Managing The Operations of a Licensee

General Requirements

§ 107.500 Lawful operations under the Act.

You must engage only in the activities contemplated by the Act and in no other activities.

§ 107.501 Identification as a Licensee.

You must display your SBIC license in a prominent location. You must also have a listed telephone number. All Financing documents must identify you as ''a Federal Licensee under the Small Business Investment Act of 1958, as amended.''

§ 107.502 Representations to the public.

You may not represent or imply to anyone that the SBA, the U.S. Government or any of its agencies or officers has approved any ownership interests you have issued or obligations you have incurred. Be certain to include a statement to this effect in any solicitation to investors. Example: You may not represent or imply that ''SBA stands behind the Licensee'' or that ''Your capital is safe because SBA's experts review proposed investments to make sure they are safe for the Licensee.''

§ 107.503 Licensee's adoption of an approved Valuation Policy.

(a) *SBA approval.* You must have a written valuation policy for use in determining the value of your Loans and Investments. You must include this policy as part of your initial application to SBA.

(b) *Adopting SBA's valuation guidelines/automatic approval.* If you adopt the exact wording of the Model Valuation Policy, ''Valuation Guidelines for SBICs'', and make absolutely no additions or changes, then SBA will automatically accept your Valuation Policy. With SBA's prior written approval, you may adopt a policy that differs from the model.

(c) *Licensee's adoption of policy.* Your board of directors or general partners will be solely responsible for adopting your Valuation Policy and for using it to prepare valuations of your Loans and Investments for submission to SBA. SBA reserves the right to review or independently establish valuations of your Loans and Investments.

(d) *Frequency of valuations.* (1) If you have outstanding Leverage or Earmarked Assets, you must value your Loans and Investments at the end of the second quarter of your fiscal year, and at the end of your fiscal year.

(2) Otherwise, you must value your Loans and Investments only at your fiscal year end.

(3) On a case-by-case basis, SBA may require you to perform valuations more frequently.

(4) You must report material changes in valuations at least quarterly, within thirty days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* Your independent public accountant must review only valuations performed as of the end of your fiscal year. The accountant's responsibility includes reviewing your valuation procedures and the implementation of such procedures, including adequacy of documentation. The accountant also has reporting responsibilities concerning the results of this review.

§ 107.504 Computer capability requirements of Licensee.

You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them by modem to SBA.

§ 107.505 Facsimile requirement.

You must be able to receive fax messages 24 hours per day at your primary office.

§ 107.506 Safeguarding Licensee's assets/ Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 107.507 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture, Participating Security or Preferred Security, or of any written agreement with SBA.

(b) *False statement.* In any document submitted to SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact. A material fact is any fact which is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 107.508 Accessible office.

You must maintain an office that is convenient to the public and is open for business during normal working hours.

§ 107.509 Employment of SBA officials.

Without SBA's prior written approval, for a period of two years after the date of your most recent issuance of Leverage (or the receipt of any SBA Assistance as defined in part 105 of this chapter), you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(a) Served as an officer, attorney, agent, or employee of SBA on or within one year before such date; and

(b) As such, occupied a position or engaged in activities which, in SBA's determination, involved discretion with respect to the granting of Assistance under the Act.

Management and Compensation

§ 107.510 SBA approval of Licensee's Investment Adviser/Manager.

You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors or general partner. If you have Leverage or plan to seek Leverage, you must obtain SBA's prior written approval of the management contract. SBA's approval of an Investment/ Advisor Manager for one Licensee does not indicate approval of that manager for any other Licensee.

(a) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/manager will render to you and to the Small Businesses in your Portfolio;

(2) Indicate the basis for computing Management Expenses; and

(3) Be approved annually by your board of directors or principals.

(b) *Material change to approved management contract.* If there is a material change, both you and SBA must approve such change in advance. If you are uncertain if the change is material, submit the proposed revision to SBA.

§ 107.520 Management Expenses of a Licensee.

SBA must approve any increases in your Management Expenses if you have outstanding Leverage or Earmarked Assets.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do *not* include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

(c) If your Management Expenses have not already been approved by SBA, you must submit such expenses for approval with your SBA Form 468 for your first fiscal year ending after the effective date of this Regulation.

Cash Management by a Licensee

§ 107.530 Restrictions on investments of idle funds by leveraged Licensees.

(a) *Applicability of this section.* This § 107.530 applies if you have outstanding Leverage or if you have applied for Leverage.

(b) *Permitted investments of idle funds.* Funds not invested in Small Businesses must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution.

(c) *Deposit of funds in excess of the insured amount.* (1) You are permitted to deposit funds in a federally insured institution in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103).

(2) Exception: You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(d) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 107.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

Borrowing by Licensees From Non-SBA Sources

§ 107.550 Prior approval of secured third-party debt of leveraged Licensees.

(a) *General rule.* If you have outstanding Leverage, you must get SBA's written approval before you incur any non-SBA debt secured by any of your assets (referred to in this section as ''secured third-party debt'') or refinance any debt with secured third-party debt, including any renewal of, or increase in, a secured line of credit, or expansion of the scope of a security interest or lien. Secured third-party debt includes all guarantees and other contingent obligations that you voluntarily assume that are secured by any of your assets, all secured lines of credit, and any secured Temporary Debt of a Licensee

with outstanding Participating Securities.

(b) *Additional rule for secured lines of credit in existence on April 8, 1994.* If you have outstanding Leverage and you have a secured line of credit that was created on or before April 8, 1994, you must receive SBA's written approval of the line before you increase the amounts outstanding thereunder.

(c) *Conditions for SBA approval.* As a condition of granting its approval under this § 107.550, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 1.25:1;

(3) Your Leverage does not exceed 150 percent of your Leverageable Capital; and

(4) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

§ 107.560 Subordination of SBA's creditor position.

(a) *Debentures purchased or guaranteed on or before July 1, 1991.* Under the terms of any Debenture purchased or guaranteed by SBA on or before July 1, 1991, SBA's unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated in favor of all your other creditors, except to the extent that such claims may be subject to equitable subordination in SBA's favor.

(b) *Debentures purchased or guaranteed after July 1, 1991, including refinancings of Debentures previously purchased or guaranteed.* (1) Under the terms of any Debenture purchased or guaranteed by SBA after July 1, 1991, SBA's unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated only in favor of non-Associate lenders; and, to the extent that your indebtedness to such lenders exceeds the lesser of $10,000,000 or 200 percent of your Regulatory Capital (determined as of the date your Debentures were purchased or guaranteed), SBA's unsecured claims enjoy parity with those of other unsecured creditors, except with respect to indebtedness created on or before July 1, 1991.

(2) In order to induce others to lend you money after your Debenture has been purchased or guaranteed, SBA may agree in writing on a case-by-case basis to subordinate its unsecured claims, on such terms as it may determine, in favor of one or more of your Associates, or in favor of other lenders in excess of the amounts mentioned in paragraph (b)(1)of this section.

(3) SBA reserves the authority to refuse to subordinate its claims if it determines, at the time you request your Debenture be purchased or guaranteed, that the exercise of reasonable investment prudence and your financial condition warrant such refusal.

§ 107.570 Restriction on third-party debt of issuers of Participating Securities.

(a) *General.* Temporary Debt is the only debt (other than Leverage) that you are permitted to incur if you have applied to issue Participating Securities or if you have outstanding Participating Securities. For additional rules governing secured Temporary Debt, see § 107.550.

(b) *Definition of Temporary Debt.* Temporary Debt means your short-term borrowings if:

(1) Such borrowings are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(2) The funds are borrowed from a regulated financial institution or a regulated credit company (or, if approved by SBA on a case-by-case basis, from non-regulated lenders including shareholders or partners);

(3) Your total outstanding borrowings (not including Leverage) do not exceed 50 percent of your Leverageable Capital; and

(4) All such borrowings are fully paid off for at least 30 consecutive days during your fiscal year so that you have no outstanding third-party debt for 30 days.

Voluntary Decrease in Licensee's Regulatory Capital

§ 107.585 Voluntary decrease in Regulatory Capital.

You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year, unless otherwise permitted under §§ 107.1560 and 107.1570. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 107.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and §§ 107.1150 through 107.1170.

Requirement To Conduct Active Investment Operations

§ 107.590 Licensee's requirement to maintain active operations.

(a) *Activity test.* You must conduct active operations, as determined under this § 107.590, as a condition of your license. You will be considered active if:

(1) During the eighteen months preceding your most recent fiscal year end, you made Financings (excluding Commitments) totaling at least 20 percent of your Regulatory Capital; and

(2) Your idle funds did not exceed 20 percent of your total assets (at cost) at your most recent fiscal year end.

(b) *Permitted exceptions to activity requirements.* You are considered active if SBA determines that your failure to meet the requirements in paragraph (a) of this section is the result of one or more of the following factors:

(1) Your excess idle funds are the result of recent realized gains, repayments, the raising of additional capital or Leverage recently received.

(2) It is necessary for you to maintain excess idle funds to conduct your operations because:

(i) You have no remaining unfunded commitments from investors; and

(ii) You cannot receive additional Leverage, solely because SBA has insufficient funds available.

(3) You have not made sufficient Financings because of a lack of available funds, evidenced by Loans and Investments (at cost) equal to at least 90 percent of your Combined Capital as of your most recent fiscal year end.

(4) You have not made sufficient Financings solely because SBA has restricted your ability to make investments.

(c) *Applicability of activity requirements.* The activity requirements in paragraph (a) of this section do not apply if you have filed a ''Wind-up Plan'' approved by SBA. ''Wind-up Plan'' means a plan that you prepare when you decide that you will no longer make any Financings other than follow-on investments, and that you update annually when you file your SBA Form 468. The plan must contain your best estimates of the following:

(1) The remaining number of years you expect to operate.

(2) For each of your Loans and Investments, the expected liquidation date and anticipated proceeds.

(3) The timing of your repayment of obligations to SBA.

(4) The timing and amount of any planned reductions in your Management Expenses.

(d) *Phase-in of activity requirements.* You must meet the activity requirements in this § 107.590 as of the end of your first full fiscal year following the effective date of the final regulation. Until then, you will be considered active if you meet the activity requirements in effect the day before the effective date of the final regulation.

Subpart F—Recordkeeping, Reporting, and Examination Requirements for Licensees

Recordkeeping Requirements for Licensees

§ 107.600 General requirement for Licensee to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for Licensee, unless SBA approves otherwise.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or non-SBA lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c), and must remain accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership Licensee, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses.

(ii) Your Articles, bylaws, minute books, and license application.

(iii) All documents evidencing ownership of the Licensee including ownership ledgers, and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(1) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments.

(ii) All loan, participation, and escrow agreements.

(iii) Size status declarations (SBA Form 480) and Financing Eligibility Statements (SBA Form 1941).

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise.

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

§ 107.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to SBA upon request.

(a) SBA Form 480, the Size Status Declaration, executed both by you and by the concern you are financing. By executing this document, both parties certify that the concern is a Small Business. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business.

(b) SBA Form 652, a certification by the concern you are financing that it will not illegally discriminate (see part 112 of this chapter).

(c) SBA Form 1941 (for Section 301(d) Licensees only), executed both by you and by the concern you are financing. By executing this document, both parties certify that the concern is a Disadvantaged Business.

(d) A certification by the concern you are financing of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

§ 107.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 107.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the applicant to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses and projections as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the business and the amount of the proposed Financing.

(b) *Updated financial information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern; and

(iii) Verify the use of Financing proceeds.

(2) The information submitted to you must be certified by the chief financial officer, general partner, or proprietor of the Portfolio Concern.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the business involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see § 107.828). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by SBA's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 107.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or SBA's examiners access to its books and records for such purpose.

Reporting Requirements for Licensees

§ 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).

(a) *Annual filing of Form 468.* For each fiscal year, you must submit to SBA financial statements and

supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year.

(1) *Audit of Form 468.* The annual Form 468 must be audited by an independent public accountant acceptable to SBA.

(2) *Insurance requirement for public accountant.* Your independent public accountant must carry Errors and Omissions insurance in an amount acceptable to SBA, or be self-insured and have a net worth acceptable to SBA.

(b) *Interim filings of Form 468.* When requested by SBA, you must file interim reports on Form 468. SBA may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with appendix I, Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

§ 107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).

For each Financing of a Small Business (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

§ 107.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material changes in valuations at least quarterly, within thirty days following the close of the quarter.

§ 107.660 Other items required to be filed by Licensee with SBA.

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give SBA a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give SBA a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

(2) SBA may require you to submit copies of the pleadings and other documents SBA may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise SBA of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Other reports.* You must file any other reports that SBA may require by written directive.

§ 107.670 Application for exemption from civil penalty for late filing of reports.

(a) If it is impracticable to submit any required report within the time allowed, you may apply for an extension. The request for an extension must:

(1) Be filed before the reporting deadline;

(2) Certify to an extraordinary occurrence, not within your control, that makes timely filing of the report impracticable; and

(3) Be accompanied by written evidence of such occurrence, where appropriate.

(b) Upon receipt of your request, SBA may exempt you from the civil penalty provision of section 315(a) of the Act, in such manner and under such conditions as SBA determines.

§ 107.680 Reporting changes in Licensee not subject to prior SBA approval.

(a) *Changes to be reported for post approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require SBA's prior approval. You must report such changes to SBA within 30 days for post approval. A processing fee of $200 must accompany each request for post approval of new officer, directors, or Control Persons.

(b) *Approval by SBA.* You may consider any change submitted under this section § 107.680 to be approved unless SBA notifies you to the contrary within 90 days after receiving it. SBA's approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions SBA may prescribe.

Examinations of Licensees by SBA for Regulatory Compliance

§ 107.690 Examinations.

SBA will examine all Licensees for the purpose of evaluating regulatory compliance.

§ 107.691 Responsibilities of Licensee during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 107.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to SBA upon request.

§ 107.692 Examination fees.

(a) SBA will assess fees for examinations. Fees will be assessed based on your assets as of the date of your latest certified financial statement submitted to SBA prior to the examination. As a general rule, SBA will not assess fees for special examinations to obtain specific information. The rate table is as follows:

Total assets of licensee	Base rate	Percent of assets
$0 to $2,000,000	$3,500	+0
$2,000,001 to $5,000,000	$3,500	+.24% over $2,000,000
$5,000,001 to $10,000,000	$10,700	+.12% over $5,000,000
$10,000,001 to $15,000,000	$16,700	+.06% over $10,000,000
$15,000,001 or more	$19,700	+.03% over $15,000,000

(b) *Delay Fee.* If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition or your records, SBA may assess an additional fee of up to $500 per day.

Subpart G—Financing of Small Businesses by Licensees

Determining the Eligibility of a Small Business for SBIC Financing

§ 107.700 Compliance with size standards in Part 121 of this chapter as a condition of Assistance.

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant is a Small Business, you may use either the financial size standards in § 121.802(a)(3)(i) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.802(a)(3)(ii) of this chapter.

§ 107.710 Requirement to finance Smaller Businesses.

Your Portfolio must include Financings to Smaller Businesses.

(a) *Definition of Smaller Business.* A Smaller Business means a business that:

(1) Together with its Affiliates has a net worth of not more than $6.0 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than $2.0 million; or

(2) Both together with its affiliates, and by itself, meets the size standard of § 121.601 of this chapter at the time of the Financing for the industry in which it is then primarily engaged.

(b) *Phase 1 of Smaller Business Financing requirement.* At the close of your first complete fiscal year beginning on or after April 25, 1994, at least 10 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been in Smaller Businesses.

(c) *Phase 2 of Smaller Business Financing requirement.* At the close of each of your next fiscal years, at least 20 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been invested in Smaller Businesses.

(d) *Financing a change of ownership which results in the creation of a Smaller Business.* The Financing of a change of ownership under § 107.750 which results in the creation of a Smaller Business qualifies as a Smaller Business Financing.

(e) *Non-compliance with this section.* If you have not reached the required percentage of Smaller Business Financings at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year.

§ 107.720 Small Businesses that may be ineligible for Financing.

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor.

(1) *Definition.* Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(2) *Exception.* You may provide Venture Capital Financing to Disadvantaged Businesses that are relenders or reinvestors (except banks or savings and loans not insured by agencies of the federal government, and agricultural credit companies). Without SBA's prior written approval, total Financings under this paragraph (a)(2) that are outstanding as of the close of your fiscal year must not exceed your Regulatory Capital.

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of the day to day operations; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception.* You may finance a passive business if it passes all the proceeds of the Financing through to a wholly-owned eligible Small Business that is not passive.

(c) *Real Estate Businesses.* (1) You are not permitted to finance any business classified under Major Group 65 (Real Estate) or Industry No. 1532 (Operative Builders) of the SIC Manual, with the following exceptions:

(i) Title Abstract companies (Industry No. 6541); and

(ii) Companies listed under Industry No. 6531 (for example, real estate agents, brokers, escrow agents, managers and multiple listing services) that derive at least 80 percent of their revenue from non-Affiliate sources.

(2) You are not permitted to finance a business, regardless of SIC classification, if the Financing is to be used to acquire realty or to discharge an obligation relating to the prior acquisition of realty, unless the Small Business:

(i) Is acquiring an existing building and will use at least 51 percent of the usable square footage for an eligible business activity; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business activity.

(d) *Project Financing.* You are not permitted to finance a business if:

(1) The assets of the business are to be reduced or consumed, generally without replacement, as the life of the business progresses, and the nature of the business requires that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Small Business. Examples include motion pictures and electric generating plants.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farm land. Farm land means land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment*—(1) *General rule.* You are not permitted to finance a business if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 40 percent of the employees or tangible assets of the Small Business are located outside the United States (unless you can show, to SBA's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Associated supplier.* You are not permitted to finance a business that purchases, or will purchase, goods or services from a supplier who is your

Associate, except under the following conditions:

(1) The amount of goods and services purchased (or to be purchased) from your Associate with the proceeds of the Financing, or with funds released as a result of the Financing, is less than 50 percent of the total amount of the Financing (75 percent for a Section 301(d) Licensee);

(2) The price of such goods and services is no higher than that charged other customers of your Associate; and

(3) The Small Business purchases no capital goods from your Associate.

(i) *Financing Licensees.* You are not permitted to provide funds, directly or indirectly, that the Small Business will use:

(1) To purchase stock in or provide capital to a Licensee; or

(2) To repay an indebtedness incurred for the purpose of investing in a Licensee.

§ 107.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not self-deal to the prejudice of a Small Business, the Licensee, its shareholders or partners, or SBA. Unless you obtain a prior written exemption from SBA for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates.

(2) Provide Financing to an Associate of another Licensee if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that Licensee or a third Licensee (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) A Small Business Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such business; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to a Small Business to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(5) Provide Financing to a Small Business for the purpose of purchasing property from your Associate, except as permitted under § 107.720(h).

(b) *Rules applicable to Associates.* Without SBA's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from a Small Business any compensation in connection with Assistance you provide (except as permitted under §§ 107.828(c) and 107.900), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by any restrictions in Federal or State laws governing conflicts of interest and fiduciary obligations.

(d) *Financings with Associates*—(1) *Financings with Associates requiring prior approval.* Without SBA's prior written approval, you may not Finance any business in which your Associate has either a voting equity interest, or total equity interests (including potential interests), of at least five percent.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Small Business, either at the same time or at different times, you must be able to demonstrate to SBA's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Small Business, and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Small Business on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are leveraged Licensees, and both have outstanding Participating Securities or neither has outstanding Participating Securities.

(iv) Both you and your Associate are non-leveraged Licensees.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Small Business. You must identify any such Associate in your records available for SBA's review under § 107.600. Without SBA's prior written approval, the Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, 3 percent of the Portfolio Concern's equity.

(2) Have served for more than 30 days as an officer, director or other participant in the management of the Portfolio Concern before you provided Financing.

(3) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 107.730, you need not obtain SBA's approval of the transaction. However, you must promptly notify SBA of the transaction and satisfy the public notice requirements in paragraph (g) of this section.

(g) *Public notice.* Before SBA grants an exemption under this § 107.730, you must publish notice of the transaction in a newspaper of general circulation in the locality most directly affected by the transaction, and furnish a certified copy to SBA within 10 days of publication. SBA will publish a similar notice in the Federal Register.

§ 107.740 Portfolio diversification (''overline'' limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or want to be eligible for Leverage. Without SBA's prior written approval, your aggregate outstanding Financings and Commitments to a Small Business (including its Affiliates) must not exceed:

(1) 20 percent of Regulatory Capital for a Section 301(c) Licensee; or

(2) 30 percent of Regulatory Capital for a Section 301(d) Licensee.

(b) *Outstanding Financings.* For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost *plus* any amount of the Financing that was previously written off.

(c) *Adjustment to Regulatory Capital.* For the purposes of paragraph (a) of this section, you may compute a higher maximum permitted investment in a Small Business (an ''increased limit'') by adding ''net unrealized gains'' on Publicly Traded and Marketable securities to your Regulatory Capital, subject to the following conditions:

(1) *Net unrealized gains* on Publicly Traded and Marketable securities means unrealized gains on Publicly Traded and Marketable securities minus unrealized losses on *all* Loans and Investments.

(2) You must value your Publicly Traded and Marketable securities in accordance with your SBA-approved valuation policy.

(3) You must have positive Retained Earnings Available for Distribution at the time you compute an increased limit under this paragraph (c).

(4) At the time you first compute an increased limit, and as of the first business day of each calendar quarter that the increased limit is in effect, you must keep copies in your files of the NASDAQ listings (or the Wall Street Journal) or written quotations from the market makers quoting the Publicly Traded and Marketable securities which support the adjustment.

(5) If your net unrealized gains on Publicly Traded and Marketable securities are more than 30 percent below their original level on the first business day of any calendar quarter, and remain so for the next 30 days, you agree to do one of the following to remain in compliance with the terms of your Leverage:

(i) By the first day of the next calendar quarter, increase your Regulatory Capital sufficiently to restore support for the increased limit; or

(ii) Lower the increased limit to reflect the decrease in net unrealized gains on Publicly Traded and Marketable securities, and reduce any Financings that exceed the lower limit.

Example to paragraph (c) of this section. Your Regulatory Capital is $2,500,000 and your overline limit is $500,000 (20 percent of $2,500,000). On January 15, 1995, you document net unrealized gains on Publicly Traded and Marketable securities of $200,000 and compute an increased limit of $540,000 (20 percent of $2,700,000). You now make an investment of $540,000 in a Small Business. Nothing changes until the first business day of April, 1996, when you document net unrealized gains on Publicly Traded and Marketable securities of only $120,000, a reduction of more than 30 percent. Your net unrealized gains remain at this level for the next 30 days. Your increased limit is now only $524,000 (20 percent of $2,620,000). By July 1, 1996, you must either increase Regulatory Capital by $80,000 to restore your increased limit to $540,000, or reduce your portfolio investment from $540,000 to $524,000.

§ 107.750 Conditions for financing a change of ownership of a Small Business.

You may finance a change of ownership of a Small Business only under the conditions set forth in this section.

(a) The Financing must:

(1) Promote the sound development or preserve the existence of the Small Business;

(2) Help create a Small Business as a result of a corporate divestiture; or

(3) Facilitate ownership in a Disadvantaged Business.

(b) The Resulting Concern (as defined in paragraph (c) of this section) must:

(1) Be a Small Business under § 107.700;

(2) Have 500 or fewer full-time equivalent employees; or meet one of the appropriate debt/equity ratio tests:

(i) If you have outstanding Leverage, the Resulting Concern's ratio of debt to equity must be no more than 5 to 1; or

(ii) If you have no outstanding Leverage, the Resulting Concern's ratio of debt to equity must be no more than 8 to 1.

(c) *Definitions.* (1) The ''Resulting Concern'' is determined by viewing the business as though the change of ownership had already occurred, giving effect to all contemplated financing, mergers, and acquisitions.

(2) For purposes of this section, ''debt'' means long-term debt, including contingent liabilities, but excluding accounts payable, operating leases, letters of credit, subordinated notes payable to the seller, any other liabilities approved for exclusion by SBA and short-term working capital loans (so long as the loans carry a zero balance for 30 consecutive days during the concern's fiscal year).

(3) For purposes of this section, ''equity'' means common and preferred stock (corporation), contributed capital (partnership), or membership interests (limited liability company).

§ 107.760 How a change in size or activity of a Portfolio Concern affects the Licensee and the Portfolio Concern.

(a) *Effect on Licensee of a change in size of a Portfolio Concern.* If a Portfolio Concern no longer qualifies as a Small Business you may keep your investment in the concern and:

(1) Subject to the overline limitations of § 107.740, you may provide additional Financing to the concern up to the time it makes a public offering of its securities.

(2) Even after the concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering.

(b) *Effect of a change in business activity occurring within one year of Licensee's initial Financing*—(1) *Retention of Investment.* Unless you receive SBA's written approval, you may not keep your investment in a Portfolio Concern, small or otherwise, which becomes ineligible by reason of a change in its business activity within one year of your initial investment.

(2) *Presumption against Portfolio Concern—Default.* If such a change occurs within one year, there is a presumption that the change was within the contemplation of the Portfolio Concern at the time of your initial Financing. Unless this presumption is rebutted, this change constitutes a default or breach of the terms of your initial Financing and a violation of this part.

(3) *Licensee's rights upon default of Portfolio Concern.* If the Portfolio Concern is in breach or default, you have the right to demand immediate repayment of all indebtedness owed by the Portfolio Concern to you, or redemption of all of your equity investments in the Portfolio Concern.

(4) *Request for SBA's approval to retain investment.* If you request that SBA approve the retention of your investment, your request must include sufficient evidence to rebut the presumption in paragraph (b)(2) of this section by a showing that the change in business activity was caused by an unforeseen change in circumstances.

(5) *Additional Financing.* If SBA approves your request to retain an investment under paragraph (b)(4) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) You may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

Structuring Licensee's Financing of Eligible Small Businesses: Types of Financing

§ 107.800 Financings in the form of Equity Securities.

(a) You may purchase the Equity Securities of a Small Business. You may not, inadvertently or otherwise:

(1) Become a general partner in any unincorporated business; or

(2) Become jointly or severally liable for any obligations of an unincorporated business.

(b) *Definition.* Equity Securities means stock of any class in a corporation, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests. If the Financing agreement contains covenants or compliance provisions with debt-type remedies (as determined by SBA), or includes redemption provisions other than those permitted under § 107.850, the security will be considered a Debt Security for all regulatory purposes.

§ 107.810 Financings in the form of Loans.

You may make Loans to Small Businesses. A Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

§ 107.815 Financings in the form of Debt Securities.

You may purchase Debt Securities from Small Businesses.

(a) *Definition.* Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options that you acquire.

(b) *Restriction on options obtained by Licensee's management and employees.* Your employees, officers, directors or general partners, or the general partners of the management company that is providing services to you or to your general partner, may obtain options in a Financed Small Business only if:

(1) They participate in the Financing on a pari passu basis with you; or

(2) SBA gives its prior written approval.

§ 107.820 Financings in the form of guarantees.

At the request of a Small Business or where necessary to protect your existing investment, you may guarantee the monetary obligation of a Small Business to any non-Associate creditor.

(a) You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business;

(2) The amount of the guaranty plus any direct Financings to the Small Business exceed the overline limitations of § 107.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline; or

(3) The total financing cost to the Small Business exceeds the cost of money limits of § 107.855.

(b) *Pledge of Licensee's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 107.825 Commitments to Small Businesses.

You may enter into a written Commitment to provide Financing to a Small Business. A Commitment is a written agreement between you and an eligible Small Business that obligates you to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. You may include in the agreement reasonable conditions precedent to your obligation to fund the commitment but these conditions must be outside your control.

§ 107.828 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of a Small Business through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the Small Business.

(b) *Recordkeeping requirements.* In addition to the recordkeeping requirements of § 107.600, you must keep records available for SBA's inspection which show the relevant details of the transaction, including, but not limited to, date, price, commissions, and the underwriter's certifications required under paragraph (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify in writing that the requirement in paragraph (a)(3) of this section has been met. The underwriter also must certify whether it is your Associate. Any such Associate underwriter may keep fees or charges related to the portion of the offering purchased by you only if such fees and charges do not exceed the total of the application and closing fees and reimbursable expenses permitted by § 107.860.

(d) *Securities purchased from another Licensee or from SBA.* You may purchase from, or exchange with, another Licensee, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets(valued at cost) invested in such securities. If you have previously sold Portfolio Securities (or any interest therein) on a recourse basis, you shall include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of a Small Business from a non-issuer not previously described in this § 107.828 if:

(1) Such acquisition is a reasonably necessary part of the overall sound Financing of the Small Business under the Act; or

(2) The securities are acquired to finance a change of ownership under § 107.750.

Structuring Licensee's Financing of an Eligible Small Business: Terms and Conditions of Financing

§ 107.830 Minimum duration/term of financing.

(a) *General rule for Section 301(c) Licensees.* If you are a Section 301(c) Licensee, the duration/term of all your Financings must be for a minimum period of five years. *Exception:* You may finance a Disadvantaged Business for a minimum term of four years.

(b) *General rule for Section 301(d) Licensees.* The duration/term of your Financings may be for a minimum period of four years.

(c) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options or warrants on terms that include redemption by the Small Business, you must not require redemption by the Small Business within the first five years of your acquisition except as permitted in § 107.850.

(d) *Special rules for Loans and Debt Securities*—(1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment before five years.* You must permit voluntary prepayment by the Small Business at any time during the initial five year term. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (d)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty

which must be agreed upon at the time of the Financing. If SBA determines that a prepayment penalty is unreasonable, you must refund the entire penalty to the Small Business. A prepayment penalty equal to 5 percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered reasonable.

§ 107.835 Exceptions to minimum duration/term of Financing.

You may make a Short-term Financing for a term less than five years if the Financing is:

(a) An interim financing (for a period not to exceed one year) in contemplation of long-term Financing. The contemplated long-term Financing must be in an amount at least equal to the short-term Financing, and must be made by you alone or in participation with other investors; or

(b) For protection of your prior investment(s); or

(c) For the purpose of Financing a change of ownership under § 107.750. The total amount of such Financings may not exceed 20 percent of your Loans and Investments (at cost) at the end of any fiscal year; or

(d) For the purpose of aiding a Small Business in performing a contract awarded under a Federal, State, or local government set-aside program for ''minority'' or ''disadvantaged'' contractors.

§ 107.840 Maximum term of Financing.

The maximum term of any Financing must be no longer than 20 years.

§ 107.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan (or the loan portion of a Debt Security) with a term of five years or less cannot be amortized faster than straight line. If the term is greater than five years, the principal cannot be amortized faster than straight line for the first five years.

§ 107.850 Restrictions on redemption of Equity Securities.

(a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than five years from the date of the first closing unless:

(1) The concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on investment, in which case the new securities may be redeemed in less than five years, but no earlier than the redemption date associated with your earliest Financing of the concern.

(b) The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the concern (such as one based on earnings); or

(ii) The fair market value of the concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'').

''Cost of Money'' means the interest and other consideration that you receive from a Small Business. The Cost of Money to the Small Business may not exceed the ceiling determined under this section.

(a) *Financings to which the Cost of Money rules apply.* This section applies to all Loans and Debt Securities. As required by § 107.800(b), you must include as Debt Securities any equity interests with redemption provisions that do not meet the restrictions in § 107.850.

(b) *When to determine the Cost of Money ceiling for a Financing.* Your Cost of Money ceiling for a particular Financing is determined as of the date of the first closing of the Financing and remains fixed for the duration of the Financing.

(c) *How to determine the Cost of Money ceiling for a Financing.* At a minimum, you may use a Cost of Money ceiling of 19 percent for a Loan and 14 percent for a Debt Security. To determine whether you may charge more, do the following:

(1) Choose a base rate for your Cost of Money computation. The base rate may be either the Debenture Rate currently in effect or your own ''Cost of Capital'' as determined under paragraph (d) of this section.

(2) For a Loan, add 11 percentage points to the base rate; for a Debt Security, add 6 percentage points. In either case, round the sum down to the nearest eighth of one percent.

(3) If the result is more than 19 percent (for a Loan) or 14 percent (for a Debt Security), you may use it as your Cost of Money ceiling.

(4) If two or more Licensees participate in the same Financing of a Small Business, the base rate used in this paragraph (c) is the highest of the following:

(i) The current Debenture rate;

(ii) The Cost of Capital of the lead Licensee; or

(iii) The weighted average of the Cost of Capital for all Licensees participating in the Financing.

(d) *How to determine your Cost of Capital.* ''Cost of Capital'' is an optional computation of the weighted average interest rate you pay on your ''qualified borrowings''. ''Qualified borrowings'' means your Debentures together with your borrowings at or below the usual interest rate charged by banks in your locality on the date your loan was made.

(1) For any fiscal year, you may compute your Cost of Capital:

(i) As of the first day of your fiscal year, to remain in effect for the entire year; or

(ii) As of the first day of every fiscal quarter during the fiscal year, to remain in effect for the duration of the quarter.

(2) For each qualified borrowing outstanding at your last fiscal year or fiscal quarter end, multiply the ending principal balance (net of related unamortized fees) by the number of days during the past four fiscal quarters that the borrowing was outstanding, and divide the result by 365.

(3) Add together the amounts computed for all borrowings under paragraph (d)(2) of this section. The result is your weighted average borrowings.

(4) For all qualified borrowings outstanding at your last fiscal year or fiscal quarter end, determine the aggregate interest expense for the past four fiscal quarters (excluding amortization of loan fees).

(5) Divide the interest expense from paragraph (d)(4) of this section by the weighted average borrowings from paragraph (d)(3) of this section, and multiply by 100. The result is your Cost of Capital, which you may use to compute a Cost of Money ceiling under paragraph (c) of this section.

(e) *SBA review of Cost of Capital computation.* You must keep your Cost of Capital computations in a separate file available for SBA's review.

(1) A computation that is kept in such a file and is audited by your independent public accountant is considered correct unless SBA demonstrates otherwise.

(2) If a computation is not kept in such a file or is unaudited, you must prove its accuracy to SBA's satisfaction.

(f) *Charges included in the Cost of Money.* The Cost of Money includes all

interest, points, discounts, fees, royalties, profit participation, and any other consideration you receive from a Small Business, except for the specific exclusions in paragraph (g) of this section. For equity interests subject to the Cost of Money rules (see paragraph (a) of this section), you must include:

(1) The portion of the fixed redemption price that exceeds your original cost.

(2) Any amount of a redemption that is paid out of accounts other than the Small Business's capital accounts (capital, paid-in surplus, or retained earnings of a corporation; or partners' capital of a partnership).

(g) *Charges excluded from the Cost of Money.* You may exclude from the Cost of Money:

(1) Closing fees, application fees, and expense reimbursements, each as permitted under § 107.860.

(2) Reasonable prepayment penalties permitted under § 107.830(d)(3).

(3) Out-of-pocket conveyance and/or recordation fees and taxes.

(4) Reasonable closing costs.

(5) Fees for management services as permitted under § 107.900.

(6) Reasonable and necessary out-of-pocket expenses you incur to monitor the Financing.

(7) Board of director fees not in excess of those paid to other outside directors, if your board representation meets the requirements of § 107.730(e).

(8) A reasonable fee for arranging financing for a Small Business from a source that is neither a Licensee nor an Associate of yours. The Small Business must agree in writing to pay such a fee before you arrange the financing.

(9) A one-time ''bonus'' that satisfies the requirements in paragraph (i) of this section.

(10) The difference between the contractual interest rate of the Financing and a default rate of interest permitted as follows:

(i) If a Small Business is in default, you may charge a default rate of interest as much as 7 percentage points higher than the contractual rate until the default is cured.

(ii) For this purpose, ''default'' means either failure to pay an amount when due or failure to provide information required under the Financing documents or SBA regulations.

(h) *How to evaluate compliance with the Cost of Money ceiling.* You must determine whether a Financing is within the Cost of Money ceiling based on its discounted cash flows, as follows:

(1) Beginning with the date of the first disbursement (''period zero''), identify your cash inflows and cash outflows for each period of the Financing. The appropriate period to use (such as years, quarters, or months) depends on how you have structured the disbursements and payments.

(2) Discount the cash flows back to the first disbursement date using the Cost of Money ceiling from paragraph (d) of this section as the discount rate.

(3) If the result is zero or less, the Financing is within the Cost of Money ceiling; if it is greater than zero, the Financing exceeds the Cost of Money ceiling.

(i) *''Bonus'' paid by a Small Business.* You may provide Financing to a Small Business that includes both a loan and a one-time ''bonus'' determined at the end of the loan term. For Cost of Money purposes, you must treat such a Financing as a Debt Security. You may exclude a bonus from the Cost of Money only if it is:

(1) Computed on or after the date that the Financing is repaid in full;

(2) Not fixed or determinable before the computation date; and

(3) Fully contingent upon factor(s) that reflect the performance of the Small Business. The period for which such performance is measured must not extend beyond the Small Business's fiscal year end immediately following repayment of the Financing. You must demonstrate to SBA's satisfaction that the factor(s) used are appropriate indicators of performance. Examples of generally acceptable factors include net income and operating cash flow; examples of generally unacceptable factors include gross revenues or gross profit.

§ 107.860 Financing fees and expense reimbursements a Licensee may receive from a Small Business.

You may collect Financing fees and receive expense reimbursements from a Small Business only as permitted under this § 107.860.

(a) *Application Fee.* You may collect a nonrefundable application fee from a Small Business to review its Financing application if:

(1) The fee is no more than 1 percent of the amount of Financing requested (or, if two or more Licensees participate in the Financing, their combined application fees are no more than 1 percent of the total Financing requested); and

(2) The Financing applicant signs a letter agreeing to pay the fee.

(b) *SBA review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, SBA in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 107.115.

(c) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than 2 percent of the Financing amount (or, if two or more Licensees participate in the Financing, their combined closing fees are no more than 2 percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(d) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than 4 percent of the Financing amount (or, if two or more Licensees participate in the Financing, their combined closing fees are no more than 4 percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Limitation on dual fees.* If another Licensee or an Associate of yours collects a transaction fee under § 107.900(e) in connection with your Financing of a Small Business, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 107.860.

(f) *Expense reimbursements.* You may charge a Small Business for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If SBA determines that any of your reimbursed expenses are unreasonable or are Management Expenses, SBA will require you to include such amounts in the Cost of Money or refund them to the Small Business.

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

(a) *General.* You must not operate a business enterprise or function as a holding company exercising Control over a business enterprise. Neither you, nor you and your Associates, nor you and other Licensee(s) (in the latter two cases, the ''Investor Group'') may, except as set forth in this section, assume Control over a Small Business through management agreements, voting trusts, majority representation on the board of directors, or otherwise.

(b) *Presumption of Control.* Control over a Small Business will be presumed to exist whenever you or the Investor Group own or control, directly or indirectly:

(1) At least 50 percent of the outstanding voting securities, if there are fewer than 50 shareholders; or

(2) More than 25 percent of the outstanding voting securities, if there are 50 or more shareholders; or

(3) A block of at least 20 percent of the outstanding voting securities, if there are 50 or more shareholders and no other party holds a larger block.

(c) *Rebuttals to presumption of Control.* A presumption of Control under paragraph (b) of this section is rebutted if:

(1) The management of the Small Business owns at least a 25 percent interest in the voting securities of the business; and

(2) The management of the Small Business can elect at least 40 percent (rounded down) of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent (rounded up). The balance of such officials may be elected through mutual agreement by management and the Investor Group.

(d) *Temporary Control permitted.* You may acquire temporary Control:

(1) Where reasonably necessary for the protection of your investment under circumstances where a Small Business is threatened with insolvency or closure;

(2) If there has been a material breach of the Financing agreement by the Small Business;

(3) If there has been a substantial change in the Small Business's operations or products during the past 2 years, or such a change is the intended result of the Financing, and the Investor Group's original Financing constitutes the Small Business's major source of capital; or

(4) In the case of a Start-up Financing, if you or the Investor Group constitute the Small Business's major source of capital.

(e) *Control certification.* If you take temporary Control of a Small Business under paragraph (d) of this section, you must file a Control certification with SBA within 30 days. The certification must state:

(1) The date on which you took Control;

(2) The basis for taking Control; and

(3) Your agreement to relinquish Control within five years (although you may, under extraordinary circumstances, request SBA's approval of an extension beyond five years).

(f) *Control acquired through enforcement actions.* If you retain or acquire Control through enforcement action, you must notify SBA immediately and submit a Control certification within 30 days.

(g) *Additional Financing for businesses under Licensee's Control.* If you assume Control of a Small Business, you may later provide additional Financing, without an exemption under § 107.730(a)(1).

§ 107.880 Assets acquired in liquidation of Portfolio securities.

You may acquire assets in full or partial liquidation of a Small Business's obligation to you under the conditions permitted by this § 107.880. The assets may be acquired from the Small Business, a guarantor of its obligation, or another party.

(a) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(b) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(c) *SBA approval of expenditures.* This paragraph (c) applies if you have outstanding Leverage or are applying for Leverage. Any application for SBA approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without SBA's prior written approval:

(1) Your total expenditures under paragraphs (b)(1) and (b)(2) of this section plus your total Financing(s) to the Small Business must not exceed your overline limit under § 107.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Small Business must not exceed 35 percent of your Regulatory Capital.

Limitations on Disposition of Assets

§ 107.885 Disposition of assets to Licensee's Associates or to competitors of Portfolio Concern.

(a) *Sale of assets to Associate.* Except with SBA's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate if you have outstanding Leverage or Earmarked Assets. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

(b) *Sale of assets to competitor of Small Business.* Except with the prior written approval of the Portfolio Concern (if it is not under your Control) or of SBA, you are not permitted to dispose of Portfolio securities to a competitor of such concern. If SBA's prior approval is not required, you must promptly notify SBA of any such disposal.

Management Services and Fees

§ 107.900 Management fees for services provided to a Small Business by Licensee or its Associate.

This § 107.900 applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to a Small Business that you do not finance. Fees permitted under this section are not included in the Cost of Money (see § 107.855).

(a) *Permitted management fees.* You or your Associate may provide management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) Services are provided only on an hourly fee basis;

(3) The fees charged are for services actually performed; and

(4) The hourly rate does not exceed the prevailing rate charged for comparable services by other organizations in your geographic area.

(b) *Fees for service as a board member.* You or your Associate may receive fees for services provided as members of the board of directors of a Small Businesses Financed by you. The fees must not exceed those paid to other outside board members.

(c) *SBA approval required.* You must obtain SBA's prior written approval of any management contract that does not satisfy paragraphs (a) or (b) of this section.

(d) *Record keeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

(e) *Transaction fees.* (1) You may charge reasonable transaction fees for work you or your Associate perform to prepare a client for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide. However, at

least 95 percent of the Associate's revenues must derive from sources unrelated to Financings by you. If the Associate does not meet this test, its fee must not exceed the sum of the application and closing fees permitted under § 107.860.

Subpart H—Non-leveraged Licensees—Exceptions to Regulations

§ 107.1000 Licensees without Leverage—exceptions to the regulations.

The regulatory exceptions in this section apply to Licensees with no outstanding Leverage or Earmarked Assets.

(a) You are exempt from the following provisions (but you must come into compliance with them to become eligible for Leverage):

(1) The overline limitation in § 107.740.

(2) The restrictions in § 107.530 on investments of idle funds, provided you do not engage in activities not contemplated by the Act.

(3) The restrictions in § 107.550 on third-party debt.

(4) The restrictions in § 107.880 on expenses incurred to maintain or improve assets acquired in liquidation of Portfolio securities.

(b) You are exempt from the requirements to obtain SBA's prior approval for:

(1) A decrease in your Regulatory Capital of more than two percent under § 107.585 (but not below the minimum required under the Act or these regulations). You must report the reduction to SBA within 30 days.

(2) Disposition of any asset to your Associate under § 107.885.

(3) A contract to employ an Investment Adviser/Manager under § 107.510. However, you must notify SBA of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution. In order to become eligible for Leverage, you must have the contract approved by SBA.

Subpart I—SBA Financial Assistance for Licensees (Leverage)

General Information About Obtaining Leverage

§ 107.1100 Types of Leverage available.

(a) *Types of Leverage available for Section 301(c) Licensees.* If you are a Section 301(c) Licensee, you may apply for Leverage from SBA in one or both of the following forms:

(1) The purchase or guarantee of your Debentures.

(2) The purchase or guarantee of your Participating Securities.

(b) *Types of Leverage available for Section 301(d) Licensees.* If you are a Section 301(d) Licensee, you may apply for Leverage from SBA in one or more of the following forms:

(1) The purchase or guarantee of your Debentures.

(2) The purchase or guarantee of your Participating Securities.

(3) The purchase of your Preferred Securities.

(c) *Subsidized and non-subsidized Debentures available to Licensees.* If you are a Section 301(d) Licensee, you may issue both subsidized and non-subsidized Debentures. If you are a Section 301(c) Licensee, you may issue only non-subsidized Debentures.

(1) *Non-subsidized Debentures.* SBA may purchase or guarantee non-subsidized Debentures under section 303(b) of the Act. You pay interest on a non-subsidized Debenture at the rate stated on its face.

(2) *Subsidized Debentures.* SBA may purchase or guarantee subsidized Debentures under section 303(c) of the Act. On a guaranteed Debenture, during the first 5 years of the term, you pay an interest rate that is 300 basis points below the rate stated on the face of the Debenture. On a Debenture that SBA purchases, you pay a reduced interest rate determined under section 317 of the Act.

§ 107.1110 How to apply for Leverage.

(a) *Application forms.* Select the appropriate form from the following table:

Type of leverage you are applying for	Application form
Debentures (any type) ..	SBA Form 1022.
Participating Securities .	SBA Form 1022A.
4% Preferred Securities	SBA Form 1022B.

(b) *Where to send your application.* Send all Leverage applications to SBA, Investment Division, 409 Third Street, S.W., Washington, D.C. 20416.

§ 107.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must:

(a) Demonstrate a need for Leverage, evidenced by your investment activity and a lack of sufficient funds for investment. For your first issuance of Leverage, if you have invested at least 50 percent of your Leverageable Capital, you are presumed to lack sufficient funds for investment.

(b) Have adequate Private Capital to satisfy the requirements for financial viability under § 107.200.

(c) Meet the minimum capital requirements of § 107.210 or § 107.220, as appropriate.

(d) Show, to the satisfaction of SBA, that your management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, these regulations and your business plan.

(e) Be in compliance with the regulations in this Part.

(f) If required by SBA, have your Control Person(s) assume, in writing, personal responsibility for your Leverage, effective only if such Control Person(s) participate (directly or indirectly) in a transfer of Control not approved by SBA.

§ 107.1130 Leverage fees payable by Licensee.

(a) *User fee for Debentures and Participating Securities.* You must pay a user fee to SBA for each issuance of a Debenture or Participating Security. The fee is 2 percent of the face amount of the Leverage issued.

(b) *Payment of user fee.* If you issue a Debenture or Participating Security:

(1) To repay or redeem existing Leverage, you must pay the user fee before SBA will guarantee or purchase the new Debenture or Participating Security.

(2) That is not used to repay or redeem existing Leverage, SBA will deduct the user fee from the proceeds remitted to you, unless you prepaid the fee under § 107.1210.

(c) *Refundability.* The user fee is not refundable under any circumstances.

(d) *Other Leverage fees.* SBA may establish a fee structure for services performed by the CRA. SBA will not collect any fee for its guarantee of TCs.

§ 107.1140 Licensee's acceptance of SBA remedies under §§ 107.1800 through 107.1820.

If you issue Leverage after April 25, 1994, you automatically agree to the terms and conditions in §§ 107.1800 through 107.1820 as they exist at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

Maximum Amount of Leverage for Which a Licensee is Eligible

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

(a) *Maximum amount of Leverage.* If you are a Section 301(c) Licensee, use the following table to determine the maximum amount of Leverage you may have outstanding at any time:

If your leverageable capital is	Then your maximum leverage is:
Not over $15,000,000	300% of Leverageable Capital.
Over $15,000,000 but not over $30,000,000.	$45,000,000 + [200% of (Leverageable Capital −$15,000,000)].
Over $30,000,000 but not over $45,000,000.	$75,000,000 + [100% of (Leverageable Capital −$30,000,000)].
Over $45,000,000	$90,000,000.

(b) *Exceptions to maximum Leverage provisions—(1) Licensees under Common Control.* Two or more Licensees under Common Control may have aggregate outstanding Leverage over $90,000,000 only if SBA gives them permission to do so. SBA may grant such permission on a case-by-case basis only. SBA may impose any terms and conditions SBA considers appropriate to minimize its risk of loss in the event of default.

(2) *Licensees with excess Leverage issued before March 31, 1993.* If you had outstanding Debentures on March 31, 1993 that exceeded 300 percent of your Leverageable Capital:

(i) You do not have to prepay the excess amount.

(ii) You may apply for an additional Debenture guarantee or Participating Security guarantee if you use the proceeds solely to pay the amount due at maturity on a Debenture issued before March 31, 1993. The new Debenture or Participating Security must mature on or before September 30, 2002.

(iii) You must maintain at least 65 percent of your ''Total Funds Available for Investment'' in ''Venture Capital Financings'' (as defined in § 107.1160(e) and (f), respectively) until your outstanding Debentures no longer exceed 300 percent of your Leverageable Capital.

(3) *Maximum amount of Participating Securities.* See § 107.1170.

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

(a) *Maximum amount of subsidized Leverage.* (1) ''Subsidized Leverage'' means Debentures with a reduced interest rate and Preferred Securities. If you are a Section 301(d) Licensee:

(i) The maximum amount of subsidized Leverage you may have outstanding at any time is the lesser of 400 percent of your Leverageable Capital, or $35,000,000. The same limit applies to a group of Section 301(d) Licensees under Common Control.

(ii) The maximum amount of Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

(2) Certain types and amounts of subsidized Leverage have special eligibility requirements (see paragraphs (c) and (d) of this section).

(b) *Maximum amount of total Leverage.* Use § 107.1150(a) and (b)(1) to determine your maximum amount of Leverage as if you were a Section 301(c) Licensee. If the result is more than your maximum subsidized Leverage, then this is your maximum total (subsidized plus non-subsidized) Leverage. Otherwise, your maximum total Leverage is the same as your maximum subsidized Leverage. For Participating Securities, see § 107.1170.

(c) *Special eligibility requirements for fourth tier of Leverage.* A ''fourth tier of Leverage'' is any amount of outstanding Leverage in excess of 300 percent of your Leverageable Capital.

(1) To qualify for a fourth tier of Leverage, you must have invested (or have Commitments to invest) at least 30 percent of your ''Total Funds Available for Investment'' in ''Venture Capital Financings'' (see the definitions in paragraphs (e) and (f) of this section).

(2) While you have a fourth tier of Leverage, you must maintain Venture Capital Financings (at cost) that equal at least 30 percent of your Total Funds Available for Investment.

(d) *Special eligibility requirements for second tier of Preferred Securities.* A ''second tier of Preferred Securities'' is any amount of outstanding Preferred Securities in excess of 100 percent of your Leverageable Capital.

(1) To qualify for a second tier of Preferred Securities:

(i) If your license was issued after October 13, 1971, you must have at least $500,000 of Leverageable Capital.

(ii) You must have invested (or have Commitments to invest) at least the same dollar amount in Venture Capital Financings.

(2) While you have a second tier of Preferred Securities, you must maintain at least the same dollar amount of Venture Capital Financings (at cost).

(e) *Definition of ''Total Funds Available for Investment''.* Total Funds Available for Investment means the result obtained from the following formula:

T = .90 x (CA + LI)

Where:

T = Total funds available for investment
CA = Total current assets
LI = Total Loans and Investment at cost (as reported on SBA Form 468), net of current maturities

(f) *Definition of ''Venture Capital Financing''.* Venture Capital Financing means an investment represented by common or preferred stock, a limited partnership interest, or a similar ownership interest; or by an unsecured debt instrument that is subordinated by its terms to all other borrowings of the issuer.

(1) A debt secured by any agreement with a third party is not a Venture Capital Financing, whether or not you have a security interest in any asset of the third party or have recourse against the third party.

(2) A Financing that originally qualified as a Venture Capital Financing will continue to qualify (at its original cost), even if you later must report it on SBA Form 468 under either Assets Acquired in Liquidation of Portfolio Securities or Operating Concerns Acquired.

§ 107.1170 Maximum amount of Participating Securities for any Licensee.

The maximum amount of Participating Securities you may have outstanding at any time is 200 percent of your Leverageable Capital. If you are a Section 301(d) Licensee, the maximum combined amount of Participating Securities and Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

Conditional Commitments by SBA to Reserve Leverage for a Licensee

§ 107.1200 SBA's Leverage commitment to a Licensee—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 107.1200 through 107.1240, you may apply for SBA's conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of any Leverage commitment must be at least $500,000. It must not exceed 100 percent of your Regulatory Capital or your remaining Leverage eligibility, whichever is less.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse at 5:00 P.M. Eastern Time on August 1 of the next full Federal fiscal year following issuance of the commitment.

§ 107.1210 Commitment fees payable by Licensee.

(a) *Commitment fees.* As a condition of SBA's Leverage commitment, and before you may draw any Leverage, you must pay SBA a non-refundable fee of:

(1) 3 percent of the face amount of the Debentures or Participating Securities reserved under the commitment; or

(2) 1 percent of the issue price of Preferred Securities reserved under the commitment.

(b) *Credit for user fee.* The 3 percent commitment fee paid by issuers of Debentures or Participating Securities under paragraph (a)(1) of this section includes the 2 percent user fee required under § 107.1130. If you pay the commitment fee, you do not have to pay the user fee separately.

(c) *Automatic cancellation of commitment.* Unless you pay the full amount of the commitment fee by 5:00 P.M. Eastern Time on the 30th calendar day following the issuance of SBA's Leverage commitment, the commitment will be automatically canceled.

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year. You must file this form within 30 days after the close of the quarter, or with any request for a draw that you make within such 30-day period. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you:

(1) Authorize SBA to purchase your Preferred Security; or

(2) Authorize SBA, or any agent or trustee SBA designates, to guaranty your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* For Debentures or Participating Securities, any draw against SBA's Leverage commitment must be at least $500,000; amounts above $500,000 must be in multiples of $100,000. You may issue Preferred Securities in any amount.

(c) *Effect of regulatory violations on Licensee's eligibility for draws*—(1) *General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations).

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) If your request is submitted within 30 days following the close of your fiscal quarter, a Financial Statement on SBA Form 468 (Short Form) prepared as of the close of that fiscal quarter; otherwise, a statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (Long or Short Form).

(2) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations), or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the Licensee;

(ii) An officer of a corporate general partner of the Licensee; or

(iii) An individual who is authorized to act as or for a general partner of the Licensee.

(3) A statement that the proceeds are needed to fund one or more particular Small Businesses, including the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) Within 60 calendar days after the anticipated closing date, if a planned Financing has not closed, you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under §§ 107.1810 or 107.1820.

§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* By submitting a request for a draw of Debenture or Participating Security Leverage, you authorize SBA, or any agent or trustee SBA designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture or Participating Security to a short-term investor;

(2) The purchase of your security from the short-term investor, either by you or on your behalf; and

(3) The pooling of your security with other securities with the same maturity date.

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale will be at a discount based on an interest rate determined under section 303(b) of the Act (without any interest rate subsidy), as if the maturity date of the Debenture were the next scheduled date for the sale of Debenture Trust Certificates.

(2) If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor daily interest on the Debenture, at the same rate, from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date. Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see §§ 107.1810 and 107.1820).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term investor:

(1) The sale price will be the face amount.

(2) At the closing of the next scheduled sale of Participating Security Trust Certificates, you (or SBA, as guarantor) must pay the short-term investor Earned Prioritized Payments at a rate determined under section 303(b) of the Act, as if the maturity date of the Participating Security were the next scheduled date for the sale of Trust Certificates.

(d) *Licensee's right to repurchase its securities before pooling.* You may repurchase your securities from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your security is to be included; and

(2) Pay the face amount of the Debenture, or the face amount of the Participating Security plus Earned Prioritized Payments, to the short-term investor.

Exchange of Outstanding Debentures for Participating or Preferred Securities—Section 301(d) Licensees

§ 107.1350 Exchange by Section 301(d) Licensee of Debentures for Preferred or Participating Securities.

(a) *Conditions for exchange of Debentures.* A Section 301(d) Licensee may, in SBA's discretion, retire an eligible Debenture through the issuance of Preferred or Participating Securities. To do so, you must:

(1) Pay all unpaid accrued interest on the Debenture, plus any applicable prepayment penalties, fees, and other charges.

(2) Comply with all conditions that apply to the issuance of Preferred or Participating Securities.

(b) *Debentures not eligible for exchange.* You may not retire a Debenture by issuing Preferred or Participating Securities if SBA guaranteed or purchased it on the basis of funds not included in your Leverageable Capital. You must repay such a Debenture at its maturity date, unless SBA extends it. SBA has discretion to extend the maturity to a date not more than 15 years from the date of issuance if SBA believes the extension is necessary for orderly liquidation of the indebtedness.

Preferred Securities Leverage—Section 301(d) Licensees

§ 107.1400 Stock dividends or partnership distributions on 4 percent Preferred Securities.

Preferred Securities that SBA purchases from a Section 301(d) Licensee may be in the form of either preferred stock issued at par value or a preferred limited partnership interest issued at face value. When you issue Preferred Securities, you agree to pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issue Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

(a) Computed on the par value of the outstanding stock or the face value of the outstanding limited partnership interest.

(b) Cumulative. This means that if you do not pay the entire dividend or partnership distribution for a given fiscal year, the unpaid balance accumulates as a distribution in arrears. You do not have to pay interest on distributions in arrears.

(c) Preferred. This means that you must pay SBA in full (including distributions in arrears) before setting aside or paying any amount to any other equity holder.

(d) Payable at the discretion of your Board of Directors or General Partner(s), except that all distributions in arrears must be paid in full when you redeem the Preferred Securities.

§ 107.1410 Requirement to redeem 4 percent Preferred Securities.

You must redeem 4 percent Preferred Securities not later than 15 years from the date of issuance. At the redemption date, you must pay to SBA:

(a) The par value (of preferred stock) or face value (of a preferred limited partnership interest); plus

(b) Any unpaid dividends or partnership distributions accrued to the redemption date.

§ 107.1420 Articles requirements for 4 percent Preferred Securities issuers.

You may issue 4 percent Preferred Securities only if your Articles contain all the provisions in §§ 107.1400 and 107.1410.

§ 107.1430 Redeeming 4 percent Preferred Securities with proceeds of non-subsidized Debentures.

If SBA approves, a Section 301(d) Licensee may use the proceeds of a Debenture to redeem Preferred Securities at their mandatory redemption date, including any accrued unpaid dividends or partnership distributions. For this purpose, you may issue only a non-subsidized Debenture (see § 107.1100(c)).

§ 107.1440 Three percent preferred stock issued before November 21, 1989.

Before November 21, 1989, Preferred Securities were available only in the form of preferred stock and had a preferred and cumulative dividend of 3 percent. If you have such preferred stock outstanding, you must follow § 107.1400 (except for § 107.1400(d)), substituting ''3 percent'' for ''4 percent'' throughout.) Dividends on 3 percent preferred stock are payable at the discretion of your Board of Directors or General Partner(s), except that all dividends in arrears must be paid in full before any non-SBA investor receives any distribution. Upon your liquidation, SBA is entitled to payment of all dividends in arrears even if you have no Retained Earnings Available for Distribution at such time.

§ 107.1450 Optional redemption of Preferred Securities.

(a) *Redemption at par or face value.* A Section 301(d) Licensee may redeem Preferred Securities at any time, provided you give SBA at least 30 days written notice. You may redeem all or only part of your Preferred Securities, but the par value or face value of the securities being redeemed must be at least $50,000. At the redemption date, you must pay to SBA:

(1) The par value (of preferred stock) or face value (of a preferred limited partnership interest); plus

(2) Any unpaid dividends or partnership distributions accrued to the redemption date.

(b) *Repurchase of 3 percent preferred stock for less than par value.* If you issued 3 percent preferred stock to SBA, you may ask SBA to sell it back to you at a price less than its par value. The terms and conditions of any such transaction will be as set forth in the Notice published in the Federal Register on April 1, 1994 (Copies of this notice are available from SBA, 409 3rd Street, S.W., Washington, D.C., 20416). SBA has sole discretion to:

(1) Approve or disapprove the sale.

(2) Determine the sale price after considering any factors SBA considers appropriate.

(3) Determine the form of payment SBA will accept. SBA is not authorized to accept the proceeds of a subsidized Debenture as payment.

Participating Securities Leverage

§ 107.1500 General description of Participating Securities.

(a) *Types of Participating Securities.* Participating Securities are redeemable, preferred, equity-type securities. SBA may purchase or guarantee Participating Securities issued by Licensees in the form of limited partnership interests, preferred stock, or debentures with interest payable only to the extent of earnings. The structure, terms and conditions of Participating Securities are set forth in detail in §§ 107.1500 through 107.1590.

(b) *Special eligibility requirements for Participating Securities.* In addition to the general eligibility requirements for Leverage under § 107.1120, Participating Securities issuers must also comply with special rules on:

(1) Minimum capital (see § 107.220).

(2) Liquidity (see § 107.1505).

(3) Non-SBA borrowing (see § 107.570).

(4) Making Equity Capital Investments in Small Businesses, as follows:

(i) *General rule.* If you issue Participating Securities, you must invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments.

(ii) *Continuing requirement to maintain Equity Capital Investments.*

Unless SBA permits otherwise, once you have met the initial investment requirement of this paragraph (b)(4), you must maintain Equity Capital Investments with an original cost equal to or greater than the outstanding balance of Participating Securities in your portfolio, measured as of the end of each fiscal year.

(c) *Special features of Participating Securities—Prioritized Payments, Adjustments, and Profit Participation.* When you issue Participating Securities, you agree to make the following payments:

(1) *Prioritized Payments.* Depending upon the type of Participating Security you issue, Prioritized Payments may be preferred partnership distributions, preferred dividends, or interest. Your obligation to pay Prioritized Payments is contingent upon your profits as determined under § 107.1520.

(2) *Adjustments to Prioritized Payments.* If you have unpaid Prioritized Payments, you must compute Adjustments, which are additional contingent obligations determined under § 107.1520. The conditions for paying Adjustments are the same as for Prioritized Payments.

(3) *SBA Profit Participation.* Profit Participation is an amount payable to SBA under § 107.1530 in consideration for SBA's guarantee of your Participating Securities.

(d) *Distributions by Licensees issuing Participating Securities.* Sections 107.1540 through 107.1580 govern both required and optional Distributions by Participating Securities issuers. Distributions include both profit distributions and returns of capital, paid either to SBA or to your non-SBA investors.

(e) *Mandatory redemption of Participating Securities.* You must redeem Participating Securities at the redemption date, which is the same as the maturity date of the Trust Certificates for the Trust containing such securities. The redemption date can never be later than 15 years after the issue date. You must pay the Redemption Price plus any unpaid Earned Prioritized Payments and any earned Adjustments due under § 107.1520.

(f) *Priority of Participating Securities in liquidation of Licensee.* In the event of your liquidation, the following are senior in priority, for all purposes, to all other equity interests you have issued at any time:

(1) The Redemption Price of Participating Securities;

(2) Any Prioritized Payments and earned Adjustments; and

(3) Any Profit Participation allocated to SBA under § 107.1530.

§ 107.1505 Liquidity requirements for Licensees issuing Participating Securities.

If you have outstanding Participating Securities, you must maintain sufficient liquidity to avoid a condition of Liquidity Impairment. Such a condition will constitute noncompliance with the terms of your Leverage under § 107.1820(e).

(a) *Definition of Liquidity Impairment.* A condition of Liquidity Impairment exists when your Liquidity Ratio, as determined in paragraph (b) of this section, is less than 1.20. You are responsible for calculating whether you have a condition of Liquidity Impairment as of the close of your fiscal year, at the time of application for Leverage, or at such time as you contemplate making any Distribution. However, SBA has the right to make the final determination of Liquidity Impairment.

(b) *Computation of Liquidity Ratio.* Your Liquidity Ratio equals your Total Current Funds Available (A) divided by your Total Current Funds Required (B), as determined in the following table:

CALCULATION OF LIQUIDITY RATIO

Financial account	Amount reported on SBA form 468	Weight	Weighted amount
Total Current Funds Available(A)			
Cash and invested idle funds	.....	×1.00	
Commitments from investors	.....	×1.00	
Current maturities	.....	×0.50	
Other current assets	.....	×1.00	
Publicly Traded and Marketable Securities	.....	×0.65	
Anticipated operating revenue for next 12 months	(1)	×1.00	
Total Current Funds Required(B)			
Current liabilities	.....	×1.00	
Commitments to Small Businesses	.....	×0.75	
Anticipated operating expense for next 12 months	(1)	×1.00	
Anticipated interest expense for next 12 months	(1)	×1.00	
Contingent liabilities (guarantees)	.....	×0.25	

[1] As determined by Licensee's management under its business plan.

§ 107.1510 How a Licensee computes Earmarked Profit (Loss).

Computing your Earmarked Profit (Loss) is the first step in determining your obligations to pay Prioritized Payments and Adjustments under § 107.1520 and Profit Participation under § 107.1530.

(a) *Requirement to compute your Earmarked Profit (Loss).* While you have Participating Securities outstanding or have Earmarked Assets (as defined in paragraph (b) of this section), you must compute your Earmarked Profit (Loss) for:

(1) Each full fiscal year.

(2) Any interim period (consisting of one or more fiscal quarters) for which you want to make a Distribution.

(b) *How to determine your Earmarked Assets.* ''Earmarked Assets'' means all the Loans and Investments that you have when you issue Participating Securities or that you acquire while you have Participating Securities outstanding, and any non-cash assets that you receive in exchange for such Loans and Investments.

(1) An Earmarked Asset remains earmarked until you dispose of it, even if you no longer have any outstanding Participating Securities.

(2) Investments you make after redeeming all your Participating Securities are not Earmarked Assets. However, if you issue new Participating Securities, all of your Loans and Investments again become Earmarked Assets.

(3) If you were licensed before March 31, 1993, you may be permitted to exclude Loans and Investments held at that date from Earmarked Assets under § 107.1590.

(c) *How to compute your Earmarked Asset Ratio.* You must determine your Earmarked Asset Ratio each time you compute Earmarked Profit (Loss). If all your Loans and Investments are Earmarked Assets, your Earmarked Asset Ratio equals 100 percent. Otherwise, compute your Earmarked Asset Ratio using the following formula:

$EAR = [(EA + P) / (LI + P)] \times 100$

Where:

EAR = Earmarked Asset Ratio
EA = Weighted average Earmarked Assets (at cost) for the fiscal year or interim period
P = Weighted average uninvested proceeds of Participating Securities for the fiscal year or interim period
LI = Weighted average Loans and Investments (at cost) for the fiscal year or interim period

(d) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is 100 percent.* (1) If your Earmarked Asset Ratio from paragraph (b) of this section is 100 percent, use the following formula to compute your Earmarked Profit (Loss):

$EP = NI + IK + EME$

Where:

EP = Earmarked Profit (Loss)
NI = Net Income (Loss), as reported on SBA Form 468
IK = Unrealized Appreciation (Depreciation) on Earmarked Assets that you are distributing as an In-Kind Distribution under § 107.1580
EME = Excess Management Expenses

(2) ''Excess Management Expenses'' are those that exceed the following limit:

(i) For a full fiscal year, the limit is the lower of:

(A) 2.5 percent of your weighted average Combined Capital for the year, plus $125,000 if Combined Capital is below $20,000,000; or

(B) Your Management Expenses approved by SBA.

(ii) For less than a full fiscal year, you must prorate the annual amounts in paragraph (d)(2)(i) of this section to determine the limit.

(e) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is less than 100 percent.* If your Earmarked Asset Ratio is less than 100 percent, compute your Earmarked Profit (Loss) as follows:

(1) Do the Earmarked Profit (Loss) computation in paragraph (d) of this section.

(2) Subtract your net realized gain (loss) (as reported on SBA Form 468) on Loans and Investments that are not Earmarked Assets.

(3) Separate the result from paragraph (e)(2) of this section into:

(i) Net realized gain (loss) (as reported on SBA Form 468) on Earmarked Assets (''EGL''); and

(ii) The remainder (''R'').

(4) Your Earmarked Profit (Loss) equals:

$EGL + (R \times \text{Earmarked Asset Ratio})$

(f) *How to compute your cumulative Earmarked Profit (Loss).* Sum your Earmarked Profit (Loss) for all fiscal years and for any interim period following the end of your last fiscal year. The total is your cumulative Earmarked Profit (Loss), which you must use in the Prioritized Payment computations under § 107.1520.

§ 107.1520 How a Licensee computes and allocates Prioritized Payments to SBA.

This section tells you how to compute Prioritized Payments and Adjustments and determine the amounts you must pay. To distribute Prioritized Payments, see § 107.1540.

(a) *How to compute Prioritized Payments and Adjustments*—(1) *Prioritized Payments.* For a full fiscal year, the Prioritized Payment on a Participating Security equals the Redemption Price times the Trust Certificate Rate. For a shorter period (one or more fiscal quarters), you must prorate the annual Prioritized Payment.

(2) *Adjustments.* Compute Adjustments using paragraph (f) of this section.

(b) *Licensee's obligation to pay Prioritized Payments and Adjustments.* You are obligated to pay Prioritized Payments and Adjustments only if you have profit as determined under paragraph (d) of this section.

(1) Prioritized Payments that you must pay (or have already paid) because you have sufficient profit are ''Earned Prioritized Payments''.

(2) Prioritized Payments that are not payable because you lack sufficient profit are ''Accumulated Prioritized Payments''. Treat all Prioritized Payment as ''Accumulated'' until they become ''Earned'' under this section.

(3) Adjustments are computed under paragraph (f) of this section and are ''earned'' according to the same criteria applied to Prioritized Payments.

(c) *How to keep track of Prioritized Payments.* You must establish three accounts to record your Accumulated and Earned Prioritized Payments.

(1) *Accumulation Account.* The Accumulation Account is a memorandum account. Its balance represents your Accumulated Prioritized Payments and unearned Adjustments.

(2) *Distribution Account.* The Distribution Account is a liability account. Its balance represents your unpaid Earned Prioritized Payments and earned Adjustments.

(3) *Earned Payments Account.* The Earned Payments Account is a memorandum account. Each time you add to the Distribution Account balance, add the same amount to the Earned Payments Account. Its balance represents your total (paid and unpaid) Earned Prioritized Payments and earned Adjustments.

(d) *How to determine your profit for Prioritized Payment purposes.* As of the end of each fiscal year and any interim period (one or more fiscal quarters) for which you want to make a Distribution:

(1) Bring the Accumulation Account up to date by adding to it all Prioritized Payments through the end of the fiscal period.

(2) Determine your cumulative Earmarked Profit (Loss) under § 107.1510(e) and subtract your Earned Payments Account balance from it. The result (if greater than zero) is your profit for the purposes of this section; if zero or less, you have no profit.

(3) If you have a profit, continue with paragraph (e) of this section. Otherwise, continue with paragraph (f) of this section.

(e) *Allocating Prioritized Payments to the Distribution Account.* (1) If you have a profit under paragraph (d) of this section, determine the lesser of:

(i) Your profit; or

(ii) The balance in your Accumulation Account.

(2) Subtract the result in paragraph (e)(1) of this section from the Accumulation Account and add it to the Distribution Account.

(f) *How to compute Adjustments.* You must compute your Adjustments as of the end of each fiscal year.

(1) *Adjustments based on Accumulation Account balance.* If you have any balance in your Accumulation Account, determine your average Accumulation Account balance for the fiscal year and multiply it by the average of the Trust Certificate Rates for all the Participating Securities poolings during such year.

(2) *Adjustments based on Distribution Account balance.* If you have any balance in your Distribution Account after giving effect to any Distribution that will be made on the first or second Payment Date following your fiscal year end, do the computations in paragraph (f)(1) of this section, substituting

''Distribution Account'' for ''Accumulation Account''.

(3) Add the amounts computed in this paragraph (f) to your Accumulation Account balance.

(g) *Licensee's obligation to pay Prioritized Payments after redeeming Participating Securities.* This paragraph (g) applies if you have redeemed all your Participating Securities, but you still hold Earmarked Assets and still have a balance in your Accumulation Account.

(1) You must continue to perform all the procedures in this § 107.1520 as of the end of each fiscal quarter. You must distribute any Earned Prioritized Payments and earned Adjustments in accordance with § 107.1540.

(2) After you dispose of all your Earmarked Assets and make any required Distributions in accordance with § 107.1540, your obligation to pay any remaining Accumulated Prioritized Payments and unearned Adjustments will be extinguished.

§ 107.1530 How a Licensee computes SBA's Profit Participation.

This section tells you how to compute SBA's Profit Participation. Profit Participation is included in the Distributions you make to SBA under §§ 107.1550 and 107.1560.

(a) *How to compute Profit Participation.* Profit Participation equals your ''Base'' times your ''Profit Participation Rate'' (if the Base is zero or less, you do not owe SBA Profit Participation). Compute the Base using paragraph (c) of this section and the Profit Participation Rate using paragraphs (d) through (g) of this section. You must compute your Earmarked Profit (Loss) under § 107.1510 and your Prioritized Payments and Adjustments under § 107.1520 before you can compute Profit Participation.

(b) *How to keep track of Profit Participation.* You must establish a Profit Participation Account to record your computations under this section and payments under §§ 107.1550 and 107.1560. Its balance represents your unpaid Profit Participation.

(c) *How to compute the Base.* As of the end of each fiscal year and any year-to-date interim period (one or more fiscal quarters) for which you want to make a Distribution, compute your Base using the following formula:

$$B = EP - PPA - UL$$

Where:

B = Base

EP = Earmarked Profit (Loss) for the period from § 107.1510

PPA = Prioritized Payments from § 107.1520(a)(1) and Adjustments (if applicable) from § 107.1520(f)

UL = ''Unused Loss'' as determined in this paragraph (c).

(1) If you have never computed a Base before, or if the Base as of the end of your last fiscal year (your ''Previous Base'') was zero or greater, your Unused Loss is zero.

(2) If your Previous Base was less than zero, your Unused Loss equals your Previous Base.

(d) *How to compute the Profit Participation Rate.* You must determine your Profit Participation Rate each time you compute a Base that is greater than zero. Compute the Rate by following the steps in paragraphs (e) through (g) of this section.

(e) *Compute the ''PLC ratio''*—(1) *General rule.* The ''PLC ratio'' is the highest ratio of outstanding Participating Securities to Leverageable Capital that you have ever attained.

(2) *Exception.* You may reduce the ratio computed under paragraph (e)(1) of this section if you have increased your Leverageable Capital above its highest previous level. The increase must have taken place at least 120 days before the date as of which your Base is computed and must have been expressly provided for in a plan of operations submitted to and approved by SBA in writing. To reduce your PLC ratio:

(i) Determine the increase in your Leverageable Capital over its highest previous level.

(ii) Find your highest previous ratio of Participating Securities to Leverageable Capital. If you have attained your highest ratio more than once, with different numerators and denominators, choose the ratio with the highest numerator.

(iii) Add the increase in Leverageable Capital to the denominator of the ratio chosen in paragraph (e)(2)(ii) of this section, and divide the numerator by the revised denominator. The result is your new PLC ratio.

(3) Once you compute a PLC ratio under either paragraph (e)(1) or (e)(2) of this section, do not recompute it unless there has been a change in your outstanding Participating Securities or your Leverageable Capital.

(4) Example.

	Participating securities (A)	Leverageable capital (B)	A/B	PLC ratio
End of period 1	1,000	1,000	1.00	1.00
End of period 2	1,500	1,000	1.50	1.50
End of period 3	1,200	900	1.33	1.50
End of period 4	750	500	1.50	1.50
End of period 5	750	1,500	0.50	1.00

Explanation of PLC Ratio calculation following increase in Leverageable Capital:
Step 1: Increase in Leverageable Capital over highest previous level = 1,500 − 1,000=500.
Step 2: Highest previous ratio of Participating Securities to Leverageable Capital = 1.50 (attained two times, at end of periods 2 and 4).
Step 3: Highest numerator associated with highest ratio = 1,500 (at end of period 2); associated denominator = 1,000.
Step 4: Add the increase in Leverageable Capital (from step 1) to the denominator (from step 3): 500+1,000=1,500.
Step 5: Divide the numerator (from step 3) by the revised denominator (from step 4): 1,500/1,500=1.00.

(f) *Compute the Profit Participation Rate (before indexing).* Compute the Profit Participation Rate (before indexing) using the table in this paragraph (f). Then go to paragraph (g) of this section to determine whether to index the Profit Participation Rate.

If your PLC ratio is	Then your profit participation rate is
1 or less	9% × PLC Ratio.
More than 1	9%+[3%×(PLC ratio − 1)].

(g) *Indexing the Profit Participation Rate.* The Profit Participation Rate is indexed, up or down, to the yield-to-maturity on Treasury bonds with a remaining term of ten (10) years (the ''Treasury Rate''). You must perform the indexing procedures in this paragraph (g) unless the Treasury Rate was exactly 8 percent on every date that you issued Participating Securities.

(1) *Licensees that have issued Participating Securities on only one occasion.* Determine the Treasury Rate for the date you issued your

Participating Security. Adjust the Profit Participation Rate from paragraph (f) of this section by the percentage difference between the Treasury Rate and 8 percent. For example, assume that you issued Participating Securities when the Treasury Rate was 10 percent. The percentage difference between 10 percent and 8 percent is 25 percent. If you had a PLC ratio of 1, the Profit Participation Rate before indexing would be 9 percent. You would increase this rate by 25 percent, giving you a Profit Participation Rate of 11.25 percent.

(2) *Licensees that have issued Participating Securities on more than one occasion.* Determine the Treasury Rate for each of the dates you issued Participating Securities.

(i) Compute an average of all such Treasury Rates, weighted to reflect the dollar amount of each issuance (ignoring any redemptions) and the number of days from the date of each issuance to the date as of which you are computing the Profit Participation Rate.

Example to paragraph (g)(2)(i) of this section. If you issued $10 million of Participating Securities on the 60th day of Fiscal Year 1 when the Treasury Rate was 8 percent, and another $15 million on the 100th day of Fiscal Year 3 when the Treasury Rate was 10 percent, then the weighted average Treasury Rate computed as of the end of Fiscal Year 3 would be 8.55 percent. [Days elapsed since first issuance of Participating Securities = 1,035; days elapsed since second issuance of Participating Securities = 265; weighted amount of first issuance = $10,000,000×1,035/1,035=$10,000,000; weighted amount of second issuance = $15,000,000×265/1035=$3,840,579; weighted average amount of Participating Securities issued = $10,000,000+$3,840,579=$13,840,579; weighted average Treasury Rate = {(.08×$10,000,000)+(.10×$3,840,579)}/$13,840,579=8.55%].

(ii) Adjust the Profit Participation Rate from paragraph (f) of this section by the percentage difference between the weighted average Treasury Rate and 8 percent. In the example given in paragraph (g)(2)(i) of this section, if the PLC ratio were equal to 2, the Profit Participation Rate for the fiscal year would be 12.83 percent. [{((.0855 − .08)/.08)+1}×.12×100=12.83%].

(h) *Computing SBA's Profit Participation.* If the Base from paragraph (c) of this section is greater than zero, you must compute SBA's Profit Participation as follows:

(1) Multiply the Base by the Profit Participation Rate to determine the Profit Participation for the fiscal year or year-to-date interim period.

(2) Reduce the Profit Participation from paragraph (h)(1) of this section by any amounts of Profit Participation that you distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any previous interim period during the fiscal year.

(3) If you computed Profit Participation for any previous interim period during the fiscal year, you must adjust it to account for any increase in the Profit Participation Rate.

(i) *Allocation of Profit Participation.* Before any Distribution and in any case within 120 days following the end of your fiscal year, you must add the amount of Profit Participation computed under this § 107.1530 to the Profit Participation Account. You must reserve funds equal to this amount for distribution to SBA, or its designated agent or Trustee; you may not reinvest these funds or use them for any other purpose.

§ 107.1540 Distributions by Licensee—Prioritized Payments and Adjustments.

After you compute Prioritized Payments and Adjustments under § 107.1520, you must distribute them in accordance with this § 107.1540.

(a) *Requirement to distribute Prioritized Payments and Adjustments.* This paragraph (a) applies only if you satisfy the liquidity requirement in § 107.1505. All Distributions under this paragraph (a) go to SBA or its designated agent or trustee.

(1) You must distribute the balance in your Distribution Account from § 107.1520 annually on the first or second Payment Date following your fiscal year end, and on any Payment Date when you are making any other Distribution.

(2) You may distribute all or part of the balance in your Distribution Account on any Payment Date regardless of whether you are making any other Distribution on that date.

(b) *Additional requirement for Licensees with undistributed Prioritized Payments.* This paragraph (b) applies if you do not distribute the full amount in your Distribution Account by the second Payment Date following the end of your fiscal year. At the end of each fiscal quarter, until you reduce the balance in your Distribution Account to zero, you must:

(1) Do all the steps in § 107.1520; and

(2) Distribute the balance in your Distribution Account on the next Payment Date following the end of your fiscal quarter, provided you satisfy the liquidity requirement in § 107.1505.

(c) *Order of Prioritized Payment Distributions.* If you have issued Participating Securities on more than one occasion, you must pay Prioritized Payments on them in the order of their issue date.

§ 107.1550 Distributions by Licensee—permitted ''tax Distributions'' to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you are a limited partnership, ''S Corporation'', or equivalent pass-through entity for tax purposes, you may make an annual ''tax Distribution'' to your investors, whether or not they have an actual tax liability. SBA receives a share of any tax Distribution you make. This section tells you when you may make a ''tax Distribution'' and how to compute it.

(a) *Conditions for making a tax Distribution.* You may make a tax Distribution only if:

(1) You have paid all your Prioritized Payments and Adjustments, so that the balance in both your Distribution Account and your Accumulation Account is zero (see § 107.1520).

(2) You satisfy the liquidity requirement in § 107.1505.

(3) The tax Distribution does not exceed your Retained Earnings Available for Distribution.

(4) The tax Distribution does not exceed the Maximum Tax Liability from paragraph (b) of this section.

(b) *How to compute the Maximum Tax Liability.* (1) Compute your Maximum Tax Liability for a full fiscal year only. Use the following formula:

$M = (TOI \times HRO) + (TCG \times HRC)$

Where:

M = Maximum Tax Liability.

TOI = Total ordinary income allocated to your partners or shareholders for Federal income tax purposes.

HRO = The highest combined marginal Federal and State income tax rates for corporations or individuals (whichever is higher), on ordinary income.

TCG = Total capital gains allocated to your partners or shareholders for Federal income tax purposes.

HRC = The highest combined marginal Federal and State income tax rates for corporations or individuals (whichever is higher), on capital gains.

(2) For purposes of this paragraph (b), the ''State income tax'' is that of the State where your principal place of business is located.

(c) *SBA's share of the tax Distribution.* (1) SBA's percentage share of the tax Distribution is equal to the Profit Participation Rate computed under § 107.1530.

(2) SBA may direct you to pay its share of the tax Distribution to its designated agent or Trustee.

(3) SBA will apply its share of the tax Distribution to the Profit Participation you owe SBA under § 107.1530.

(d) *Paying a tax Distribution.* You may make a tax Distribution only on the first or second Payment Date following the end of your fiscal year.

§ 107.1560 Distributions by Licensee—required Distributions to private investors and SBA.

You must make Distributions under this § 107.1560 if you have outstanding Participating Securities or Earmarked Assets and you satisfy the conditions in paragraph (a) of this section. Distributions under this section are determined as of the end of each fiscal year.

(a) *Conditions for making Distributions.* Distributions under this section are subject to the following conditions:

(1) You must have paid all your Prioritized Payments and Adjustments, so that the balance in both your Distribution Account and your Accumulation Account is zero (see §§ 107.1520 and 107.1540).

(2) You must have made any permitted tax Distribution that you choose to make under § 107.1550.

(3) You must satisfy the liquidity requirement in § 107.1505.

(4) The amount you distribute under this section must not exceed your Retained Earnings Available for Distribution.

(b) *Total amount you must distribute.* Unless SBA permits otherwise, the total amount you must distribute equals the result (if greater than zero) of the following computation:

(1) Your Retained Earnings Available for Distribution as of the end of your fiscal year; minus

(2) All previous Distributions under this § 107.1560 that were applied as redemptions or repayments of Leverage; plus

(3) All previous Distributions under § 107.1570(b) that reduced your Retained Earnings Available for Distribution.

(c) *When you must make Distributions.* You must make the required Distributions on either the first or second Payment Date following the end of your fiscal year.

(d) *Effect of Distributions on Retained Earnings Available for Distribution.* Distributions under this § 107.1560 have the following effect on your Retained Earnings Available for Distribution:

(1) All Distributions to private investors reduce Retained Earnings Available for Distribution.

(2) Distributions to SBA, or its designated agent or Trustee, reduce Retained Earnings Available for Distribution if they are applied as payments of Profit Participation or distributions on Preferred Securities (see paragraph (g) of this section).

(3) Distributions to SBA, or its designated agent or Trustee, do not reduce Retained Earnings Available for Distribution if they are applied as a repayment or redemption of Leverage (see paragraph (g) of this section).

(e) *SBA's share of the total Distribution.* Use the following table to determine the percentage share of the total Distribution (from paragraph (b) of this section) that goes to SBA (or its designated agent or Trustee):

SBA'S PERCENTAGE SHARE OF TOTAL DISTRIBUTION

If your ratio of leverage to leverageable capital as of the fiscal year end is	Then SBA's percentage share of the distribution is
Over 200%	[Leverage / (Leverage + Leverageable Capital)] x 100.
Over 100% but not over 200%.	50%.
100% or less	Profit Participation Rate from § 107.1530.

(f) *Exceptions to the Distribution requirement.* (1) With SBA's prior written approval, you may withhold from distribution reasonable reserves necessary to protect your investments or relative position in Loans and Investments and to meet contingent liabilities.

(i) If you submit a written request for SBA approval, you may consider it approved unless SBA notifies you otherwise within 30 days from receipt.

(ii) Reserves that you withhold from distribution may not be used to make investments in additional portfolio companies.

(iii) Withholding of reserves under this paragraph (f)(1) is not a ''payment failure'' in violation of § 107.1820(e)(6).

(2) SBA may restrict Distributions under this § 107.1560 if SBA determines that the value of your assets is materially overstated. SBA must give you notice of such a determination in advance of your proposed Distribution.

(g) *How SBA will apply your Distributions.* Your Distributions to SBA (or its designated agent or Trustee) under this § 107.1560 will be applied in the following order:

(1) First, to Profit Participation;

(2) Second, to the extent there remain any Retained Earnings Available for Distribution, to distributions on Preferred Securities;

(3) Third, as a redemption of Participating Securities in order of issue;

(4) Fourth, as a redemption of Preferred Securities; and

(5) Fifth, as the repayment of principal of any outstanding Debentures, with such repayment to be made into escrow on terms and conditions SBA determines.

§ 107.1570 Distributions by Licensee—optional Distribution to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, you may make two types of optional Distributions under this § 107.1570: quarterly Distributions determined the same way as the required annual Distributions in § 107.1560, and Distributions allocated between SBA and your private investors in proportion to the capital contributions of each.

(a) *Quarterly Distributions subject to conditions in § 107.1560.* (1) You may make Distributions under this paragraph (a) as of the end of any fiscal quarter, giving SBA (or its designated agent or Trustee) a percentage share determined under § 107.1560(e).

(2) Such Distributions are subject to all the provisions in § 107.1560(a)(1), (a)(3), (a)(4), (d), (f)(2), and (g).

(3) You may make such Distributions only on the next Payment Date following the end of your fiscal quarter.

(4) The total amount of such Distributions may not exceed the result of the following computation:

(i) Your Retained Earnings Available for Distribution as of the end of your fiscal quarter; minus

(ii) All previous Distributions under this paragraph (a) or § 107.1560 that were applied as redemptions or repayments of Leverage; plus

(iii) All previous Distributions under paragraph (b) of this section that reduced your Retained Earnings Available for Distribution.

(b) *Other optional Distributions.* On any Payment Date, you may make additional Distributions to your private investors and to SBA (or its designated agent or Trustee) under this paragraph (b).

(1) *Conditions for making Distribution.* You may make a Distribution under this paragraph (b) only if:

(i) You have distributed all Earned Prioritized Payments and earned Adjustments, so that the balance in your Distribution Account is zero (see § 107.1520).

(ii) You have distributed all Profit Participation computed under § 107.1530 and made all required Distributions under § 107.1560.

(iii) You satisfy the liquidity requirement in § 107.1505 or obtain SBA's prior written approval of the Distribution.

(iv) You do not have a condition of Capital Impairment.

(v) The Distribution does not reduce your Regulatory Capital (excluding commitments from Institutional Investors) below the minimum required under § 107.210, unless SBA approves the reduction as part of a plan of liquidation.

(vi) The Distribution does not cause you to have excess Leverage contrary to section 303 of the Act.

(2) *SBA's share of Distribution.* (i) If your Capital Impairment Percentage under § 107.1840 is zero, SBA's percentage share of any Distribution under this paragraph (b) equals:

[Leverage/(Leverage+Leverageable Capital)]×100

In this formula, use Leverage and Leverageable Capital as of the date of the Distribution, after giving effect to any Distribution under § 107.1560 and paragraph (a) of this section.

(ii) If your Capital Impairment Percentage under § 107.1840 is greater than zero, you must modify the formula in paragraph (b)(2)(i) of this section by replacing Leverageable Capital with:

Leverageable Capital×(100% − CIP)

where ''CIP'' is your Capital Impairment Percentage or 100 percent, whichever is less.

(3) *How SBA will apply Distributions.* Any amounts you distribute to SBA, or its designated agent or Trustee, under this paragraph (b) will be applied as a repayment or redemption of Leverage in the order set forth in § 107.1560(g)(3) through (g)(5).

(4) *Effect of Distributions on Retained Earnings Available for Distribution.* Any amounts you distribute to non-SBA investors under this paragraph (b) must reduce your Retained Earnings Available for Distribution to zero before reducing your Private Capital.

(5) *Permitted exception to § 107.585.* You may make any Distribution permitted by this paragraph (b), even if the result is a reduction in your Regulatory Capital that would otherwise be prohibited under § 107.585.

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* A Distribution under §§ 107.1560 or 107.1570 may consist of securities (an ''In-Kind Distribution''). Such a Distribution must satisfy the conditions in this paragraph (a).

(1) You may distribute only securities that are Publicly Traded and Marketable at the time of the Distribution.

(2) You must distribute each security pro-rata to all investors and to SBA or its designated agent or Trustee, based on the amounts that each party would receive if the Distribution were in cash.

(3) You must impute a gain (loss) on each security being distributed as if it were being sold, using the value of the security as of the declaration date of the Distribution (if you are a Corporate Licensee) or the distribution date (if you are a Partnership Licensee).

(4) You must deposit SBA's share of the securities being distributed with the CRA, who will select a Disposition Agent (a person who is knowledgeable about and proficient in the marketing of thinly traded securities). As an alternative, if you agree, SBA may direct you to dispose of its share. In this case, you must promptly remit the proceeds to SBA.

(b) *In-Kind Distributions after Licensee has redeemed all Participating Securities.* This paragraph (b) applies from the time you redeem all your Participating Securities until you dispose of all your Earmarked Assets.

(1) You may make an In-Kind Distribution of an Earmarked Asset only if you pay SBA the lower of:

(i) An amount equal to the Unrealized Appreciation on the asset; or

(ii) The full amount of your Accumulated Prioritized Payments and unpaid Adjustments.

(2) You must obtain SBA's prior written approval of any In-Kind Distribution of an Earmarked Asset that is not Publicly Traded and Marketable, specifically including approval of the valuation of the asset.

§ 107.1590 Special rules for companies licensed on or before March 31, 1993.

This section applies to companies licensed on or before March 31, 1993 that apply to issue Participating Securities.

(a) *Election to exclude pre-existing portfolio.* You may choose to exclude all (but not a portion) of your Loans and Investments as of March 31, 1993, from classification as Earmarked Assets if:

(1) The proceeds of your first issuance of Participating Securities are not used to refinance outstanding Debentures (see paragraph (c) of this section). SBA will consider payment or prepayment of any outstanding Debenture to be a refinancing unless you demonstrate to SBA's satisfaction that you can pay the Debenture principal without relying on the proceeds of the Participating Securities.

(2) SBA, in its sole discretion, approves the exclusion.

(b) *Treatment of pre-existing portfolio if not excluded.* If you do not choose to exclude your Loans and Investments as of March 31, 1993, they will be Earmarked Assets for all purposes.

(c) *Refinancing Debentures with Participating Securities.* SBA may permit you to use the proceeds of a Participating Security to pay the principal amount due on an outstanding Debenture if:

(1) You have outstanding Equity Capital Investments (at cost) equal to the amount of the Debentures being refinanced.

(2) You have not elected to exclude Loans and Investments from Earmarked Assets under paragraph (a) of this section.

(d) *Requirements for Licensee's first issuance of Participating Securities.* When you apply for your first issuance of Participating Securities, you must comply with the following:

(1) For each of your Loans and Investments, you must submit:

(i) The most recent annual report (or fiscal year-end financial statements) and the most recent interim financial statements of the Small Business; and

(ii) Your valuation reports on the Small Business, prepared as of the end of each of your last three fiscal years. If you have applied for Participating Securities on the basis of interim financial statements, you must also submit a valuation report as of your interim financial statement date.

(2) If you have negative Undistributed Net Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may require you to undergo a quasi-reorganization in accordance with generally accepted accounting principles.

(3) If your financial statements accompanying the Participating Securities application are for an interim period, you must have your SBA-approved independent public accountant perform a limited-scope audit of the statements. For purposes of this paragraph (d)(3), ''limited scope audit'' means auditing procedures sufficient to enable the independent public accountant to express an opinion on the Statement of Financial Position and the accompanying Schedule of Loans and Investments.

Funding Leverage by Use of SBA-Guaranteed Trust Certificates (''TCs'')

§ 107.1600 SBA authority to issue and guarantee Trust Certificates.

(a) *Full Faith and Credit.* Sections 321 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC is limited

to the principal and interest due on the Debentures or the Redemption Price of and Prioritized Payments on Participating Securities in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *Periodic Exercise of Authority.* SBA will issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 321 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or TCs.

§ 107.1610 Terms and conditions of Trust Certificates.

TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures, or the Redemption Price of and Prioritized Payments on the Participating Securities, in the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on Debentures or the Prioritized Payment rate on the Participating Securities in a Trust or Pool shall be determined pursuant to section 303 (b) or (g), respectively, of the Act.

§ 107.1620 SBA authority to pay subsidy amount on subsidized Debentures.

If SBA guarantees Debentures of a Section 301(d) Licensee, section 303(d) of the Act requires SBA to make payments to the CRA, or to the holder of any such Debenture, sufficient to reduce the effective rate of interest to such Licensee during the first five years of the term of such Debenture by three percentage points.

§ 107.1630 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a Licensee to prepay any Debenture or make early redemption of any Participating Security are established by the terms of such securities, and no such right is created or denied by the regulations in this part.

(b) SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. SBA's rights to redeem, at any time, any Participating Security without premium are established by the terms of the Guaranty Agreement relating to the Participating Security.

(c) Any prepayment of a Debenture or early redemption of a Participating Security pursuant to the terms of the Guaranty Agreement relating to such securities, shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal or Redemption Price that such prepaid Debenture or redeemed Participating Security represents in the Trust or Pool backing such TC.

(d) SBA shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures and Prioritized Payments on Participating Securities shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be.

(f) In the event that all Debentures or Participating Securities constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; *Provided, however,* that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor Licensee pursuant to the terms of the Debenture.

§ 107.1640 Subrogation of SBA upon payment under Trust Certificate Program.

In the event SBA pays a claim under the guarantee of a TC, SBA's claim is subrogated fully to the rights satisfied by such payment. No state or Federal law can preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

§ 107.1650 Formation of a Pool or Trust holding Leverage securities.

SBA shall approve the formation of each Pool or Trust. SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

§ 107.1660 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents.* SBA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures, Participating Securities, or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture or Participating Security, SBA shall cause each Licensee to appoint a Selling Agent to perform functions which include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers''). Such actions shall be subject to SBA prior written approval and to the provisions of § 107.1670(b).

(ii) Receiving guaranteed Debentures and Participating Securities as well as negotiating the terms and conditions of periodic offerings of Debentures and/or TCs with Poolers on behalf of Licensees.

(iii) Directing and coordinating periodic sales of Debentures and Participating Securities and/or TCs.

(iv) Arranging for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures or Participating Securities.

(3) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(4) Perform such other functions as SBA, from time to time, may prescribe.

(b) The function of locating purchasers, and negotiating and closing the sale of Debentures, Participating Securities and TCs, may be performed either by SBA or an agent appointed by SBA. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(c) Pursuant to a contract entered into with SBA, the CRA shall do the following as agent of SBA:

(1) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures or Participating Securities, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(2) *Receipt of amounts due on Debentures and Participating Securities.* CRA shall receive payments from Licensees of amounts due on Debentures and Participating Securities, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(3) *Payments of amounts due on TCs.* CRA shall make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures or redemption of Participating Securities.

(4) *Custody of Debentures and Participating Securities and Documentation.* CRA shall hold and safeguard all Debentures and Participating Securities constituting Trusts or Pools and shall release, upon instructions of SBA, the Debentures and Participating Securities paid in full at maturity or prepaid in full prior to maturity. CRA also shall be custodian of such other documentation as SBA shall direct by written instructions.

(5) *Registration of Debentures and Participating Securities and TCs.* CRA shall provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs. With respect to each sale of Debentures or Participating Securities, such registration shall include:

(i) The identification of the selling License;

(ii) The interest rate to be paid on the Debentures;

(iii) The Prioritized Payment rate to be paid on the Participating Securities;

(iv) All commissions, fees, and/or discounts paid to brokers and dealers in TCs or others;

(v) Identification of each purchaser and any subsequent purchaser of any TC;

(vi) The interest rate on any TC;

(vii) The price paid by any purchaser for a TC;

(viii) The fee of the CRA; and

(ix) Such other information as SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(6) *Fidelity bond or insurance.* CRA shall provide a fidelity bond or insurance in such amount as SBA may require to fully protect the interest of the government.

(7) *Other necessary functions.* CRA shall perform such other functions as SBA may deem necessary to implement the provisions of this section.

§ 107.1670 SBA regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Disclosure to purchasers.* Prior to any sale of a Debenture, Participating Security, or TC, SBA shall require the seller, or the broker or dealer as agent for the seller, to disclose to the purchaser, in a form prescribed or approved by SBA, specified information on the terms, conditions, and yield of such instrument.

(b) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They also shall be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c)(5) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require. Nothing in these provisions shall affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or any authority at any time conferred under the securities laws.

(c) *Suspension and/or termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in Debentures, Participating Securities or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures, Participating Securities or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures, Participating Securities or TCs may be terminated.

(4) When such broker or dealer has failed to make full disclosure of the information required by paragraph (a) of this section, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(5) Proceedings to terminate such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs shall be conducted in accordance with Part 134 of this Chapter. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34 of this chapter.

§ 107.1680 SBA access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures, Participating Securities and TCs available to SBA for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

Miscellaneous

§ 107.1700 Characteristics of SBA's guarantee.

(a) *Unconditional nature of SBA's guarantee.* If SBA agrees to guarantee your Debentures or Participating Securities, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities, irrespective of any default by you or acceleration of the maturity of the Debentures by SBA, or your inability to pay the Redemption Price of or to make the Prioritized Payments on the Participating Securities, or any early redemption of the Participating Securities by SBA.

(b) *SBA authority to arrange public or private fundings of Leverage.* SBA in its discretion may arrange for public or private financing under its guarantee authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures or Participating Securities, aggregations of Debentures or Participating Securities, or Pools or Trusts of Debentures or Participating Securities issued or sold

pursuant to §§ 107.1600 through 107.1680. Persons interested in providing funds to Licensees with SBA's guarantee must notify SBA by letter, certifying any direct or indirect beneficial interest, or actual or potential voting rights, in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. These reporting requirements are approved under OMB No. 3245–0081.

(c) *SBA subrogation rights.* In the event SBA pays a claim under its guarantee, SBA's claim is subrogated fully to the rights satisfied by such payment. No state law or Federal law can preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

§ 107.1710 Transfer by SBA of its interest in Licensee's Leverage security.

Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Preferred Security, Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. Upon notice by SBA, Licensee will make all payments of principal, dividends, interest, Prioritized Payments, and redemptions as shall be directed by SBA. Licensee will be liable for all damage or loss which SBA may sustain by reason of such disposal, up to the amount of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

§ 107.1720 SBA authority to collect or compromise its claims.

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA.

Subpart J—Licensee's Noncompliance With Terms of Leverage

§ 107.1800 Licensee's agreement to terms and conditions in §§ 107.1810 and 107.1820.

Any Licensee that violates the terms and conditions of its Leverage is subject to SBA remedies. The terms, conditions and remedies in § 107.1810 apply to outstanding Debentures issued after April 25, 1994. The terms, conditions and remedies in § 107.1820 apply to outstanding Preferred Securities and Participating Securities issued after April 25, 1994, or if you have Earmarked Assets in your portfolio.

§ 107.1810 Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures.

(a) *Applicability of this section.* This § 107.1810 applies to Debentures issued after April 25, 1994. By issuing such Debentures, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance and as if fully set forth in the Debentures. Debentures issued before April 25, 1994 continue to be governed by the remedies in effect at the time of their issuance.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *SBA remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed SBA with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of SBA or its designee as your receiver under section 311(c) of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (d), SBA may avail itself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act which causes detriment to SBA's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 USC 548.

(3) *Willful conflicts of interest.* You willfully violate § 107.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(5) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior which results in another occurrence of the same event of default.

(6) *Transfer of Control.* You violate § 107.475 and/or willfully violate § 107.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 107.1810(h).* You fail to take appropriate steps, satisfactory to SBA, to accomplish any action SBA may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify SBA as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than SBA.

(e) *SBA remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events in paragraph (d) of this section:

(1) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable; and

(2) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 311(c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (f), SBA may avail itself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the prior written consent of SBA, you incur Management Expenses in excess of those permitted under § 107.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the prior written consent of SBA, other than:

(i) Distributions permitted under § 107.585;

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' pro-rata

interests or the provisions for profit distributions in your partnership agreement, as appropriate; and

(iii) Distributions by Participating Securities issuers as permitted under §§ 107.1540 through 107.1580.

(3) *Failure to make payment.* Unless otherwise approved by SBA, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by SBA.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the prior written consent of SBA, you reduce your Regulatory Capital, except as permitted by §§ 107.585 and 107.1560 through 107.1580.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 107.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d)(5) of this section, SBA determines that you have violated one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain investment ratio.* You fail to maintain the investment ratio for Leverage in excess of 300 percent of Leverageable Capital (see §§ 107.1150(b)(2) and 107.1160(c)), if applicable to you, as of the end of each fiscal year. In determining whether you have maintained the ratio, SBA will disregard any prepayment, sale, or disposition of Venture Capital Financing, any increase in Leverageable Capital, and any receipt of additional Leverage, within 120 days prior to the end of your fiscal year.

(10) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 107.150, if applicable to you.

(g) *SBA remedies for events of default with opportunity to cure.* (1) Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable; and

(ii) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 311(c) of the Act.

(2) SBA may invoke the remedies in paragraph (g)(1) of this section only if:

(i) It has given you at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to SBA's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, SBA, after written notification to you and until you cure such condition to SBA's satisfaction, may deny you additional Leverage and/or require you to take such actions as SBA may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of any Licensee issuing Debentures after April 25, 1994 must include the following provisions as a condition to the purchase or guarantee by SBA of such Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(1) through (f)(3) of this section as determined by SBA, SBA shall have the right, and you consent to SBA's exercise of such right:

(1) With respect to a Corporate Licensee, upon written notice, to require you to replace, with individuals approved by SBA, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership Licensee, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA; and/or

(3) With respect to either a Corporate or Partnership Licensee, to obtain the appointment of SBA or its designee as your receiver under section 311(c) of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate a Licensee is not within such consent, but is governed instead by the relevant provisions of the Act.

§ 107.1820 Conditions affecting issuers of Preferred Securities and/or Participating Securities.

(a) *Applicability of this section.* This section applies if you have Preferred Securities issued after April 25, 1994, or if you issue Participating Securities or have Earmarked Assets in your portfolio. Your Articles must include the provisions of this § 107.1820 as a condition to SBA's purchase of Preferred Securities or guarantee of Participating Securities and for as long as you own Earmarked Assets. Preferred Securities issued before April 25, 1994 continue to be governed by the remedies in effect at the time of their issuance.

(b) *Removal Conditions.* Upon the occurrence (as determined by SBA) of any of the following conditions (''Removal Conditions''), SBA may avail itself of one or more of the remedies in paragraph (d) of this section:

(1) *Insolvency or extreme Capital Impairment.* You become equitably or legally insolvent, or have a Capital Impairment Percentage of 100 percent or more (''extreme Capital Impairment'') and have not cured such Capital Impairment within the time limits set by SBA in writing. In this regard:

(i) You are not considered to have a condition of extreme Capital Impairment during the first eight years following your first issuance of Participating Securities.

(ii) This paragraph (b)(1) does not give you an additional opportunity to cure if you have already had an opportunity to cure your Capital Impairment under paragraph (e)(3) of this section.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors.

(3) *Bankruptcy.* You begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(4) *Transfer of Control.* You violate § 107.475 and/or willfully violate § 107.410, and such violation results in a transfer of Control.

(5) *Fraud.* You commit a fraudulent act which causes serious detriment to SBA's position as a guarantor or investor.

(6) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 USC 548.

(c) *Contingent Removal Conditions.* Upon the occurrence (as determined by SBA) of any of the following conditions (''Contingent Removal Conditions''), SBA may avail itself of one or more of the remedies in paragraph (d) of this section, but only if you fail to remove the person(s) SBA identifies as responsible for such occurrence and/or cure such occurrence to SBA's satisfaction within a time period determined by SBA (but not less than 15 days):

(1) *Willful conflicts of interest.* You willfully violate § 107.730.

(2) *Willful or repeated noncompliance.* You willfully or repeatedly violate one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(3) *Failure to comply with restrictions under paragraph (f) of this section.* You fail to comply with the restrictions imposed by SBA under paragraph (f) of this section.

(d) *SBA remedies for Removal Conditions and Contingent Removal Conditions.* Upon the occurrence (as determined by SBA) of any Removal Condition, or any Contingent Removal Condition accompanied by your failure to act as set forth in paragraph (c) of this section, SBA has the following rights, and you consent to SBA's exercise of any or all of such rights:

(1) With respect to a Corporate Licensee, upon written notice, to require you to replace, with individuals approved by SBA, one or more of your officers and/or such number of directors as is sufficient to constitute a majority of your board of directors; or

(2) With respect to a Partnership Licensee, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove your general partner, who shall then be replaced in accordance with your Articles by a new general partner approved by SBA; and/or

(3) With respect to either a Corporate or Partnership Licensee, to the appointment of SBA or its designee as your receiver under section 311(c) of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate a Licensee is not within such consent, but is governed instead by the relevant provisions of the Act.

(e) *Restricted Operations Conditions.* Upon the occurrence (as determined by SBA) of any of the following conditions (''Restricted Operations Conditions''), SBA may avail itself of any of the remedies in paragraph (f) of this section.

(1) *Removal Conditions or Contingent Removal Conditions.* Any condition occurs which is listed in paragraphs (b) or (c) of this section.

(2) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required by this part.

(3) *Capital or Liquidity Impairment.* You have a condition of Capital Impairment as determined under § 107.1830 or, if applicable, a condition of Liquidity Impairment as determined under § 107.1505, and you fail to cure the impairment within time limits set by SBA in writing.

(4) *Improper Distributions.* You make any Distribution to your shareholders or partners other than those permitted by §§ 107.585 and 107.1560 through 107.1580.

(5) *Excessive Management Expenses.* Without the prior written consent of SBA, you incur Management Expenses in excess of those permitted under § 107.520.

(6) *Failure to make payment.* You fail to pay any amounts due under Preferred Securities or required by §§ 107.1500 through 107.1590, unless otherwise permitted by SBA.

(7) *Noncompliance.* Except as otherwise provided for in paragraphs (c)(1) and (c)(2) of this section, SBA determines that you have failed to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(8) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 107.150, if applicable to you.

(9) *Failure to maintain investment ratios.* You fail to maintain the investment ratios or amounts required for Participating Securities (§ 107.1500(b)(4)) or Leverage in excess of 300 percent of Leverageable Capital (§ 107.1160(c)) or Preferred Securities in excess of 100 percent of Leverageable Capital (§ 107.1160(d)), if applicable to you, as of the end of each fiscal year. In determining whether you have maintained the ratios or amounts, SBA will disregard any prepayment, sale, or disposition of Equity Capital Investments or Venture Capital Financings, as appropriate, any increase in Leverageable Capital, and any receipt of additional Leverage, within 120 days prior to the end of your fiscal year.

(10) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any Participating Security or Preferred Security or of any agreement with or condition imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(11) *Noncooperation under paragraph (g) of this section.* You fail to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required under paragraph (g) of this section.

(f) *SBA remedies for Restricted Operations Conditions.* Upon the occurrence of any Restricted Operations Condition, and until such condition(s) are cured to SBA's satisfaction within a time period determined by SBA (but not less than 15 days), upon written notice SBA shall have the following rights, and you consent to SBA's exercise of any or all of such rights:

(1) To prohibit you from making any additional investments except for investments under legally binding commitments you entered into before such notice and, subject to SBA's prior written approval, investments that are necessary to protect your investments;

(2) Until all Leverage is redeemed and amounts due are paid, to prohibit Distributions by you to any party other than SBA, its agent or Trustee;

(3) To require all your commitments from investors to be funded at the earliest time(s) permitted in accordance with your Articles; and

(4) To review and re-determine your approved Management Expenses.

(g) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to you and until such condition is cured to SBA's satisfaction, will deny you additional Leverage and/or require you to take such actions as SBA may determine to be appropriate under the circumstances.

Computation of Licensee's Capital Impairment

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

(a) *Applicability of this section.* This § 107.1830 applies to you if you have any outstanding Leverage issued on or after April 25, 1994. If you only have outstanding Leverage issued before April 25, 1994, you must comply with paragraphs (e) and (f) of this section and the Capital Impairment regulations in

this part in effect when you issued your Leverage.

(b) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, SBA has the right to impose the applicable remedies for noncompliance in §§ 107.1810(g) and 107.1820(f).

(c) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed in § 107.1840, exceeds:

(1) For Section 301(d) Licensees, 75 percent.

(2) For Section 301(c) Licensees, the appropriate percentage from the following table:

MAXIMUM PERMITTED CAPITAL IMPAIRMENT PERCENTAGES FOR Section 301(C) LICENSEES

If the percentage of equity capital investments (at cost) in your portfolio is:	And your ratio of outstanding leverage to leverageable capital percentage is:	Then your maximum permitted capital impairment percentage is:
67	100 or less	70
Over 100 but not over 200	60.	
Over 200	50.	
At least 40 but under 67	100 or less	55
	Over 100 but not over 200	50
Over 200	40.	
Under 40	100 or less	45
Over 100 but not over 200	40.	
Over 200	35.	

(d) *Phase-in of maximum permitted Capital Impairment Percentages for Section 301(c) Licensees.* If you are a Section 301(c) Licensee, regardless of your maximum permitted Capital Impairment Percentage under paragraph (c) of this section, you will not have a condition of Capital Impairment if:

(1) Your Capital Impairment Percentage does not exceed 50 percent; and

(2) You have not reached your first fiscal year end occurring after April 25, 1995.

(e) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify SBA promptly if you are capitally impaired.

(f) *SBA's right to determine Licensee's Capital Impairment condition.* SBA may make its own determination of your Capital Impairment condition at any time.

§ 107.1840 Computation of Licensee's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage if you have outstanding Leverage issued after April 25, 1994. You must compare your Capital Impairment Percentage to the maximum permitted under § 107.1830(c) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 107.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class 1 Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the satisfaction of SBA (this is your ''Class 2 Appreciation''):

(i) The Small Business that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Small Business' pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of the Small Business' average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the following table:

ADJUSTED UNREALIZED GAIN BEFORE ESTIMATED TAX EFFECTS

If:	**And:**	**Then Adjusted Unrealized Gain before Taxes is:**
.		

ADJUSTED UNREALIZED GAIN BEFORE ESTIMATED TAX EFFECTS—Continued

Class 1 Appreciation ≤ Net Appreciation	Class 1 Appreciation + Class 2 Appreciation ≤ Net Appreciation.	(80% x Class 1 Appreciation) + (50% x Class 2 Appreciation).
Class 1 Appreciation ≤ Net Appreciation	Class 1 Appreciation + Class 2 Appreciation > Net Appreciation.	(80% x Class 1 Appreciation) + [(50% x Net Appreciation − Class 1 Appreciation)].
Class 1 Appreciation > Net Appreciation	.....	80% x Net Appreciation.

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation.

§ 107.1850 Exceptions to Capital Impairment provisions for Licensees with outstanding Participating Securities.

The provisions in this § 107.1850 apply only if at least two-thirds of your outstanding Leverage consists of Participating Securities, and at least two-thirds of your Loans and Investments (at cost) consist of Equity Capital Investments.

(a) *Forbearance period for Participating Securities issuers.* During the first forty-eight (48) months following your first issuance of Participating Securities, you will not have a condition of Capital Impairment if your Capital Impairment Percentage is below 85 percent.

(b) *Extended forbearance period for early stage investors.* If at least two-thirds of your Loans and Investments (at cost) are in Start-Up Financings, the forbearance period in paragraph (a) of this section is extended to 60 months.

(c) *Forbearance based on actions by Licensee.* The provisions of this paragraph (c) apply only during the fifth and sixth years following your first issuance of Participating Securities. If your Capital Impairment Percentage, as determined either by you or by SBA, exceeds the maximum permitted under § 107.1830(c) but is below 85 percent, you will not have a condition of Capital Impairment if you do either of the following within thirty (30) days of such determination:

(1) Increase your Regulatory Capital by a cash contribution placed in an escrow account or other account satisfactory to SBA, for its benefit. The contribution must equal, during the fifth year, 15 percent of your outstanding Leverage or, during the sixth year, 30 percent.

(2) Provide a guarantee, satisfactory to SBA and for its benefit, for the amount of the cash contribution required in paragraph (c)(1) of this section. SBA will credit any escrowed funds or guarantee received in the fifth year toward the requirements for the sixth year.

(d) *Conditions for forbearance under paragraph (c) of this section.* (1) You cannot count any funds placed in an escrow or other account under paragraph (c) of this section as Leverageable Capital.

(2) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and earned Adjustments.

(3) If there is an acceleration or mandatory redemption under § 107.1810 or § 107.1820, any funds in the escrow account and/or any guarantee received under paragraph (c) of this section will be applied toward repaying any amounts due SBA.

(4) If you reduce your Capital Impairment Percentage to zero, SBA will release and return any escrowed funds and/or any guarantee received under paragraph (c) of this section.

Subpart K—Ending Operations as a Licensee

§ 107.1900 Surrender of license.

You may not surrender your license without SBA's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the Licensee.

Subpart L—Miscellaneous

§ 107.1910 Non-waiver of SBA's rights or terms of Leverage security.

SBA's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. SBA's failure to require you to perform any term or provision of your Leverage does not affect SBA's right to enforce such term or provision. Similarly, SBA's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in §§ 107.1810 or 107.1820 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 107.1920 Licensee's application for exemption from a regulation in Part 107.

You may file an application in writing with SBA to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. SBA may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act. Your application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that:

(a) The proposed action is fair and equitable; and

(b) The exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and regulations.

§ 107.1930 Effect of changes in Part 107 on transactions previously consummated.

The legality of a transaction covered by these regulations is governed by the regulations in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28757 Filed 11–27–95; 8:45 am]

BILLING CODE 8025–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–23–AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters. This proposal would require replacement of the upper V-belt sheave (sheave). This proposal is prompted by three reports of cracks in the flange of the sheave. The actions specified in this AD are intended to prevent failure of the sheave, which could result in damage to other drive system components, and subsequent loss of control of the helicopter.

DATES: Comments must be received by January 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, FAX (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to docket No. 95–SW–23–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to Robinson Model R22 helicopters. In 1990, Robinson changed the sheave, part number (P/N) A170–1I or J, and P/N A170–2J, from a casting to a machined part. This change included some dimensional modifications, one of which was a reduction in the thickness of the sheave flange. Two reported cases of cracks in the thinner flange prompted Robinson to issue Robinson Helicopter Company R22 Service Bulletin SB–71, dated June 18, 1992, describing pre-flight owner/operator checks of the sheave for cracks until replacement with a modified sheave, P/N A170–1K or P/N A170–2K, is accomplished. This service bulletin was not reviewed or approved by the FAA prior to its issuance by Robinson. Another report of cracks in the thinner-flanged sheave prompted Robinson to issue Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995, describing procedures for removal and replacement of the thinner-flanged sheave. Any crack in the sheave creates an unsafe condition. That condition, if not corrected, could result in failure of the sheave, which could result in damage to other drive system components, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved the design engineering aspects of Robinson Helicopter R22 Service Bulletin SB–77, dated April 25, 1995, which describes procedures for removal and replacement of sheave, P/N A170–1I or J, or P/N A170–2J.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the proposed AD would require replacement of the affected sheave with a sheave having a thicker flange within the next 100 hours time-in-service (TIS) or 60 calendar days, whichever occurs first. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 650 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,216 per helicopter for the sheave, P/N A170–1, and $2,298 per helicopter for the sheave, P/N A170–2. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,298,050, assuming replacement of the sheave in all 650 helicopters, and assuming that one-half of the helicopters have the sheave, P/N A170–1, installed, and one-half of the helicopters have the sheave, P/N A170–2, installed.

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

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

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Robinson Helicopter Company: Docket No. 95–SW–23–AD.

Applicability: Model R22 helicopters with upper V-belt sheave (sheave), part number (P/N) A170–1I or J, or P/N A170–2J, installed, certificated in any category.

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

Note 2: Determination of whether the affected sheave has been installed can be accomplished by measuring the depth from the edge of the forward retainer plate to the flange of the sheave in an area located between the webs as shown in Figure 2 of Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995. If the depth is greater than 0.30 inch, then either sheave, P/N A170–1I or J, or sheave, P/N A170–2J, is installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the sheave, which could result in damage to other drive system components, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) or 60 calendar days, whichever occurs first after the effective date of this AD, replace the sheave, P/N A170–1I or J, or P/N A170–2J, with an airworthy sheave, P/N A170–1, or P/N A170–2, having a dimension equal to or less than 0.30 inch measured from the edge of the forward retainer plate to the flange of the sheave in an area located between the webs, in accordance with paragraphs 2 through 15 of the Compliance Procedures of Robinson Helicopter Company R22 Service Bulletin SB–77, dated April 25, 1995.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on October 26, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–28396 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–44]

Airworthiness Directives; Textron Lycoming 235 Series, 290 Series, and Certain 320 and 360 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Textron Lycoming 235 Series and 290 Series, and certain 320 and 360 series reciprocating engines. This proposal would require initial and repetitive inspections of the crankshaft inner diameter (ID) for corrosion and cracks, and replacement of cracked crankshafts with a serviceable part. This proposal permits operation of engines with crankshafts that are found to have corrosion pits but are free of cracks provided repetitive inspections are performed until the next engine overhaul or 5 years after the initial inspection, whichever occurs first, at which time crankshafts with corrosion pits but no cracks must be replaced with serviceable crankshafts. This proposal is prompted by reports of crankshaft breakage originating from corrosion pits on the inside wall. The actions specified by the proposed AD are intended to prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

DATES: Comments must be received by January 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7080, fax (717) 327–7100. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond Reinhardt, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581–1200; telephone (516) 256–7532, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–44.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 18, 1993, the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, received a report that a Piper PA–28–161 aircraft, with a Textron Lycoming O–320–D3G reciprocating engine executed a forced landing due to an engine crankshaft failure which caused the propeller to separate from the aircraft. The cause of the crankshaft failure was determined to be due to a high cycle reverse torsional fatigue mechanism that had initiated from a number of corrosion pits in the crankshaft bore. After the cracks had progressed through a substantial proportion of the crankshaft section, the rate of advance had increased until the remaining unseparated portion had failed as a result of overload. The cracking occurred in high cycle fatigue and it had progressed over an extended period of service. At the time of the accident the engine had operated for 1,950 hours time in service (TIS) since overhaul and had accumulated 4,429 hours TIS since new over a period of 16 years. In addition, the Federal Aviation Administration (FAA) has received reports of ten additional instances of cracks or failures of the crankshaft behind the propeller flange on various Textron Lycoming reciprocating engines due to cracks initiating from corrosion pits in the crankshaft bore. This condition, if not corrected, could result in crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

The FAA has reviewed and approved the procedures for initial and repetitive inspections of the crankshaft inner diameter (ID) for corrosion and cracks contained in Textron Lycoming Mandatory Service Bulletin (MSB) No. 505A, dated October 18, 1994, but has determined that additional inspections via Fluorescent Penetrant Inspection (FPI) are warranted if corrosion pits are found. The FPI inspection was developed due to reports from Lycoming and other approved repair stations that most of the crankshafts that are pitted do not contain cracks. The FPI inspection was based on crack propagation data developed by the FAA in conjunction with Textron Lycoming and the technical base in the U.S. for performing Non-Destructive Inspections. The FPI process has been shown to be reliable to detect cracks down to 0.050 inches deep and 0.100 inches long. The FPI inspection interval was based on the crack propagation data and the detection of a crack before the crankshaft failed. If a crankshaft is found to be pitted on-wing, it is not recommended that removal of metal be permitted to remove the corrosion pits due to possible contamination of the engine oil supply with metal filings and also to ensure the concentricity of the crankshaft is not compromised.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections of the crankshaft ID for corrosion and cracks, and replacement of cracked crankshafts with a serviceable part. The actions would be required to be accomplished in accordance with the MSB described previously and the FPI procedure detailed in paragraph (e) of this AD.

There are approximately 77,100 engines of the affected design in the worldwide fleet. The FAA estimates that 46,260 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. The estimated cost impact for the proposed inspections would be $11,102,400. The FAA estimates 10% of the crankshafts will require replacement at engine overhaul due to corrosion pits, and that it would take 32 work hours per engine to replace pitted crankshafts. Required parts would cost approximately $4,742 per engine. The estimated cost for replacement of 10% of the crankshafts annually would be $3,081,841.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Textron Lycoming: Docket No. 94–ANE–44

Applicability: Textron Lycoming 235 series, 290 series, 320 series except model O–320–B2C installed in helicopters, and 360 series except models O–360–A4G, –A4J, A4K, –A4M, –C4F, –AEIO–360–B4A, HO–360 series, HIO–360 series, LHIO–360 series, VO–360 series, and IVO–360 series, four-cylinder reciprocating engines with fixed pitch propellers. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Cessna, Piper, Beech, American Aircraft Corporation, Grumman American Aviation, Mooney, Augustair Inc., Maule Aerospace Technology Corporation, Great Lakes Aircraft Co., and Commander Aircraft Co.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or

repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft, accomplish the following:

(a) For new engines shipped from Textron Lycoming prior to and including December 31, 1984, that have never been overhauled, or any remanufactured or overhauled engines that have accumulated 1,000 hours or more time in service (TIS) since remanufacture or overhaul, initially inspect the inner diameter (ID) of the crankshaft for corrosion pits within the next 100 hours TIS after the effective date of this AD, or 6 months after the effective date of this AD, whichever occurs first, in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 505A, dated October 18, 1994. The propeller, if installed, must be removed in accordance with the aircraft manufacturer's procedures to perform this inspection. If corrosion pits are found during this inspection, perform a Fluorescent Penetrant Inspection (FPI) in accordance with paragraph (e) of this AD.

(b) For new engines shipped from Textron Lycoming after December 31, 1984, that have never been overhauled, or any remanufactured or overhauled engines that have accumulated less than 1,000 hours TIS since remanufacture or overhaul, initially inspect the ID of the crankshaft for corrosion pits, at intervals specified in subparagraphs (1) through (3) of this paragraph, whichever occurs first, in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994. The propeller, if installed, must be removed in accordance with the aircraft manufacturer's procedures to perform this inspection. If corrosion pits are found during this inspection, perform an FPI in accordance with paragraph (e) of this AD.

(1) At the next engine overhaul or disassembly.

(2) Within 10 years of the original ship date or 6 months from the effective date of this AD whichever occurs later.

(3) At 1,000 hours TIS since remanufacture or overhaul, or 6 months from the effective date of this AD, whichever occurs later.

(c) Thereafter, if no corrosion pits are found on the ID of the crankshaft during the initial inspection, perform an inspection at intervals not to exceed 5 years since last inspection or at the next engine overhaul or disassembly, whichever occurs first, in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994. If corrosion pits but no cracks are found on the ID of the crankshaft during the initial inspection, repeat the FPI at intervals not to exceed 100 hours TIS since last FPI inspection, 5 years from the initial inspection that detected the corrosion pits, or next engine overhaul, whichever occurs first.

(d) Prior to further flight, remove from service and replace with a serviceable part the following:

(1) Crankshafts found cracked during FPI outlined in paragraph (e) of this AD.

(2) Crankshafts that have corrosion pits but no cracks, which are on a repetitive inspection cycle and have attained 5 years from the initial inspection that detected the corrosion pits, in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994.

(3) Crankshafts that have corrosion pits but no cracks, which are being overhauled.

(e) An engine as installed in the aircraft having a corroded crankshaft may be returned to service without disassembly provided an FPI confirms the bore to be crack free. The process and materials utilized for the FPI are in accordance with the classification contained in MIL–I–25135. The FPI must be fluorescent solvent removable (Method C) utilizing a Type 1 penetrant system with a penetrant sensitivity Level 3 or higher and a Form D-Nonaqueous Developer. Spray containers of the materials are acceptable for this inspection. Personnel performing the FPI that are making accept/reject decisions shall be qualified to at least Level II in liquid penetrant inspection in accordance with MIL–STD–410E, dated January 25, 1991 or a similar certification system assuring the competence of the inspector. This FPI process involves the removal of penetrant material from the inspection surface. Caution must be used to ensure that contaminants from the cleaning process and the FPI do not enter the engine oil supply by blocking off the area of the crankshaft bore that is aft of the area being inspected by using a clean, dry, lint-free cloth. The FPI must be performed using the following steps:

(1) Cleaning—The crankshaft bore surface must be cleaned of visible corrosion prior to the FPI process using Scotchbrite or an equivalent material. Metal-removing processes must not be used for visible corrosion cleaning. In addition, clean all surfaces to be inspected utilizing a cleaner, such as Magnaflux Spot Check Cleaner/Remover SKC–NF or equivalent, on the ID of the crankshaft bore. Let the cleaner/remover dry for 5 minutes minimum. Wipe clean with a lint- free cloth.

(2) Penetrant Application—Spray penetrant, such as ZYGLO ZL–22A Magnaflux Corp. or equivalent Type 1 with a penetrant sensitivity Level 3 or higher, on the ID bore.

(3) Penetrant Dwell—Allow a minimum of 10 minutes dwell. For dwell times exceeding 60 minutes the penetrant shall be reapplied to prevent drying.

(4) Penetrant Removal—Remove all bulk surface penetrant by wiping with a clean, dry lint-free cloth. Make a single wipe and then fold the cloth to provide a clean surface for succeeding wipes.

(i) Solvent Wipe—After the bulk of the surface penetrant has been removed, lightly moisten a fresh lint-free cloth with cleaner/remover and again wipe the surface. The cloth must not be saturated and the inspection surface must not be flooded with solvent. Excessive solvent will wash penetrant from defects.

(ii) During wiping, the inspection surface shall be illuminated with black light. Repeat the solvent wipe as necessary until no residual trace of penetrant remains on the inspection surface.

(5) Nonaqueous Developer (solvent suspended)—Following the cleaner/remover wipe apply nonaqueous developer by spraying a developer, such as Magnaflux Spot Check Developer SKD–NF or Form D-Nonaqueous equivalent, on the ID bore. Apply a thin uniform layer to the bore surface. The optimum coating thickness is indicated by the visibility of the part surface. If the metallic luster cannot be seen the developer is too thick.

(6) Dwell—Developer dwell is required to allow the developer time to draw entrapped penetrant from any small defects. The minimum development time shall be 10 minutes. The maximum dwell time for nonaqueous developer shall be 60 minutes.

(7) Inspection shall be performed within the allotted dwell time. Components that are not inspected within the allotted dwell time must be reprocessed.

(i) Examine crankshaft bore in a darkened enclosure under ultraviolet (black) light. Allow 1 minute for eyes to adapt to darkened environment prior to inspecting crankshaft bore. Use of photochromic lenses or permanent darkened lenses is prohibited.

(ii) During inspection make sure that the black light intensity is a minimum of 1200 microwatts/cm^2 at the bore surface. This can be accomplished by positioning the black light as close as necessary to the bore to achieve 1200 microwatts/cm^2. White light background shall not exceed 20 1x/m^2 (2 foot-candles). A photographic light meter may be used to determine the white light background reading.

(iii) Crankshaft bores having no crack indications are acceptable.

(iv) Magnification (10X maximum) and/or white light may be used to determine discontinuity type. Indications, on parts exhibiting fluorescent background which interferes with evaluation of questionable indications, shall be evaluated as follows:

(A) Lightly wipe the area once with a soft brush or cotton swab applicator dampened with ethyl alcohol. Do not permit alcohol to flood the surface.

(B) After the alcohol evaporates from the surface, re-inspect. If an indication reappears, evaluate it immediately. If the indication does not reappear, reapply developer . The redevelopment time shall equal the original development time. Thereafter, re-inspect.

(8) After inspection, clean residual penetrants and developers from crankshaft bore. Ensure lint-free cloth is removed from crankshaft bore prior to installing front crankshaft plug. Failure to do so may result

in oil restriction within the engine and in turn cause engine failure.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on November 8, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28956 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–82–AD]

Airworthiness Directives; Beech Aircraft Corporation Model C90A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) Model C90A airplanes equipped with an optional Beech electric trim system or a Collins autopilot system. The proposed action would require modifying the elevator electric trim tab actuator assembly. Failure of the elevator electric trim tab system on a Beech Model C90A prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent possible failure of the elevator electric trim tab system, which, if not detected and corrected, could cause loss of airplane maneuverablity and possible loss of control of the airplane.

DATES: Comments must be received on or before January 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–82–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Investigation of an inoperative electric elevator trim system on a Beech Model C90A airplane revealed that the trim cable had moved out of its groove, twisted on top of the next groove, and stopped the actuator cable drum from moving. This airplane had a pin-type cable guard actuator assembly (part number (P/N) 33–524023–51) installed. These installations involve both the optional Beech electric trim system and the Collins autopilot system. Investigation shows the pin-type cable guard allows the trim cable to come out of the actuator grooves of the actuator cable drum when the elevator trim system is at maximum travel. This situation could cause the actuator cable drum to bind, thus causing the actuator motor to stall, and causing the actuator assembly to jam. Beech has changed the design to a shroud-type cable guard actuator assembly (P/N 33–524023–77 or P/N 33–524023–79). The shroud-type cable guard does not allow the trim cable to travel out of the grooves of the actuator cable drum and prevents failure of the actuator assembly.

The pin-type cable guards were installed on some airplanes starting at Beech Model C90A serial number LJ–1111. Beech changed to the shroud-type cable guard at some point between LJ–1111 and LJ–1410. After serial number LJ–1410, Beech manufactured the Model C90A airplanes with the shroud-type cable guard actuator assembly exclusively in the elevator electric trim system and the Collins autopilot system.

Beech Service Bulletin (SB) number (No.) 2631, Issued: June 1995, Revised: September 1995, specifies procedures for modifying the elevator electric trim tab actuator assembly.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent possible failure of the elevator electric trim tab system, which, if not detected and corrected, could result in loss of airplane maneuverablity and possible loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech C90A airplanes of the same type design, the proposed AD would require modifying the elevator electric trim tab actuator assembly from the pin-type actuator cable guard to the shroud-type actuator cable guard. Accomplishment of the proposed action would be in accordance with Beech SB No. 2631, Issued: June 1995, Revised: September 1995.

The FAA estimates that 300 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and

that the average labor rate is approximately $60 an hour. Parts are estimated to be $160 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $156,000 or $520 per airplane. Beech has informed FAA that no parts have been distributed to owners/operators for this modification; therefore, this figure is based on the assumption that no owners/operators have accomplished the proposed inspection and modification.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Beech Aircraft Corporation: Docket No. 95–CE–82–AD.

Applicability: The following Model C90A airplanes, certificated in any category, that are equipped with an optional Beech electric trim system or a Collins autopilot system:

(1) Serial numbers LJ–1111 through LJ–1410 that were equipped at manufacturer with a pin-type cable guard actuator assembly (P/N 33–524023–51) on the elevator electric trim tab actuator assembly.

(2) All serial numbers (except LJ–1 through LJ–1110) equipped with a pin-type cable guard actuator assembly (P/N 33–524023–51) installed through field approval.

Note 1: Steps 1 through 4 of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2631, Issued: June 1995, Revised: September 1995, provide procedures for determining which assembly is installed.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows, unless already accomplished:

(1) Within 150 hours time-in-service (TIS) after the effective date of this AD; or

(2) Upon installation of an optional Beech elevator electric trim tab system or a Collins autopilot system.

To prevent possible failure of the optional Beech electric trim system or the Collins autopilot system, which, if not detected and corrected, could cause loss of airplane maneuverablity and possible loss of control of the airplane, accomplish the following:

(a) Modify all elevator electric trim tab actuator assemblies, part number (P/N) 33–524023–51 to the P/N 33–524023–77 or P/N 33–524023–79 level, by accomplishing the procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin SB No. 2631, Issued: June 1995, Revised: September 1995.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 20, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28958 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–70–AD]

Airworthiness Directives; Fokker Model F27 Mark 050 and Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 050 and Model F28 Mark 0100 series airplanes. This proposal would require an inspection to verify that adequate clearance exists between the insulation screen and the two adjacent terminal bolts, and replacement of the circuit breaker terminal bolts with new bolts, if necessary. This proposal is prompted by a report that circuit breaker terminal bolts that were too long were discovered installed in the circuit breaker panels. The actions specified by the proposed AD are intended to prevent damage to the insulation screen between adjacent rows of circuit breakers, as the result of a circuit breaker terminal bolt being too long; this condition could lead to electrical arcing and loss of the associated electrical system, which could result in the potential for an electrical fire.

DATES: Comments must be received by January 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–70–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 and Model F28 Mark 0100 series airplanes. The RLD advises that, during production of Fokker Model F27 Mark 050 series airplanes, circuit breaker terminal bolts that were too long were installed in the circuit breaker panels. Investigation revealed that a design change introduced new circuit breaker terminal bolts having hexagonal heads that were too long. These new circuit breaker terminal bolts can cause damage to the insulation screen between adjacent rows of circuit breakers, which could result in electrical arcing; this condition could lead to the loss of the associated electrical system and could result in the potential for an electrical fire.

The RLD advises that this unsafe condition also exists on certain Model F28 Mark 0100 series airplanes.

Fokker has issued Service Bulletin SBF100–20–001, dated January 15, 1994 (for Model F28 Mark 0100 series airplanes), and Service Bulletin SBF50–20–003, dated January 11, 1994 (for Model F27 Mark 050 series airplanes). These service bulletins describe procedures for a one-time inspection to verify that adequate clearance exists between the insulation screen and the two adjacent terminal bolts, and replacement of the circuit breaker terminal bolts with new bolts, if necessary. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive 94–029 (A), dated February 21, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to verify that adequate clearance exists between the insulation screen and the two adjacent terminal bolts, and replacement of the circuit breaker terminal bolts with new bolts, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 44 Model F28 Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators of Model F28 Mark 0100 series airplanes is estimated to be $2,640, or $60 per airplane.

Should an operator of Model F28 Mark 0100 series airplanes be required to accomplish the necessary bolt replacement, it would take approximately 7 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of any necessary replacement action is estimated to be $520 per airplane.

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

Currently there are no Fokker Model F27 Mark 050 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the impact of the proposed inspection on operators of Model F27 Mark 050 series airplanes would be $60 per airplane.

Should an operator of Model F27 Mark 050 series airplanes be required to accomplish the necessary bolt replacement, it would take approximately 17 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $150 per airplane. Based on these figures, the cost impact of any necessary replacement action is estimated to be $1,170 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–70–AD.

Applicability: Model F27 Mark 050 series airplanes having serial numbers 20247 through 20292 inclusive, and 20294 through 20297 inclusive; and Model F28 Mark 0100 series airplanes having serial numbers 11390 through 11479 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent electrical arcing and subsequent loss of the associated electrical system, which could result in the potential for an electrical fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an inspection to verify if adequate clearance exists between the insulation screen and the two adjacent terminal bolts in accordance with Fokker Service Bulletin SBF100–20–001, dated January 15, 1994 (for Model F28 Mark 0100 series airplanes), or Fokker Service Bulletin SBF50–20–003, dated January 11, 1994 (for Model F27 Mark 050 series airplanes), as applicable.

(1) If adequate clearance is found, no further action is required by this AD.

(2) If inadequate clearance is found, prior to further flight, replace the circuit breaker terminal bolts with new bolts in accordance with the applicable service bulletin.

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

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

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

Issued in Renton, Washington, on November 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29012 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–10–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 81–20–01, which currently requires repetitively inspecting the nose landing gear (NLG) actuator support structure and the front pressure bulkhead for cracks on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes, and replacing any cracked part. The proposed action would: retain the repetitive inspections required by AD 81–20–01; require repetitively inspecting the NLG retraction jack upper mounting fitting and attachment hardware for security bolt failure and for bolts with improper torque levels on the HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes, and require replacing any failed security bolts and adjusting any bolt with an improper torque level; and require modifying the NLG retraction jack on all affected airplanes as terminating action for the repetitive inspections. The proposed action is prompted by reports of NLG jack mounting fitting failures on several of the affected airplanes, and by the Federal Aviation Administration's policy on aging commuter-class aircraft. The actions specified in the proposed AD are intended to prevent failure of the NLG caused by a cracked NLG actuator support structure or cracked front pressure bulkhead, which, if not detected and corrected, could lead to nose gear collapse and damage to the airplane.

DATES: Comments must be received on or before February 9, 1996.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport,

Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508–2715; facsimile (322) 230–6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–10–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of loose or failed bolts that attach the nose landing gear (NLG) jack mounting fitting to the front pressure bulkhead on JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. In addition, JAL and the FAA have found similar failures during testing of fatigue test articles of this type design.

JAL has introduced Modification JM 5285, which consists of an attachment bracket of improved design for the NLG retraction jack. Procedures for accomplishing Modification JM 5285 are included within Jetstream Service Bulletin (SB) 53–JM 5285, which consists of the following pages and revision levels:

Pages	Revision level	Date
1 and 4	Revision 2	November 12, 1992.
2, 3, and 5 through 26.	Revision 1	May 18, 1992.

In addition, JAL has issued Jetstream SB 53–A–JA870510, which specifies procedures for inspecting the NLG retraction jack upper mounting fitting security bolts. Jetstream SB 53–A–JA870510 incorporates the following pages and revision levels:

Pages	Revision level	Date
3, 5, 6, 8, 9, and 10.	Original issue	May 26, 1987.
1, 2, 4 and 7	Revision 1	November 10, 1987.

The FAA has reviewed all available information related to the incidents described above including the referenced service bulletins and has determined that AD action should be taken to prevent failure of the NLG caused by a cracked NLG actuator support structure or cracked front pressure bulkhead, which, if not detected and corrected, could lead to nose gear collapse and damage to the airplane.

In addition, AD 81–20–01, Amendment 39–4223, currently requires the following on JAL HP137 Mk1 and Jetstream series 200 airplanes that do not have the front pressure bulkhead strengthened in the area of the NLG jack attachment fitting (Modification No. 5127): repetitively inspecting (using dye penetrant methods) the NLG actuator support structure and the front pressure bulkhead for cracks, and replacing or repairing any cracked NLG actuator support structure or cracked front pressure bulkhead. The inspections required by AD 81–20–01 are accomplished in accordance with Jetstream SB No. 6/5, dated September 4, 1978.

AD 81–20–01 has been identified as one that should be superseded under the FAA's aging commuter-class airplane policy. The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

Based on these factors, the FAA established this aging commuter-class aircraft policy to require the incorporation of a known design change when it could eliminate or, in certain instances, reduce the number of critical repetitive inspections.

The FAA is combining this policy with the incidents presented in this discussion to establish the basis for the proposed AD action.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design that do not have Modification JM 5285 incorporated, the proposed AD would supersede AD 81–20–01 with a new AD that would:

—retain the requirement contained in AD 81–20–01 of repetitively inspecting (using dye penetrant methods) the NLG actuator support structure and the front pressure bulkhead for cracks on JAL HP137 Mk1 and Jetstream series 200 airplanes without Modification 5127 incorporated, and replacing or repairing any cracked NLG actuator support structure or cracked front pressure bulkhead. Accomplishment of these proposed inspections would continue to be accomplished in accordance with Jetstream SB No. 6/5, dated September 4, 1978.

—require repetitively inspecting the NLG retraction jack upper mounting fitting and attachment hardware for security bolt failure and bolts with improper torque levels on the HP137 Mk1, Jetstream series 200, and

Jetstream Model 3101 airplanes, and replacing any failed security bolts and adjusting any bolt with an improper torque level. Accomplishment of these proposed inspections would be in accordance with Jetstream SB 53–A–JA870510.

—require modifying the NLG retraction jack on the HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes as terminating action for all the repetitive inspections, including the inspections referenced in the Model 3201 maintenance manual. Accomplishment of this proposed modification would be in accordance with Jetstream SB 53–JM 5285.

The FAA estimates that 170 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 41 workhours to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $690,200 or $4,060 per airplane. This figure only takes into account the cost of the proposed inspection-terminating modification and does not take into account the cost of the proposed repetitive inspections. The FAA has no way of determining the number of repetitive inspections each HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplane would incur.

This figure is also based on the assumption that none of the affected airplane operators have accomplished the proposed modification. This action would eliminate the repetitive inspections required by AD 81–20–01. The FAA has no way of determining the operation levels of each individual operator of the affected airplanes, and subsequently cannot determine the repetitive inspection costs that would be eliminated by the proposed action. The FAA estimates these costs to be substantial over the long term.

In addition, JAL has informed the FAA that parts have been distributed to owners/operators that would equip approximately 39 of the affected airplanes. Assuming that these parts have been installed on the affected airplanes, the cost impact of the proposed modification upon the public would be reduced $158,340 from $690,200 to $531,860.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 170 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 95 percent are operated in scheduled passenger service by 14 different operators.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39–AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 81–20–01, Amendment 39–4223, and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–10–AD. Supersedes AD 81–20–01, Amendment 39–4223.

Applicability: The following airplanes, certificated in any category, that do not have Modification JM 5285 incorporated:

—HP137 Mk1 airplanes, all serial numbers;

—Jetstream Series 200 airplanes, all serial numbers;

—Jetstream Model 3101 airplanes, all serial numbers; and

—Jetstream Model 3201 airplanes, serial numbers 601 through 840.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the nose landing gear (NLG) caused by a cracked NLG actuator support structure or cracked front pressure bulkhead, which, if not detected and corrected, could lead to nose gear collapse and damage to the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow:

(a) For HP137 Mk1 and Jetstream series 200 airplanes that do not have the front pressure bulkhead strengthened in the area of the NLG jack attachment fitting (Modification 5127), upon accumulating 1,600 landings or within the next 200 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 200 landings until the modification required by paragraph (c) of this AD is incorporated, inspect (using dye penetrant methods) the nose landing gear actuator support structure, part number (P/N) 137139C–13 and P/N 137139C–25, and the membrane of the front pressure bulkhead for cracks. Accomplish the inspection in accordance with British Aerospace (BAe) Service Bulletin (SB) No. 6/5, dated September 4, 1978.

(1) Prior to further flight after any of the inspections required by paragraph (a) of this AD, replace any cracked P/N 137139C–13 NLG actuator support structure.

(2) Prior to further flight after any of the inspections required by paragraph (a) of this AD, repair in accordance with the maintenance manual any P/N 137139C–25 NLG actuator support structure where cracking is found that extends more than half the full length of the fold line.

(3) Prior to further flight after any of the inspections required by paragraph (a) of this AD, repair in accordance with the maintenance manual any front pressure

bulkhead membrane that has a crack with a length of six inches or more.

(4) If a crack less than 6 inches in length is found in the front pressure bulkhead membrane during any of the inspections required by paragraph (a) of this AD, prior to further flight, accomplish one of the following:

(i) Repair the front pressure bulkhead membrane in accordance with the applicable maintenance manual.

(ii) Fabricate a placard with the words ''Pressurization Inoperative'' in ⅛-inch letters, and install this placard in the airplane cabin within the pilot's clear view. Deactivate the cabin pressurization system by securing the safety valve assembly to the open position. This system is located on the front pressure bulkhead.

(iii) Install an improved design attachment bracket for the NLG retraction jack (Modification JM 5285) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 53–JM 5285, which incorporates the following pages and revision levels:

Pages	Revision level	Date
1 and 4	Revision 2	November 12, 1992.
2, 3, and 5 through 26.	Revision 1	May 18, 1992.

The repetitive inspections required by this AD are no longer required after incorporating Modification JM 5285.

(b) For all HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes, upon accumulating 3,500 landings or within the next 200 landings after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Inspect the NLG retraction jack upper mounting fitting and attaching hardware for correct installation, security bolt failure, and bolts with improper torque levels in accordance with Part A and B of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 53–A–JA870510, which incorporates the following pages and revision levels:

Pages	Revision level	Date
3, 5, 6, 8, 9, and 10.	Original Issue	May 26, 1987.
1, 2, 4 and 7	Revision 1	November 10, 1987.

Prior to further flight, replace any failed security bolt and adjust any bolt with an improper torque level in accordance with Jetstream SB 53–A–JA870510.

(2) Reinspect the NLG retraction jack upper mounting fitting and attaching hardware for security bolt failure and bolts with improper torque levels in accordance with Part A of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 53–A–JA870510 at intervals not to exceed 1,600 landings until the modification required by paragraph (c) of this AD is incorporated. Prior to further flight, replace any failed security bolt and adjust any bolt with an improper torque level in accordance with Jetstream SB 53–A–JA870510.

(3) Reinspect the NLG retraction jack upper mounting fitting security nuts for correct installation in accordance with Part B of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 53–A–JA870510 at intervals not to exceed 200 landings until the modification required by paragraph (c) of this AD is incorporated. If correct installation is not evident, prior to further flight, accomplish the reinspection specified in paragraph (b)(2) of this AD.

(c) For all applicable HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes, upon accumulating 25,000 landings or within the next 2,000 landings after the effective date of this AD, whichever occurs later, install an improved design attachment bracket for the NLG retraction jack (Modification JM 5285) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 53–JM 5285, which incorporates the following pages and revision levels:

Pages	Revision level	Date
1 and 4	Revision 2	November 12, 1992.
2, 3, and 5 through 26.	Revision 1	May 18, 1992.

(1) Incorporating Modification JM 5285 on Jetstream HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes terminates the repetitive inspection requirement of this AD.

(2) Incorporating Modification JM 5285 on Jetstream Model 3201 airplanes eliminates the need for the repetitive inspections specified in the applicable maintenance manual.

(3) Modification JM 5285 may be accomplished at any time prior to accumulating 25,000 landings, at which time it must be incorporated.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

Note 4: Alternative methods of compliance approved in accordance with AD 81–20–01 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 81–20–01, Amendment 39–4223.

Issued in Kansas City, Missouri, on November 20, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29050 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5336–1]

Hazardous Air Pollutant List; Proposed Modification

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of hearing and extension of comment period.

SUMMARY: EPA will hold a hearing in Columbia, South Carolina on December 7, 1995 concerning the proposed rule to amend the list of hazardous air pollutants (HAPs) in Clean Air Act section 112(b)(1) by removing the compound caprolactam (CAS No. 105–60–2), which was published in the Federal Register on September 18, 1995 (60 FR 48081). At the request of a commenter, EPA had agreed to an extension of the initial comment period concerning the proposed rule to delist caprolactam. This notice provides documentation of that comment period extension. In addition, EPA will keep the public docket open until January 8, 1996, to permit submission of supplementary or rebuttal information concerning the matters presented at the hearing to be held on December 7, 1995.

DATES: All written and electronic comments concerning the proposed rule to remove caprolactam from the HAP list, as published on September 18, 1995, must be received by EPA no later than December 5, 1995. The hearing will be held on December 7, 1995 at 6 P.M. EST at Irmo Elementary School auditorium, 7401 Gibbes Street, Irmo, South Carolina. All written or electronic submissions of supplementary or rebuttal information concerning the

matters presented at the hearing on December 7, 1995 must be received by EPA no later than January 8, 1996.

ADDRESSES: Written comments (duplicate copies preferred) must be submitted to: Central Docket Section (A–130), Environmental Protection Agency, Attention: Docket No. A–94–33, 401 M St. SW, Washington, D.C. 20460. Comments and information may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and information will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and information in electronic form must be identified by the docket number A–94–33. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy B. Pate, Office of Air Quality Planning and Standards, (MD–12), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5347, INTERNET: pate.nancy@epamail.epa.gov, fax 919–541–4028 or –0242.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 18, 1995 (60 FR 48081), EPA published a proposed rule that, upon promulgation, would amend the list of hazardous air pollutants in Clean Air Act section 112(b)(1), 42 U.S.C. 7412(b)(1)), by removing the compound caprolactam (CAS No. 105–60–2). This action was in response to a petition to delete the substance caprolactam which was filed by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America under section 112(b)(3) of the Act.

EPA received a request for a public hearing concerning the proposed rule to remove caprolactam. Pursuant to that request, EPA will hold a hearing at the time and location stated above.

Clean Air Act section 307(d) does not expressly apply to a rulemaking to remove a substance from the list of hazardous air pollutants in section 112(b). However, section 307(d)(1)(V) permits the EPA Administrator to apply section 307(d) to other actions and EPA is holding the hearing announced by this notice pursuant to the requirements of section 307(d). Section 307(d) also requires EPA to keep the public record open for 30 days after it holds such a hearing ''to provide an opportunity for submission of rebuttal and supplementary information.''

Prior to the original comment period deadline for the proposed rule, EPA received a request to extend the comment period from a local citizen group in Columbia, South Carolina. Citing health problems of group members and difficulties in communicating with legal counsel, the group requested a three week extension of the comment period (until November 24, 1995). In response to this request, EPA extended the initial period for submission of written and electronic comments concerning the proposed rule and is providing notice to the public that the comment period is open until December 5, 1995. Following the hearing to be held on December 7, 1995, EPA will keep the public docket open until January 8, 1996, to permit submission of supplementary or rebuttal information concerning the matters presented at the hearing.

Dated: November 22, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–29112 Filed 11–27–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–310–4191–02–24 1A]

RIN 1004–AC09

Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior, through the Bureau of Land Management (BLM), proposes to amend the provisions of 43 CFR Part 3160 that address BLM's responsibility for managing oil and gas operations on lands administered by the United States Forest Service (Forest Service). This action is being taken to clarify the regulations implementing the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Reform Act), to establish clearly that BLM's responsibility on National Forest System (NFS) lands is limited to the approval of applications for permit to drill (APD), the approval of other development or operational proposals involving subsurface activity, related impacts, and any appeals regarding the same. On NFS lands the approval of an APD does not, in itself, constitute approval of the surface use plan of operations (SUPO). Surface use plans of operations on NFS lands require separate approval by the Forest Service, and all appeals related to the SUPO are appeals from the decision of the Forest Service. Agency responsibilities under this rule and the Reform Act are determined on the basis of subsurface (BLM) and surface (Forest Service) authority for oil and gas operations on NFS lands.

DATES: Comments should be submitted by January 29, 1996. Comments received or postmarked after this date may not be considered in the decision making on the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include ''attn: AC09'' and your name and return address in your internet message. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 452–0340, or Howard Lemm, (406) 255–2842.

SUPPLEMENTARY INFORMATION: The Federal Onshore Oil and Gas Reform Act of 1987 (30 U.S.C. 226) vests the Secretary of the Interior and the Secretary of Agriculture with the authority to take actions on NFS lands for APD and SUPO approvals, respectively. The purpose of this proposed rule is to clarify in the regulations the statutory division of authority between the Department of the Interior, acting through the BLM, and the Department of Agriculture, acting through the Forest Service, for managing oil and gas operations on NFS lands. The responsibility for review of actions on NFS lands by the BLM for APDs and the Forest Service for SUPOs is clearly divisible. Each agency is responsible for predecisional reviews under such statutes as the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) to the extent that such reviews are performed for decisions proposed to be made pursuant to its decisional authority.

The Reform Act authorizes the Secretary of Agriculture to regulate all surface-disturbing activities carried out in conjunction with oil and gas development and operation on NFS lands. The Act states: ''The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine

reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area.'' As applied to SUPOs and APDS, the Reform Act makes an approved SUPO a condition precedent to the granting of an APD. Although the Forest Service is responsible for the SUPO approval prior to the APD, the Reform Act does not make the SUPO a part of the APD. The analysis and subsequent decisions for SUPOs and APDs are separate functions for Forest Service and BLM, respectively.

Although Section 5102(g) of the Reform Act delineates the authority given to each agency, clarification of this division in part 3160 of Title 43 of the Code of Federal regulations is needed to bring the existing regulations into greater conformance with the Reform Act. The intent of this proposed rule is to accurately describe the authority of the BLM for managing oil and gas operations on NFS lands. The proposed rule would abolish the existing regulatory provision making the SUPO a part of an APD on NFS lands, thus making it clearer that a SUPO approved by the Forest Service is instead a precondition to the approval of an APD on NFS lands. The proposed rule would also clarify BLM's exclusive responsibility for APD approval and any subsequent appeals related to actions taken on APDs for NFS lands pursuant to 43 CFR 3162.3–1(h). Concurrently, the Forest Service is preparing a technical amendment to 36 CFR 228 subpart E to clarify the exclusive responsibility of that agency to approve any SUPO for oil and gas operations on NFS lands and to hear any appeals of related actions. It is the intention of both agencies to coordinate these rulemaking activities.

The BLM's environmental review responsibilities for oil and gas development on NFS lands would be for decisions related to those actions described in a new section 3161.3 subtitled *Responsibility of the authorized officer on National Forest System lands.* Section 3161.3 would reiterate that BLM's authority to make decisions relating to drilling and suspension of operations or production will be appropriately coordinated with Forest Service decisions on the corresponding SUPO.

It is intended under this proposed rule that environmental review responsibilities for oil and gas development on NFS lands would be fully met through the coordinated efforts of the BLM and Forest Service. These coordinated efforts could include the development of environmental documents as cooperating agencies pursuant to the regulations located at 40 CFR 1501.6 implementing the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4332 *et seq.*). Although this proposed rule would not affect the working relationships between the two agencies in terms of NEPA compliance, the rule would make clear the limits of authority of the two agencies for the ultimate decisions on APDs and SUPOs involving NFS lands.

The existing national level Memorandum of Understanding (MOU) between the BLM and the Forest Service dated November 11, 1991, would be updated, as needed, to ensure coordination between the agencies with respect to oil and gas development on NFS lands in a manner consistent with the rule. It is anticipated that items to be considered in future amendment of the MOU would include, but would not be limited to, public posting requirements, review timeframes, operator notification requirements, SUPO and APD information sharing, and the distribution of environmental review findings and decision documents.

The principal authors of this proposed rule are Howard Lemm and Chun Wong of the Montana State Office and Erick Kaarlela of the Washington Office (WO) Compliance Team, assisted by the Regulatory Management Team, WO BLM, and the Forest Service.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, being a regulation of an administrative, financial, legal, technical, or procedural nature, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have a significant effect on the oil and gas industry. The rule will not adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal communities. The rule would have a positive impact in that it would eliminate duplicative responsibilities and appeal processes, thereby streamlining the process for all involved without compromising the stewardship of the resource.

The Department has further determined that this rulemaking would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). No small entities are likely to be affected by this rule and there are no particularly affected industries or sectors.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

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

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 3160, of title 43 of the Code of Federal Regulations is proposed to be amended as follows.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 is revised to read as follows:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 359; 30 U.S.C. 306; 25 U.S.C. 396; 25 U.S.C. 396d; 25 U.S.C. 398e; 25 U.S.C. 399; and 30 U.S.C. 1701, 1751(a).

§ 3160.0–2 [Removed]

2. Section 3160.0–2 is removed.

3. Section 3160.0–5 is amended by redesignating paragraphs (m) through (w) as paragraphs (n) through (x), respectively, and by adding a new paragraph (m) to read as follows:

§ 3160.0–5 Definitions.

* * * * *

(m) *National Forest System lands* means all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered by the Forest Service under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the System (16 U.S.C. 1609).

* * * * *

4. In § 3161.1 paragraph (a) is revised to read as follows:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by the operator are subject to the regulations in this part except as provided in § 3161.3.

* * * * *

5. Section 3161.2 is revised to read as follows:

§ 3161.2 Responsibility of the authorized officer.

Except as provided in § 3161.3 of this title, the authorized officer is authorized and directed to approve unitization, communitization, gas storage and other contractual agreements for Federal lands; to assess compensatory royalty; to approve suspensions of operations or production, or both; to issue NTLs; to approve and monitor other operator proposals for drilling, development or production of oil and gas; to perform administrative reviews; to impose monetary assessments or penalties; to provide technical information and advice relative to oil and gas development and operations on Federal and Indian lands; to enter into cooperative agreements with States, Federal agencies and Indian tribes relative to oil and gas development and operations; to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws; and to require that all operations be conducted in a manner which protects other natural resources and environmental quality, protects life and property and results in the maximum ultimate recovery of oil and gas with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources. The authorized officer may issue written or oral orders to govern specific lease operations. Any such oral orders shall be confirmed in writing by the authorized officer within 10 working days from issuance thereof. Before approving operations on leasehold, the authorized officer shall determine that the lease is in effect, that acceptable bond coverage has been provided and that except as provided in § 3161.3 of this title the proposed plan of operations is sound both from a technical and environmental standpoint.

§ 3161.3 [Redesignated as § 3161.4]

6. Section 3161.3 is redesignated as § 3161.4.

7. A new § 3161.3 is added as follows:

§ 3161.3 Responsibility of the authorized officer on National Forest System lands.

(a) The authorized officer is responsible for the approval, inspection, and regulation of drilling, development and production operations on National Forest System lands to the same extent as described in § 3161.2 of this title except that the authorized officer has no responsibility for the approval, enforcement, modification or revocation of any surface use plan of operations covering National Forest System lands. Approval of Applications for Permit to Drill, or approval of other proposed actions that would involve additional surface disturbance or reclamation, shall not be granted for operations to be conducted on National Forest System lands until the authorized representative of the Secretary of Agriculture has approved a surface use plan of operations covering related surface-disturbing activities. The authorized officer has the right to reexamine Applications for Permit to Drill, and other proposed development or production activities on National Forest System lands, if a related surface use plan of operations is revoked, modified or amended by the authorized representative of the Secretary of Agriculture.

(b) A surface use plan of operations related to the operator's proposed oil and gas operations must be furnished to the authorized officer for informational purposes at the time the operator submits an Application for Permit to Drill or other development or operational proposals applying to National Forest System lands.

8. In § 3162.3–1 paragraph (d)(1) is amended by removing the period and adding a semicolon in its place, paragraph (d)(3) is amended by removing ''; and'' and adding ''; and'' in its place, and paragraph (d)(2) is revised to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(d) * * *

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices, except on National Forest System lands a surface use plan of operations is not required as part of an Application for Permit to Drill;

* * * * *

9. Paragraph (a) of § 3162.3–2 is revised to read as follows:

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160–5 and approved by the authorized officer prior to commencing operations to redrill, perform casing repairs, plug-back, alter casing, perform nonroutine fracturing jobs, recomplete in a different interval, perform water shut off, commingle production between intervals and/or convert to an injection well. If there will be additional surface disturbance, the proposal shall include a surface use plan of operations as an integral part of the proposal unless it comes within the exception provided in § 3161.3, in which case a copy of such surface use plan must be provided in accordance with § 3161.3(b). The authorized officer may prescribe that each proposal contain all or a portion of the information set forth in § 3162.3–1 of this part. The operator shall file a subsequent report of these operations with the authorized officer using Form 3160–5.

* * * * *

10. Section 3162.3–3 is revised to read as follows:

§ 3162.3–3 Other lease operations.

Prior to commencing any operation on the leasehold that will result in additional surface disturbance, other than those activities authorized under § 3162.3–1 or § 3162.3–2 of this title, the operator shall submit a proposal on Form 3160–5 and receive approval of the authorized officer. The proposal

shall include a surface use plan of operations as an integral part of the proposal unless it comes within the exception provided in § 3161.3 of this title, in which case a copy of such surface use plan must be provided in accordance with § 3161.3(b).

11. Paragraph (c) of § 3162.3–4 is amended by revising the last sentence to read as follows:

§ 3162.3–4 Well abandonment.

* * * * *

(c) * * * Upon the removal of drilling or producing equipment from the site of a well that is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be reclaimed in accordance with a plan already approved or prescribed by the authorized officer or, where appropriate, where approved by the authorized representative of the Secretary of Agriculture as provided in § 3161.3 of this title.

Dated: November 13, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–28965 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 94–102]

Compatibility of Wireless Services with Enhanced 911

AGENCY: FCC.

ACTION: Proposed rule.

SUMMARY: The petition filed by Ad Hoc Alliance for Public Access to 911 requests the Commission to amend its Rules to mandate the provision of 911 service access by Commercial Mobile Radio Services (CMRS) providers. Because the issues raised in this Petition are closely related to the current E911 rulemaking proceeding, the Commission requests that comments on the Petition be filed in conjunction with the proceeding in CC Docket No. 94–102. The effect of the proposed rules would be to provide users of cellular telephones with effective and reliable access to 911 emergency systems.

DATES: Comments must be filed on or before December 15, 1995 and reply comments must be filed on or before January 3, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Won Kim, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: On October 27, 1995, the Ad Hoc Alliance for Public Access to 911 (''Alliance'') filed a Petition for Rulemaking to amend Part 22 of the Commission's Rules to provide users of cellular telephones with effective and reliable access to 911 emergency systems. Copies of Alliance's Petition are available for public inspection and copying in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Alliance contends that 911 cellular telephone service may be denied or unavailable when the carrier's cellular telephone system is programmed to block 911 calls from transient or non-system subscribers. Specifically, Alliance requests the Commission to amend Section 22.911(b) of the Commission's Rules to require cellular carriers to promptly connect all 911 calls without precondition. Alliance also proposes that Section 22.933 of the Commission's Rules be amended to require that all newly constructed mobile and portable stations be equipped to scan all of the control cellular telephone channels assigned to both System A and to System B, and to select and use the channel with the strongest signal whenever a 911 call is placed.

In a Notice of Proposed Rulemaking adopted September 19, 1994,[1] the Commission proposed to adopt rules requiring, *inter alia,* that Commercial Mobile Radio Service (''CMRS'') providers offering real time voice services include enhanced 911 (''E911'') capability as part of their service within five years of a final Order. Under the proposed rules, any mobile radio transmitter that is service initialized on a radio network must be allowed to make a 911 call without a requirement for user validation. Comments on the NPRM were filed on January 9, 1995, and reply comments were filed on March 17, 1995. Consumers First and Alliance filed comments on the NPRM, requesting the Commission to issue a further notice of proposed rulemaking mandating the provision of 911 service access without regard to prior service arrangements by CMRS providers. The Commission is currently reviewing the record on this docket.

Because the issues raised in Alliance's Petition are closely related to the current E911 rulemaking proceeding, the Commission requests that comments on Alliance's Petition be filed in conjunction with the proceeding in CC Docket No. 94–102. Interested parties may file comments no later than December 15, 1995. Reply comments must be filed by January 3, 1996. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, referencing CC Docket No. 94–102 and Alliance's Petition for Rulemaking. Filing should be accompanied by proof of service upon the petitioner and the parties in this proceeding. The list of the parties may be obtained from the Office of the Secretary by referencing CC Docket No. 94–102. The full text of the Petition, the comments, and reply comments are available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies may be obtained from International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

For further information, contact Won Kim at (202) 418–1310, Wireless Telecommunications Bureau, Policy Division.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 95–28990 Filed 11–27–95; 8:45 am]

BILLING CODE 6712–01–M

[1] *See* Revision of the Commission's rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Notice of Proposed Rulemaking, 59 FR 54878 (1994) (''NPRM'').

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 951116270–5270–01; I.D. 110195B]

Summer Flounder Fishery; Proposed 1996 Specifications

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

ACTION: Proposed specifications for the 1996 summer flounder fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 1996 summer flounder fishery, which include commercial catch quotas

and other restrictions. The implementing regulations for the fishery require NMFS to publish specifications for the upcoming fishing year and provide an opportunity for the public to comment. The intent of these measures is to prevent overfishing of the summer flounder resource.

DATES: Comments must be received on or before December 21, 1995.

ADDRESSES: Copies of the supporting documents used by the Summer Flounder Monitoring Committee are available from Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790. Comments on the proposed specifications should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

Section 625.20 of the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP) specifies the process for setting annual management measures in order to achieve the fishing mortality rates (F) specified in the FMP. The schedule established by Amendment 2 to the FMP set a target F of 0.53 for 1993–95, and 0.23 (F_{max}) for 1996 and beyond. However, stock assessment data indicated that the quota associated with an F of 0.23 in 1996 would represent a more than 50 percent drop from the 1995 quota. This reduction would have had significant negative impacts on industry. The Council responded by submitting Amendment 7 on August 5, 1995, to revise the F reduction schedule. The amendment moderated the negative impacts on industry of the previous rebuilding schedule, while still maintaining the FMP's stock rebuilding strategy. The revised schedule is 0.41 in 1996, 0.3 in 1997, and 0.23 (F_{max}) in 1998 and beyond. In addition, the quota for 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), unless that quota had an associated F of 0.23. Amendment 7 was approved on November 7, 1995.

The regulations at 50 CFR part 625 establish a Summer Flounder Monitoring Committee (Monitoring Committee) consisting of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council (Council), the New England Fishery Management Council, and NMFS, which recommends an annual commercial catch quota and other restrictions to achieve the specified F. The Monitoring Committee recommends annual measures after reviewing the following information: (1) Commercial and recreational catch data, (2) estimates of fishing mortality, (3) stock status, (4) estimates of recruitment, (5) virtual population analysis (VPA), (6) levels of regulatory noncompliance by fishermen or individual states, (7) impact of fish size and net mesh regulations, (8) impact of gear other than otter trawls on the mortality of summer flounder, and (9) other relevant information.

After reviewing the required information, the Monitoring Committee may recommend, in addition to the coastwide quota, modifications to the commercial minimum fish size, the minimum mesh size and restrictions to gears other than otter trawls.

The Council's Demersal Species Committee considers the recommendations of the Monitoring Committee as well as any public comments, and in turn, makes its recommendation to the full Council.

1996 Recommendations

The annual management measures are based upon stock projections derived from VPA results. This assessment indicates that although fishing mortality rates have declined, the target fishing mortality rates specified in the FMP have not been achieved in any year since plan implementation. The spawning stock biomass (SSB) of fish age 2 and older has increased; fish of these ages represent viable spawners. There was also improved recruitment in 1994, with the 1994 year class estimated at approximately 50 million fish.

Although the stock assessment indicates improvement in the summer flounder stock, the biomass is still comprised of mostly young fish, with only 26 percent of the total SSB older than age 3 in 1995. Under equilibrium conditions and a fishing mortality rate of 0.23, approximately 77 percent of the SSB would be age 3 and older.

The Monitoring Committee recommended a coastwide quota of 18.51 million lb (8.4 million kg). This quota would result in an allocation of 11.11 million lb (5.04 million kg) for the commercial quota and 7.4 million lb (3.36 million kg) for the recreational harvest limit. The Monitoring Committee determined, after a review of projections, that it was virtually impossible to recommend a higher quota, because it could not achieve the F level of 0.23 required by the FMP.

The Monitoring Committee recommendation was adopted by the Demersal Committee and the Council at its meeting September 20–21, 1995. The Director, Northeast Region, NMFS (Regional Director) has reviewed these recommendations and has determined that they are necessary to assure that the fishing mortality rates specified in § 625.20 are not exceeded. The Regional Director is seeking public comments on these proposed specifications: (1) A coastwide harvest limit of 18.51 million lb (8.4 million kg), (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg), (3) a coastwide recreational harvest limit of 7.4 million lb (3.36 million kg), (4) no change from the present minimum commercial fish size of 13 inches (33 cm), and (5) no change in the present minimum mesh restriction of 5½ inch diamond (14.0 cm) or 6 inch square (15.2 cm).

If these proposed specifications are approved, the commercial quota allocated to each state according to percentage shares specified in § 625.20(d)(1), would be the amounts depicted in Table 1 below. (These state allocations do not reflect the adjustments required under § 625.20 if 1994 landings exceed the quota for any state. Allocation adjustments will be published in the Federal Register if such adjustments are necessary.)

TABLE 1.—1996 STATE COMMERCIAL QUOTAS (PROPOSED)

State	Share (%)	1996 quota (lb)	1996 quota (kg)
ME	0.04756	5,282	2,396
NH	0.00046	51	23
MA	6.82046	757,480	343,587
RI	15.68298	1,741,752	790,045
CT	2.25708	250,671	113,702
NY	7.64699	849,275	385,225
NJ	16.72499	1,857,477	842,537

TABLE 1.—1996 STATE COMMERCIAL QUOTAS (PROPOSED)—Continued

State	Share (%)	1996 quota (lb)	1996 quota (kg)
DE	0.01779	1,976	896
MD	2.03910	226,462	102,721
VA	21.31676	2,367,439	1,073,852
NC	27.44584	3,048,135	1,382,611

The FMP calls for proposed specifications of the commercial quota, recreational harvest limit, and additional measures for the commercial fishery, to be published in the Federal Register by October 15. However, due to the timing of the Council meeting (September 20–21) during which the recommendations were made, publication of the specifications was delayed.

Classification

This action is authorized by 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: November 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–28922 Filed 11–21–95; 4:45 pm]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 60, No. 228
Tuesday, November 28, 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 COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Meeting Change

Federal Register citation of previous announcement: p. 56978, November 13, 1995.

Previously announced time of meeting: 2:00 p.m., December 7, 1995.

New time of meeting: 2:00 p.m., January 12, 1996, Room 4830.

Dated: November 22, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–29059 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DT–M

Sensors Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held December 14, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Old and new business.

Executive Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA—Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 21, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–29063 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 74–95]

Foreign-Trade Zone 83—Huntsville, AL; Request for Manufacturing Authority, Cummins/Onan Engine Company, Inc. (Internal-Combustion Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority, grantee of FTZ 83, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Cummins/Onan Engine Company, Inc. (COECI), to manufacture small internal combustion engines under zone procedures for the U.S. market and export within FTZ 83. It was formally filed on November 13, 1995.

COECI operates a facility within FTZ 83 that manufactures gasoline spark-ignition engines (up to 1,000 cc in size) and diesel engines (up to 2,800 cc) for golf carts, all-terrain vehicles, portable generators; and, farm, lawn, and garden equipment (HTS #8407.32.10–.33.30, 8408.20.10, 8408.90.90). Certain components are sourced from abroad (up to 95% of finished product value at the outset), including: crankcases, cylinder heads, manifolds, crankshafts, carburetors, connecting rods, pumps, valves, bearings, fasteners, speed changers, ignition coils, inductors, magnetos and other ignition components, hoses, and other related parts (1995 duty rate range: duty free-12.5%). The application indicates that 60 percent of all parts (by value) will be purchased from U.S. suppliers within three years of approval of subzone status.

Zone procedures would exempt COECI from Customs duty payments on the foreign components used in export production. On its domestic sales, COECI would be able to choose the duty rates that apply to finished engines (duty free, 3.0%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

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

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 28, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 12, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room

3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 20, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–29068 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 75–95]

Foreign-Trade Zone 99, Wilmington, Delaware; Proposed Foreign-Trade Subzone; Star Enterprise (Oil Refinery Complex); Delaware City, DE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Delaware Economic Development Office on behalf of the State of Delaware, grantee of FTZ 99, requesting special-purpose subzone status for the oil refinery complex of Star Enterprise (general partnership between Texaco Refining and Marketing (East), Inc. and Saudi Refining, Inc.), located in Delaware City, Delaware. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 13, 1995.

The refinery complex (1,800 acres) consists of a main refinery/petrochemical plant, storage tanks and a marine terminal, located at the intersection of Rte. 9 and Rte. 72 on the Delaware River in Newcastle County (Delaware City area), Delaware, some 35 miles south of Philadelphia.

The refinery (140,000 barrels per day; 652 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, distillates and naphthas. Petrochemicals include propane and butane, and refinery by-products include sulfur and petroleum coke. All of the crude oil (93 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢ barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 12, 1996).

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

U.S. Department of Commerce District Office, 660 American Avenue, Suite 201, King of Prussia, Pennsylvania 19406

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

Dated: November 20, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–29069 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 784]

Approval of Manufacturing Activity Within Foreign-Trade Zone 119, Minneapolis, MN; Tetra Rex Packaging Systems, Inc. (Liquid Food Products Packaging Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Tetra Rex Packaging Systems, Inc., to manufacture liquid food products packaging equipment under zone procedures within FTZ 119, Minneapolis, Minnesota (filed 4–12–95, FTZ Docket A(32b1)–5–95; Doc. 64–95, assigned 10–24–95);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed zone benefits do not involve the election of nonprivileged foreign status on items involving inverted tariff benefits (§ 400.32(b)(1)(iii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and subject to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on all foreign-origin merchandise admitted to the zone for the Tetra Rex Packaging Systems, Inc., operation, as indicated in the request.

Signed at Washington, DC, this 13th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–29070 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 785]

Revision of Grant of Authority, Subzone 84J; Shell Oil Co., (Oil Refinery), Harris County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the oil refinery of Shell Oil Company in Harris County (Houston area), Texas, in 1993 (Subzone 84J), Board Order 669, 50 FR 68116, 12/23/93);

Whereas, the Port of Houston Authority, grantee of FTZ 84, has requested, pursuant to § 400.32(b)(1)(i), a revision (filed 9/13/95, A(32b1)–17–95; FTZ Doc. 65–95, assigned 10/25/95) of the grant of authority for FTZ Subzone 84J which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for

Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 669 is revised to include the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 13th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–29071 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on July 31, 1995, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–570–101

The People's Republic of China.

Greige Polyester/Cotton Printcloth.

Objection Date: September 28, 1995.

Objector: American Textile Manufacturers Institute.

Contact: Zev Primor at (202) 482–4114.

Dated: November 8, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–29067 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of an antidumping duty order with a February anniversary date. In accordance with 19 CFR 353.33(h) (1995), we are initiating this administrative review.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (the Act), and in accordance with 19 CFR 353.22(h) (1995), for a new shipper review of the antidumping duty order on stainless steel bar from India, which has a February anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
India: Stainless Steel Bar A–533–810:	
Akai Asian	02/01/95–07/31/95
Viraj	02/01/95–07/31/95

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 353.22(h)(4) (1995).

Interested parties must submit applications for disclosure under

administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: November 20, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–29066 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews, Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 10, 1995, Gulf States Tube Division filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination made by the Secretariat de Comercio y Fomento Industrial, in the administrative review respecting Seamless Commercial Steel Tubes from the United States of America. This determination was published in the *Diario Oficial de la Federacion* on October 11, 1995. The NAFTA Secretariat has assigned Case Number MEX–95–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determination in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 10, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 11, 1995);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 26, 1995); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints files in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 21, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–29065 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–GT–M

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 17, 1995 Savannah Foods and Industries Ltd. filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final dumping determination review made by the Deputy Minister of National Revenue for Customs and Excise respecting Refined Sugar, Refined From Sugar Cane or Sugar Beets, in Granulated, Liquid and Powdered Form, originating in or Exported From the United States of America. This determination was published in the *Canada Gazette* on October 28, 1995 (Part I, Volume 129, No. 43, page 3692). The NAFTA Secretariat has assigned Case Number CDA–95–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (2202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 17, 1995, requesting panel review of the final dumping duty review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 18, 1995);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline

for filing a Notice of Appearance is January 2, 1995); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 22, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–29064 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 111495B]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on December 7, 1995, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Days Inn Philadelphia Airport, 4101 Island Avenue, Philadelphia, PA 19153; telephone: (215) 492–0400.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to recommend the summer flounder recreational limits for 1996.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674–2331 at least 5 days prior to the meeting date.

Dated: November 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29062 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110995D]

North Pacific Fishery Management Council; Committee Meetings

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

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet the week of December 4, 1995, in Anchorage, AK. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions and meetings of the Council's Nominating Committee to discuss personnel matters.

DATES: The Advisory Panel (AP) and Scientific and Statistical Committee (SSC) meetings will begin at 8:00 a.m. on December 4, 1995, and continue through December 6. The Council meeting will begin at 8:00 a.m. on December 6, 1995, and continue through December 10.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the Council meeting will include the following subjects.

1. Reports on recent fisheries activities from NMFS, Alaska Department of Fish and Game, U.S. Coast Guard, and NMFS Enforcement.
2. Council appointments to the AP, SSC, and Pacific Northwest Industry Advisory Committee.
3. Final action on a catch-sharing plan for International Pacific Halibut Commission Area 4 halibut allocations.
4. Initial review of an amendment to the halibut and sablefish Individual Fishery Quota (IFQ) plan to allow the use of large boat IFQs for smaller vessel size classes.
5. Discussion of analytical outline for plan amendments to the groundfish fishery management plans to improve retention and utilization of the resource.
6. Review of an analytical outline for future amendment for individual bycatch quotas in the groundfish fisheries.
7. Review and discussion of the North Pacific Fisheries Research Plan and final decision on the fee program.
8. Approve final Stock Assessment and Fishery Evaluation documents for the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) 1996 groundfish fisheries and set final harvest specifications for the 1996 BSAI and GOA groundfish fisheries, including bycatch specifications and halibut discard mortality rates.
9. Report on groundfish management by the State of Alaska.
10. Final review of revisions to the rebuilding plan for Pacific ocean perch in the GOA.
11. Initial review of trimester allocations of pollock in the GOA.
12. Structure alternatives for Pacific cod gear allocation amendment.
13. Review staff tasking.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29061 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110995C]

North Pacific Fishery Management Council; Plan Team Teleconference

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

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council's Crab Plan Team (Team) will meet by teleconference.

DATES: The meeting will be held on December 14, 1995, beginning at 1:00 p.m. Alaska Time.

ADDRESSES: The meeting location is 605 W. 4th Avenue, Suite 306, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W.

4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects:

1. Review a draft Environmental Assessment/Regulatory Impact Review document to allow increased flexibility in the apportionment of Tanner crab prohibited species catch among bycatch limitation zones.
2. Develop Team policy guidelines.
3. Review subcommittee recommendations on revisions to draft crab fishery management plan.
4. Approve minutes from previous meeting.
5. Discuss addition of economist to Team.

Special Accommodations

This meeting is being held by teleconference. Members of the public interested in listening in should contact Helen Allen at the Council office (see **ADDRESSES**) at least 5 working days prior to the teleconference to make arrangements. Any public listening site arranged will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to Helen Allen.

Dated: November 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29060 Filed 11–27–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Cancellation of Hearings and Cancellation of Request for Comments on Issues Relating to Patent Protection for Nucleic Acid Sequences

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of cancellation of hearings and cancellation of request for comments.

SUMMARY: On November 14, 1995 (60 FR 57223), the Patent and Trademark Office announced that it was holding public hearings and requesting written comments on issues relating to patent protection for nucleic acid sequences. The announced public hearings and request for comments are now cancelled.

FOR FURTHER INFORMATION CONTACT: Esther Kepplinger by telephone at (703) 306–2714, by facsimile transmission to (703) 308–6879, by electronic mail at ''ekepplin@uspto.gov'', or by mail marked to her attention addressed to the Assistant Commissioner of Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The public hearing that was to be held on November 29, 1995 at the University of California, San Diego, The Mandeville Auditorium/Recital Hall, Muir Campus, La Jolla, California, and the public hearing that was to be held December 7, 1995 in Suite 912, Commissioner's Conference Room, Crystal Park Building No. 2, 2121 Crystal Drive, Arlington, Virginia, have been cancelled. In addition, the request for comments announced November 14, 1995 (60 FR 57223) is also cancelled.

Dated: November 22, 1995.

Lawrence J. Goffney, Jr.,

Acting Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 95–29101 Filed 11–22–95; 4:37 pm]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Reauthorization of the National and Community Service Act of 1990, as Amended, and the Domestic Volunteer Service Act of 1973, as Amended

AGENCY: Corporation for National and Community Service.

ACTION: Request for public comment—extension of deadline for submission of public comments.

SUMMARY: To ensure participation by the greatest number of interested parties, the Corporation for National and Community Service extends the deadline for submission of written comments from the public regarding the reauthorization of the Corporation and of programs implemented under the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993, 42 U.S.C. 12501 *et seq.*, and the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq.* The statutory authorization for the Corporation and its programs expires on September 30, 1996. However, the reauthorization process has already begun and issues are currently being discussed. In order to contribute in a timely manner to Congressional reauthorization discussions, the Corporation is reviewing its statutory provisions and programs. To ensure an opportunity for public participation, the Corporation invites public comments. As Congress may hold hearings on the reauthorization of the Corporation and its programs as early as the mid- or late-December of 1995, the Corporation encourages the public to submit written comments as soon as possible.

DATES: Only written comments will be considered. Comments must be submitted on or before January 15, 1996.

ADDRESSES: Comments should be addressed to Terry Russell, General Counsel, Corporation for National Service, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Myung J. Lee, Associate General Counsel, Corporation for National Service, 1201 New York Avenue, NW., Washington, DC 20525. Telephone: (202) 606–5000, ext. 548.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs by achieving direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, the Corporation makes grants to States, subdivisions of States, Indian tribes, U.S. Territories, public or private nonprofit organizations, Federal agencies and institutions of higher education to carry out service programs as part of AmeriCorps* National, AmeriCorps* State, Learn and Serve America (School and Community Based and Higher Education), or AmeriCorps* NCCC (National Civilian Community Corps).

The Corporation also oversees programs implemented under the Domestic Volunteer Service Act of 1973, as amended, including AmeriCorps* VISTA (Volunteers in Service to America) and National Senior Service Corps (Retired Seniors Volunteer Program (RSVP), Senior Companions, and Foster Grandparents) programs.

Listed below are some of the issues that have been raised in anticipation of reauthorization by both critics and supporters of the Corporation and its programs. Please note that the following list is not exhaustive and comments do not have to be restricted to these issues:

1. Ethic of service—Beyond the programs of Learn and Serve, AmeriCorps, and National Senior

Service Corps, what can the Corporation do to further the mission, vision, and goals that engage Americans of all ages and backgrounds in community-based service?

2. Price of national service—How can we deliver national service in a way that costs less but that is as, or more, effective? For instance, for AmeriCorps programs, think in light of common aspects such as direct service, living allowance and benefits, education award, diversity, community-driven partnerships, non-federal match, and national identity.

3. Increasing the non-federal share of the budget—What functions and activities might be the most attractive to outside funders? What kinds of incentives might be necessary? What is a realistic time table for increasing the percentage of funds from the private and independent sectors?

4. Corporation structure—What is an effective and efficient field structure? What are the appropriate roles for state commissions and the Corporation, including the state offices?

5. Politicization—How can we guard against the politicization of national service? Are there any aspects of current Corporation programs and practices that create a perception of politicization?

6. Partnership relations—What products, assistance, information do you need from the Corporation? What services would make the partnerships more effective?

In order to contribute in a timely manner to the discussions concerning the reauthorization of the Corporation and its programs, the Corporation invites public commentary on any aspect of the Corporation for National Service, its policies, and its programs, including the issues presented above. Specific statutory references are preferred, but are not necessary to the submission of comments. All comments will be considered but the Corporation will not be able to reply individually to each submitter.

Dated: November 22, 1995.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 95–29045 Filed 11–27–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Military Training in the Territory of Guam and Islands of Rota, Tinian, and Farallon de Medinilla, Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Pacific Command, DOD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Pacific Command announces its intent to prepare an Environmental Impact Statement (EIS) for proposed military training in the Territory of Guam on the Islands of Rota, Tinian, and Farallon de Medinilla, Commonwealth of the Northern Mariana Islands (CNMI).

The actions to be covered in the EIS consist of training activities required to maintain military combat readiness. The EIS will analyze reasonable alternatives to meet this objective and assess their separate and cumulative environmental impacts. The U.S. Pacific Command will initiate a scoping process to identify significant related issues for study in the EIS and to identify and notify parties interested in and affected by the EIS.

The meetings will open with a short presentation of the purpose of the proposed action and alternatives to be evaluated, followed by a period for public comment. It is important that interested agencies, individuals, and organizations take this opportunity to identify environmental concerns that should be addressed in the EIS. To allow time for all views to be shared, each speaker will be limited to five minutes for oral comments.

Interested parties are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. Scoping comments should clearly describe specific issues or topics that the EIS should address.

DATES: Three public scoping meetings will be held.

Guam: December 4, 1995, 7–10 pm.
Rota: December 6, 1995, 7–10 pm.
Tinian: December 7, 1995, 7–10 pm.

ADDRESSES: The scoping meetings will be held in the following locations:

Agaña, Guam: Governor's Cabinet Room, Adelup Complex.
Sing Song Village, Rota, CNMI: The Round House.
San Jose, Tinian, CNMI: Tinian School Cafeteria.

FOR FURTHER INFORMATION CONTACT: Written statements and/or questions regarding the scoping process should be mailed no later than December 22, 1995 to Mr. Fred Minato (Code 238), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300; telephone (808) 471–9338; fax (808) 474–4890.

SUPPLEMENTARY INFORMATION: The proposed action consists of future military training activities in Guam and CNMI within existing military installations, public lands, and waters, including large-scale joint military exercises. Training will involve organizations from the U.S. Army, U.S. Marine Corps, U.S. Navy, U.S. Air Force, U.S. Army Reserve, Guam Army National Guard, and allied nations. Federal and Guamanian law enforcement agencies also train on these lands. The proposed training will take place on Tinian, primarily in the Military Lease Area, on Rota, primarily at Sand Island and the public airport, and on Guam, primarily at Andersen Air Force Base, Naval Activities Guam Ordnance Annex, and Apra Harbor. The proposed action also includes continued use of the island of Farallon de Medinilla for naval gunfire training and aerial bombardment.

Proposed training activities include tactical maneuver on foot and by wheeled and tracked vehicles, beach landings with boats, air-cushioned landing craft, and tracked amphibian vehicles, paradrops, fixed- and rotary-wing aircraft operations, underwater explosive ordnance training, military weapons and munitions training, and various logistical support activities.

Alternatives consist of: (1) The no action alternative, (2) the limited training activities alternative, (3) the proposed training activities alternative, and (4) alternate training locations. The ''no action'' alternative consists of continuing present training activities under present conditions, with no adjustment to planned future military needs. The ''limited training activities'' alternative consists of a sub-set of proposed training activities, based on constraints including the limitation of certain activities to avoid significant impacts to the environment. The ''proposed training activities'' alternative consists of implementing all proposed activities at the designated training locations. The use of alternate training locations is not applicable to this project.

Environmental issues to be addressed will include, but not be limited to,

effects on cultural resources, terrestrial and aquatic habitats, threatened or endangered species, water quality, infrastructure, traffic, noise, and socioeconomic environment. Direct, indirect, and cumulative impacts will be analyzed, and mitigation measures will be developed as required.

Dated: November 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–29003 Filed 11–27–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Privacy Act of 1974; Amend and Delete Systems of Records.

AGENCY: Department of the Air Force, DOD.

ACTION: Amend and delete systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend two systems of records notices in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective November 28, 1995. The amendments will be effective on December 28, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Assistant Air Force Access Programs Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The deletion and amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records notices are set forth below followed by the systems notices, as amended, published in their entirety.

Dated: November 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

F168 ACC A

SYSTEM NAME:

Physician Retention Program *(March 11, 1993, 58 FR 13460).*

Reason: System is no longer needed and was discontinued in 1993. There are no plans to reinstate this system in the future. Records maintained in the system have been destroyed.

* * * * *

AMENDMENT

F050 ACC B

SYSTEM NAME:

Instructional Systems Development (ISD) Evaluation *(March 11, 1993, 58 FR 13454).*

CHANGES:

SYSTEM NAME:

Delete entry and replace with 'Operations Training Development Evaluation'.

SYSTEM LOCATION:

Delete entry and replace with 'Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Air Combat Command aircrew members, pilots, copilots, navigators, radar navigators, electronic warfare officers, who are attending, or have attended a course of instruction conducted by the 11 Bomb Squadron, Barksdale Air Force Base, LA 7110–3000.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Computerized information file compiled from questionnaires about training accomplished while attending a course of instruction; to include the responder's name, Social Security Number, base of assignment and subjective assessment of the training received.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; Air Force Manual 36–92234, Instructional Systems Development; Air Combat Command Instruction 36–92250, Operations Training Development Program, and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

Requests to determine existence of record should include full name, and grade, Social Security Number and approximate dates individual attended a course of instruction.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

Requests should include full name, and grade, Social Security Number and approximate dates individual attended a course of instruction.'

* * * * *

F050 ACC B

SYSTEM NAME:

Operations Training Development Evaluation.

SYSTEM LOCATION:

Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Combat Command aircrew members, pilots, copilots, navigators, radar navigators, electronic warfare officers, who are attending, or have attended a course of instruction conducted by the 11 Bomb Squadron, Barksdale Air Force Base, LA 7110–3000.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized information file compiled from questionnaires about training accomplished while attending a course of instruction; to include the responder's name, Social Security Number, base of assignment and subjective assessment of the training received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; Air Force Manual 36–92234, Instructional Systems Development; Air Combat Command Instruction 36–92250, Operations Training Development Program, and E.O. 9397.

PURPOSE(S):

Used to tabulate and compare data; and to identify strengths and weaknesses of the training programs. Will also be used to score trainee within-course test performances. Identification of specific responders in the records will only be used by the custodian to evaluate and assess quality of Air Force Training Programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and in computers and on computer products.

RETRIEVABILITY:

Retrieved by Social Security Number. Information may also be retrieved by groupings of data from such elements as type airframe, course attended, crew position, or base of assignment.

SAFEGUARDS:

Records are accessed by custodian of the record system and personnel responsible for servicing the record system in performance of their official duties. Records are stored on diskettes kept in a locked room whenever office is not manned. Original questionnaire responses will be maintained in a locked container when the office is not manned.

RETENTION AND DISPOSAL:

Paper records are destroyed by tearing into pieces, shredding, burning, macerating, or pulping, and diskettes will be destroyed by degaussing, when superseded or when the individual is reassigned from Air Combat Command.

SYSTEM MANAGER(S) AND ADDRESS:

Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the: Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

Requests to determine existence of record should include full name, and grade, Social Security Number and approximate dates individual attended a course of instruction.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Education Training Officer, Detachment 13, Air Combat Command Training Support Squadron, 41 Orville Wright Avenue, Suite 001, Barksdale Air Force Base, LA 7110–3000.

Requests should include full name, and grade, Social Security Number and approximate dates individual attended a course of instruction.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from questionnaires completed by students, graduates or Flight Instructors, and current combat crew training instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F900 ACC A

SYSTEM NAME:

Special Awards File *(March 11, 1993, 58 FR 13462).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.'

* * * * *

AUTHORITY FOR MAINTAINING THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by and 8074, Commands: Territorial organization.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.'

* * * * *

F900 ACC A

SYSTEM NAME:

Special Awards File *(March 11, 1993, 58 FR 13461).*

SYSTEM LOCATION:

Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, civilian employees and retired Air Force officers who are or were formerly assigned to Air Combat Command (ACC), formerly Tactical Air Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical file containing limited award and biographical data on command personnel where awards have

been approved and may be used for reference in future. File is informational in nature and action does not result therefrom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by and 8074, Commands: Territorial organization.

PURPOSE(S):

Used by Command Awards Branch for reference.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Personnel, Headquarters Air Combat Command, 114 Douglas Street, Suite 214, Langley Air Force Base, VA 23665–2773.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–29004 Filed 11–27–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, West Point, New York.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with Section 10(a)(20) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 7 December 1995.

Place of Meeting: Russell Senate Office Building, Room 412, Washington, D.C.

Start Time of Meeting: 9:00 a.m.

Proposed Agenda: Preparation of Report to President; Commandant's Assessment of the Corps of Cadets, Report on Enhancing Teaching and Performance at USMA. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John J. Luther, United States Military Academy, West Point, NY 10996–5000, (914) 938–5870.

SUPPLEMENTARY INFORMATION: Please note that the Board of Visitors, United States Military Academy Meeting previously announced for 17 November at West Point, New York, was canceled due to the government shutdown.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28950 Filed 11–27–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

AGENCIES: Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Natural Resources Conservation Service, Agriculture; Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers (Corps), Environmental Protection Agency (EPA), National Resources Conservation Service (NRCS), Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are issuing final policy guidance regarding the establishment, use and operation of mitigation banks for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. The purpose of this guidance is to clarify the manner in which mitigation banks may be used to satisfy mitigation requirements of the Clean Water Act (CWA) Section 404 permit program and the wetland conservation provisions of the Food Security Act (FSA) (i.e., ''Swampbuster'' provisions). Recognizing the potential benefits mitigation banking offers for streamlining the permit evaluation process and providing more effective mitigation for authorized impacts to wetlands, the agencies encourage the establishment and appropriate use of mitigation banks in the Section 404 and ''Swampbuster'' programs.

DATES: The effective date of this Memorandum to the Field is December 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning (Corps) at (202) 761–

1781; Mr. Thomas Kelsch (EPA) at (202) 260–8795; Ms. Sandra Byrd (NRCS) at (202) 690–3501; Mr. Mark Miller (FWS) at (703) 358–2183; Ms. Susan-Marie Stedman (NMFS) at (301) 713–2325.

SUPPLEMENTARY INFORMATION: Mitigating the environmental impacts of necessary development actions on the Nation's wetlands and other aquatic resources is a central premise of Federal wetlands programs. The CWA Section 404 permit program relies on the use of compensatory mitigation to offset unavoidable damage to wetlands and other aquatic resources through, for example, the restoration or creation of wetlands. Under the ''Swampbuster'' provisions of the FSA, farmers are required to provide mitigation to offset certain conversions of wetlands for agricultural purposes in order to maintain their program eligibility.

Mitigation banking has been defined as wetland restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial. It typically involves the consolidation of small, fragmented wetland mitigation projects into one large contiguous site. Units of restored, created, enhanced or preserved wetlands are expressed as ''credits'' which may subsequently be withdrawn to offset ''debits'' incurred at a project development site.

Ideally, mitigation banks are constructed and functioning in advance of development impacts, and are seen as a way of reducing uncertainty in the CWA Section 404 permit program or the FSA ''Swampbuster'' program by having established compensatory mitigation credit available to an applicant. By consolidating compensation requirements, banks can more effectively replace lost wetland functions within a watershed, as well as provide economies of scale relating to the planning, implementation, monitoring and management of mitigation projects.

On August 23, 1993, the Clinton Administration released a comprehensive package of improvements to Federal wetlands programs which included support for the use of mitigation banks. At that same time, EPA and the Department of the Army issued interim guidance clarifying the role of mitigation banks in the Section 404 permit program and providing general guidelines for their establishment and use. In that document it was acknowledged that additional guidance would be developed, as necessary, following completion of the first phase of the Corps Institute for Water Resources national study on mitigation banking.

The Corps, EPA, NRCS, FWS and NMFS provided notice [60 FR 12286; March 6, 1995] of a proposed guidance on the policy of the Federal government regarding the establishment, use and operation of mitigation banks. The proposed guidance was based, in part, on the experiences to date with mitigation banking, as well as other environmental, economic and institutional issues identified through the Corps national study. Over 130 comments were received on the proposed guidance. The final guidance is based on full and thorough consideration of the public comments received.

A majority of the letters received supported the proposed guidance in general, but suggested modifications to one or more parts of the proposal. In response to these comments, several changes have been made to further clarify the provisions and make other modifications, as necessary, to ensure effective establishment and use of mitigation banks. One key issue on which the agencies received numerous comments focused on the timing of credit withdrawal. In order to provide additional clarification of the changes made to the final guidance in response to comments, the agencies wish to emphasize that it is our intent to ensure that decisions to allow credits to be withdrawn from a mitigation bank in advance of bank maturity be make on a case-by-case basis to best reflect the particular ecological and economic circumstances of each bank. The percentage of advance credits permitted for a particular bank may be higher or lower than the 15 percent example included in the proposed guidance. The final guidance is being revised to eliminate the reference to a specific percentage in order to provide needed flexibility. Copies of the comments and the agencies' response to significant comments are available for public review. Interested parties should contact the agency representatives for additional information.

This guidance does not change the substantive requirements of the Section 404 permit program or the FSA ''Swampbuster'' program. Rather, it interprets and provides internal guidance and procedures to the agency field personnel for the establishment, use and operation of mitigation banks consistent with existing regulations and policies of each program. The policies set out in this document are not final agency action, but are intended solely as guidance. The guidance is not intended, not can it be relied upon, to create any rights enforceable by any party in litigation with the United States. The guidance does not establish or affect legal rights or obligations, establish a binding norm on any party and it is not finally determinative of the issues addressed. Any regulatory decisions made by the agencies in any particular matter addressed by this guidance will be made by applying the governing law and regulations to the relevant facts. The purpose of the document is to provide policy and technical guidance to encourage the effective use of mitigation banks as a means of compensating for the authorized loss of wetlands and other aquatic resources.

John H. Zirschky,

Acting Assistant Secretary (Civil Works), Department of the Army.

Robert Perciasepe,

Assistant Administrator for Water, Environmental Protection Agency.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment, Department of Agriculture.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere, Department of Commerce.

Memorandum to the Field

Subject: Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

I. Introduction

A. Purpose and Scope of Guidance

This document provides policy guidance for the establishment, use and operation of mitigation banks for the purpose of providing compensatory mitigation for authorized adverse impacts to wetlands and other aquatic resources. This guidance is provided expressly to assist Federal personnel, bank sponsors, and others in meeting the requirements of Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act, the wetland conservation provisions of the Food Security Act (FS) (i.e., ''Swampbuster''), and other applicable Federal statutes and regulations. The policies and procedures discussed herein are consistent with current requirements of the Section 10/404 regulatory program and ''Swampbuster'' provisions and are intended only to clarify the applicability of existing requirements to mitigation banking.

The policies and procedures discussed herein are applicable to the establishment, use and operation of public mitigation banks, as well as privately-sponsored mitigation banks, including third party banks (e.g. entrepreneurial banks).

B. Background

For purposes of this guidance, mitigation banking means the restoration, creation, enhancement and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

The objective of a mitigation bank is to provide for the replacement of the chemical, physical and biological functions of wetlands and other aquatic resources which are lost as a result of authorized impacts. Using appropriate methods, the newly established functions are quantified as mitigation ''credits'' which are available for use by the bank sponsor or by other parties to compensate for adverse impacts (i.e., ''debits''). Consistent with mitigation policies established under the Council on Environmental Quality Implementing Regulations (CEQ regulations) (40 CFR Part 1508.20), and the Section 404(b)(1) Guidelines (Guidelines) (40 CFR Part 230), the use of credits may only be authorized for purposes of complying with Section 10/404 when adverse impacts are unavoidable. In addition, for both the Section 10/404 and ''Swampbuster'' programs, credits may only be authorized when on-site compensation is either not practicable or use of a mitigation bank is environmentally preferable to on-site compensation. Prospective bank sponsors should not construe or anticipate participation in the establishment of a mitigation bank as ultimate authorization for specific projects, as excepting such projects from any applicable requirements, or as preauthorizing the use of credits from that bank for any particular project.

Mitigation banks provide greater flexibility to applicants needing to comply with mitigation requirements and can have several advantages over individual mitigation projects, some of which are listed below:

1. It may be more advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation into a single large parcel or contiguous parcels when ecologically appropriate;

2. Establishment of a mitigation bank can bring together financial resources, planning and scientific expertise not practicable to many project-specific compensatory mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation that maximizes opportunities for contributing to biodiversity and/or watershed function;

3. Use of mitigation banks may reduce permit processing times and provide more cost-effective compensatory mitigation opportunities for projects that qualify;

4. Compensatory mitigation is typically implemented and functioning in advance of project impacts, thereby reducing temporal losses of aquatic functions and uncertainty over whether the mitigation will be successful in offsetting project impacts;

5. Consolidation of compensatory mitigation within a mitigation bank increases the efficiency of limited agency resources in the review and compliance monitoring of mitigation projects, and thus improves the reliability of efforts to restore, create or enhance wetlands for mitigation purposes.

6. The existence of mitigation banks can contribute towards attainment of the goal for no overall net loss of the Nation's wetlands by providing opportunities to compensate for authorized impacts when mitigation might not otherwise be appropriate or practicable.

II. Policy Considerations

The following policy considerations provide general guidance for the establishment, use and operation of mitigation banks. It is the agencies' intent that this guidance be applied to mitigation bank proposals submitted for approval on or after the effective date of this guidance and to those in early stages of planning or development. It is not intended that this policy be retroactive for mitigation banks that have already received agency approval. While it is recognized that individual mitigation banking proposals may vary, it is the intent of this guidance that the fundamental precepts be applicable to future mitigation banks.

For the purposes of Section 10/104, and consistent with the CEQ regulations, the Guidelines, and the Memorandum of Agreement Between the Environmental Protection Agency (EPA) and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. Compensatory mitigation, under Section 10/404, is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts. A site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources is a mitigation bank.

A. Authorities

This guidance is established in accordance with the following statutes, regulations, and policies. It is intended to clarify provisions within these existing authorities and does to establish any new requirements.

1. Clean Water Act Section 404 (33 U.S.C. 1344).

2. Rivers and Harbors Act of 1899 Section 10 (33 U.S.C. 403 *et seq.*)

3. Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR Part 230). Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

4. Department of the Army, Section 404 Permit Regulations (33 CFR Parts 320–330). Policies for evaluating permit applications to discharge dredged or fill material.

5. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (February 6, 1990).

6. Title XII Food Security Act of 1985 as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 3801 *et seq.*).

7. National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), including the Council on Environmental Quality's implementing regulations (40 CFR Parts 1500–1508).

8. Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

9. Fish and Wildlife Service Mitigation Policy (46 FR pages 7644–7663, 1981).

10. Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

11. National Marine Fisheries Service Habitat Conservation Policy (48 FR pages 53142–53147, 1983).

The policies set out in this document are not final agency action, but are intended solely as guidance. The guidance is not intended, nor can it be relied upon, to create any rights

enforceable by any party in litigation with the United States. This guidance does not establish or affect legal rights or obligations, establish a binding norm on any party and it is not finally determinative of the issues addressed. Any regulatory decisions made by the agencies in any particular matter addressed by this guidance will be made by applying the governing law and regulations to the relevant facts.

B. Planning Considerations

1. Goal Setting

The overall goal of a mitigation bank is to provide economically efficient and flexible mitigation opportunities, while fully compensating for wetland and other aquatic resource losses in a manner that contributes to the long-term ecological functioning of the watershed within which the bank is to be located. The goal will include the need to replace essential aquatic functions which are anticipated to be lost through authorized activities within the bank's service area. In some cases, banks may also be used to address other resource objectives that have been identified in a watershed management plan or other resource assessment. It is desirable to set the particular objectives for a mitigation bank (i.e., the type and character of wetlands and/or aquatic resources to be established) in advance of site selection. The goal and objectives should be driven by the anticipated mitigation need; the site selected should support achieving the goal and objectives.

2. Site Selection

The agencies will give careful consideration to the ecological suitability of a site for achieving the goal and objectives of a bank, i.e., that it posses the physical, chemical and biological characteristics to support establishment of the desired aquatic resources and functions. Size and location of the site relative to other ecological features, hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses and watershed management plans are important factors for consideration. It also is important that ecologically significant aquatic or upland resources (e.g., shallow sub-tidal habitat, mature forests), cultural sites, or habitat for Federally or State-listed threatened and endangered species are not compromised in the process of establishing a bank. Other significant factors for consideration include, but are not limited to, development trends (i.e., anticipated land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality and floodplain management goals, and the relative potential for chemical contamination of the wetlands and/or other aquatic resources.

Banks may be sited on public or private lands. Cooperative arrangements between public and private entities to use public lands for mitigation banks may be acceptable. In some circumstances, it may be appropriate to site banks on Federal, state, tribal or locally-owned resource management areas (e.g., wildlife management areas, national or state forests, public parks, recreation areas). The siting of banks on such lands may be acceptable if the internal policies of the public agency allow use of its land for such purposes, and the public agency grants approval. Mitigation credits generated by banks of this nature should be based solely on those values in the bank that are supplemental to the public program(s) already planned or in place, that is, baseline values represented by existing or already planned public programs, including preservation value, should not be counted toward bank credits.

Similarly, Federally-funded wetland conservation projects undertaken via separate authority and for other purposes, such as the Wetlands Reserve Program, Farmer's Home Administration fee title transfers or conservation easements, and Partners for Wildlife Program, cannot be used for the purpose of generating credits within a mitigation bank. However, mitigation credit may be given for activities undertaken in conjunction with, but supplemental to, such programs in order to maximize the overall ecological benefit of the conservation project.

3. Technical Feasibility

Mitigation banks should be planned and designed to be self-sustaining over time to the extent possible. The techniques for establishing wetlands and/or other aquatic resources must be carefully selected, since this science is constantly evolving. The restoration of historic or substantially-degraded wetlands and/or other aquatic resources (e.g., prior-converted cropland, farmed wetlands) utilizing proven techniques increases the likelihood of success and typically does not result in the loss of other valuable resources. Thus, restoration should be the first option considered when siting a bank. Because of the difficulty in establishing the correct hydrologic conditions associated with many creation projects and the tradeoff in wetland functions involved with certain enhancement activities, these methods should only be considered where there are adequate assurances to ensure success and that the project will result in an overall environmental benefit.

In general, banks which involve complex hydraulic engineering features and/or questionable water sources (e.g., pumped) are most costly to develop, operate and maintain, and have a higher risk of failure than banks designed to function with little or no human intervention. The former situations should only be considered where there are adequate assurances to ensure success. This guidance recognizes that in some circumstances wetlands must be actively managed to ensure their viability and sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (e.g., to maintain fire-dependent plant communities in the absence of natural fire; to control invasive exotic plant species).

Proposed mitigation techniques should be well-understood and reliable. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements (e.g., financial assurances, contingency plans, additional monitoring requirements) should be in place to increase the likelihood of success. Such arrangements may be phased-out or reduced once the attainment of prescribed performance standards is demonstrated.

4. Role of Preservation

Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the bank.

In addition, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in mitigation banks only in exceptional circumstances, consistent with existing regulations, policies and guidance. Under such circumstances, preservation may be accomplished through the implementation of appropriate legal mechanisms (e.g., transfer of deed, deed restrictions, conservation easement) to protect wetlands and/or other aquatic resources, accompanied by

implementation of appropriate changes in land use or other physical changes as necessary (e.g., installation of restrictive fencing).

Determining whether preservation is appropriate as the sole basis for generating credits at a mitigation bank requires careful judgment regarding a number of factors. Consideration must be given to whether wetlands and/or other aquatic resources proposed for preservation (1) perform physical or biological functions, the preservation of which is important to the region in which the aquatic resources are located, and (2) are under demonstrable threat of loss or substantial degradation due to human activities that might not otherwise be expected to be restricted. The existence of a demonstrable threat will be based on clear evidence of destructive land use changes which are consistent with local and regional land use trends and are not the consequence of actions under the control of the bank sponsor. Wetlands and other aquatic resources restored under the Conservation Reserve Program or similar programs requiring only temporary conservation easements may be eligible for banking credit upon termination of the original easement if the wetlands are provided permanent protection and it would otherwise be expected that the resources would be converted upon termination of the easement. The number of mitigation credits available from a bank that is based solely on preservation should be based on the functions that would otherwise be lost or degraded if the aquatic resources were not preserved, and the timing of such loss or degradation. As such, compensation for aquatic resource impacts will typically require a greater number of acres from a preservation bank than from a bank which is based on restoration, creation or enhancement.

5. Inclusion of Upland Areas

Credit may be given for the inclusion of upland areas occurring within a bank only to the degree that such features increase the overall ecological functioning of the bank. If such features are included as part of a bank, it is important that they receive the same protected status as the rest of the bank and be subject to the same operational procedures and requirements. The presence of upland areas may increase the per-unit value of the aquatic habitat in the bank. Alternatively, limited credit may be given to upland areas protected within the bank to reflect the functions inherently provided by such areas (e.g., nutrient and sediment filtration of stormwater runoff, wildlife habitat diversity) which directly enhance or maintain the integrity of the aquatic ecosystem and that might otherwise be subject to threat of loss or degradation. An appropriate functional assessment methodology should be used to determine the manner and extent to which such features augment the functions of restored, created or enhanced wetlands and/or other aquatic resources.

6. Mitigation Banking and Watershed Planning

Mitigation banks should be planned and developed to address the specific resource needs of a particular watershed. Furthermore, decisions regarding the location, type of wetlands and/or other aquatic resources to be established, and proposed uses of a mitigation bank are most appropriately made within the context of a comprehensive watershed plan. Such watershed planning efforts often identify categories of activities having minimal adverse effects on the aquatic ecosystem and that, therefore, could be authorized under a general permit. In order to reduce the potential cumulative effects of such activities, it may be appropriate to offset these types of impacts through the use of a mitigation bank established in conjunction with a watershed plan.

C. Establishment of Mitigation Banks

1. Prospectus

Prospective bank sponsors should first submit a prospectus to the Army Corps of Engineers (Corps) or Natural Resources Conservation Service (NRCS)[1] to initiate the planning and review process by the appropriate agencies. Prior to submitting a prospectus, bank sponsors are encouraged to discuss their proposal with the appropriate agencies (e.g., pre-application coordination).

It is the intent of the agencies to provide practical comments to the bank sponsors regarding the general need for and technical feasibility of proposed banks. Therefore, bank sponsors are encouraged to include in the prospectus sufficient information concerning the objectives for the bank and how it will be established and operated to allow the agencies to provide such feedback. Formal agency involvement and review is initiated with submittal of a prospectus.

[1] The Corps will typically serve as the lead agency for the establishment of mitigation banks. Bank sponsors proposing establishment of mitigation banks solely for the purpose of complying with the ''Swampbuster'' provisions of FSA should submit their prospectus to the NRCS.

2. Mitigation Banking Instruments

Information provided in the prospectus will serve as the basis for establishing the mitigation banking instrument. All mitigation banks need to have a banking instrument as documentation of agency concurrence on the objectives and administration of the bank. The banking instrument should describe in detail the physical and legal characteristics of the bank, and how the bank will be established and operated. For regional banking programs sponsored by a single entity (e.g., a state transportation agency), it may be appropriate to establish an ''umbrella'' instrument for the establishment and operation of multiple bank sites. In such circumstances, the need for supplemental site-specific information (e.g., individual site plans) should be addressed in the banking instrument. The banking instrument will be signed by the bank sponsor and the concurring regulatory and resource agencies represented on the Mitigation Bank Review Team (section II.C.2). The following information should be addressed, as appropriate, within the banking instrument:

a. Bank goals and objectives;

b. Ownership of bank lands;

c. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion in the bank, including a site plan and specifications;

d. Description of baseline conditions at the bank site;

e. Geographic service area;

f. Wetland classes or other aquatic resource impacts suitable for compensation;

g. Methods for determining credits and debits;

h. accounting procedures;

i. Performance standards for determining credit availability and bank success;

j. Reporting protocols and monitoring plan;

k. Contingency and remedial actions and responsibilities;

l. Financial assurances;

m. Compensation ratios;

n. Provisions for long-term management and maintenance.

The terms and conditions of the banking instrument may be amended, in accordance with the procedures used to establish the instrument and subject to agreement by the signatories.

In cases where initial establishment of the mitigation bank involves a discharge into waters of the United States requiring Section 10/404 authorization, the banking instrument will be made part of a Department of the Army permit for that discharge. Submittal of an

individual permit application should be accompanied by a sufficiently-detailed prospectus to allow for concurrent processing of each. Preparation of a banking instrument, however, should not alter the normal permit evaluation process timeframes. A bank sponsor may proceed with activities for the construction of a bank subsequent to receiving the Department of the Army authorization. It should be noted, however, that a bank sponsor who proceeds in the absence of a banking instrument does so at his/her own risk.

In cases where the mitigation bank is established pursuant to the FSA, the banking instrument will be included in the plan developed or approved by NRCS and the Fish and Wildlife Service (FWS).

3. Agency Roles and Coordination

Collectively, the signatory agencies to the banking instrument will comprise the Mitigation Bank Review Team (MBRT). Representatives from the Corps, EPA, FWS, National Marine Fisheries Service (NMFS) and NRCS, as appropriate given the projected use for the bank, should typically comprise the MBRT. In addition, it is appropriate for representatives from state, tribal and local regulatory and resource agencies to participate where an agency has authorities and/or mandates directly affecting or affected by the establishment, use or operation of a bank. No agency is required to sign a banking instrument; however, in signing a banking instrument, an agency agrees to the terms of that instrument.

The Corps will serve as Chair of the MBRT, except in cases where the bank is proposed solely for the purpose of complying with the FSA, in which case NRCS will be the MBRT Chair. In addition, where a bank is proposed to satisfy the requirements of another Federal, state, tribal or local program, it may be appropriate for the administering agency to serve as co-Chair of the MBRT.

The primary role of the MBRT is to facilitate the establishment of mitigation banks through the development of mitigation banking instruments. Because of the different authorities and responsibilities of each agency represented on the MBRT, there is a benefit in achieving agreement on the banking instrument. For this reason, the MBRT will strive to obtain consensus on its actions. The Chair of the MBRT will have the responsibility for making final decisions regarding the terms and conditions of the banking instrument where consensus cannot otherwise be reached within a reasonable timeframe (e.g., 90 days from the date of submittal of a complete prospectus). The MBRT will review and seek consensus on the banking instrument and final plans for the restoration, creation, enhancement, and/or preservation of wetlands and other aquatic resources.

Consistent with its authorities under Section 10/404, the Corps is responsible for authorizing use of a particular mitigation bank on a project-specific basis and determining the number and availability of credits required to compensate for proposed impacts in accordance with the terms of the banking instrument. Decisions rendered by the Corps must fully consider review agency comments submitted as part of the permit evaluation process. Similarly, the NRCS, in consultation with the FWS, will make the final decision pertaining to the withdrawal of credits from banks as appropriate mitigation pursuant to FSA.

4. Role of the Bank Sponsor

The bank sponsor is responsible for the preparation of the banking instrument in consultation with the MBRT. The bank sponsor should, therefore, have sufficient opportunity to discuss the content of the banking instrument with the MBRT. The bank sponsor is also responsible for the overall operation and management of the bank in accordance with the terms of the banking instrument, including the preparation and distribution of monitoring reports and accounting statements/ledger, as necessary.

5. Public Review and Comment

The public should be notified of and have an opportunity to comment on all bank proposals. For banks which require authorization under an individual Section 10/404 permit or a state, tribal or local program that involves a similar public notice and comment process, this condition will typically be satisfied through such standard procedures. For other proposals, the Corps or NRCS, upon receipt of a complete banking prospectus, should provide notification of the availability of the prospectus for a minimum 21-day public comment period. Notification procedures will be similar to those used by the Corps in the standard permit review process. Copies of all public comments received will be distributed to the other members of the MBRT and the bank sponsor for full consideration in the development of the final banking instrument.

6. Dispute Resolution Procedure

The MBRT will work to reach consensus on its actions in accordance with this guidance. It is anticipated that all issues will be resolved by the MBRT in this manner.

a. Development of the Banking Instrument

During the development of the banking instrument, if any agency representative considers that a particular decision raises concern regarding the application of existing policy or procedures, an agency may request, through written notification, that the issue be reviewed by the Corps District Engineer, or NRCS State Conservationist, as appropriate. Said notification will describe the issue in sufficient detail and provide recommendations for resolution. Within 20 days, the District Engineer or State Conservationist (as appropriate) will consult with the notifying agency(ies) and will resolve the issue. The resolution will be forwarded to the other MBRT member agencies. The bank sponsor may also request the District Engineer or State Conservationist review actions taken to develop the banking instrument if the sponsor believes that inadequate progress has been made on the instrument by the MBRT.

b. Application of the Banking Instrument

As previously stated, the Corps and NRCS are responsible for making final decisions on a project-specific basis regarding the use of a mitigation bank for purposes of Section 10/404 and FSA, respectively. In the event an agency on the MBRT is concerned that a proposed use may be inconsistent with the terms of the banking instrument, that agency may raise the issue to the attention of the Corps or NRCS through the permit evaluaiton process. In order to facilitate timely and effective consideration of agency comments, the Corps or NRCS, as appropriate, will advise the MBRT agencies of a proposed use of a bank. The Corps will fully consider comments provided by the review agencies regarding mitigation as part of the permit evaluation process. The NCRS will consult with FWA is making its decisions pertaining to mitigation.

If, in the view of an agency on the MBRT, an issued permit or series of permits reflects a pattern of concern regarding the application of the terms of the banking instrument, that agency may initiate review of the concern by the full MBRT through written notification to the MBRT Chair. The MBRT Chair will convene a meeting of the MBRT, or initiate another appropriate forum for communication, typically within 20 days of receipt of notification, to resolve concerns. Any such effort to address concerns

regarding the application of a banking instrument will not delay any decision pending before the authorizing agency (e.g., Corps or NRCS).

D. Criteria for Use of a Mitigation Bank

1. Project Applicability

All activities regulated under Section 10/404 may be eligible to use a mitigation bank as compensation for unavoidable impacts to wetlands and/or other aquatic resources. Mitigation banks established for FSA purposes may be debited only in accordance with the mitigation and replacement provisions of 7 CFR Part 12.

Credits from mitigation banks may also be used to compensate for environmental impacts authorized under other programs (e.g., state or local wetland regulatory programs, NPDES program, Corps civil works projects, Superfund removal and remedial actions). In no case may the same credits be used to compensate for more than one activity; however, the same credits may be used to compensate for an activity which requires authorization udner more than one program.

2. Relationship to Mitigation Requirements

Under the existing requirements of Section 10/404, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to aquatic resources, prior to authorization to use a particular mitigation bank. Remaining unavoidable impacts must be compensated to the extent appropriate and practicable. For both the Section 10/404 and ''Swampbuster'' programs, requirements for compensatory mitigation may be satisfied through the use of mitigation banks when either on-site compensation is not practicable or use of the mitigation bank is environmentally preferable to on-site compensation.

It is important to emphasize that applicants should not expect that establishment of, or purchasing credits from, a mitigation bank will necessarily lead to a determination of compliance with applicable mitigation requirements (i.e., Section 404(b)(1) Guidelines or FSA Manual), or as excepting projects from any applicable requirements.

3. Geographic Limits of Applicability

The service area of a mitigation bank is the area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources. This area should be designated in the banking instrument. Designation of the service area should be based on consideration of hydrologic and biotic criteria, and be stipulated in the banking instrument. Use of a mitigation bank to compensate for impacts beyond the designated service area may be authorized, on a case-by-case basis, where it is determined to be practicable and environmentally desirable.

The geographic extent of a service area should, to the extent environmentally desirable, be guided by the cataloging unit of the ''Hydrologic Unit map of the United States'' (USGS, 1980) and the ecoregion of the ''Ecoregions of the United States'' (James M. Omernik, EPA, 1986) or section of the ''Descriptions of the Ecoregions of the United States'' (Robert G. Bailey, USDA, 1980). It may be appropriate to use other classification systems developed at the state or regional level for the purpose of specifying bank service areas, when such systems compare favorably in their objectives and level of detail. In the interest of the integrating banks with other resource management objectives, bank service areas may encompass larger watershed areas if the designation of such areas is supported by local or regional management plans (e.g., Special Area Management Plans, Advance Identification), State Wetland Conservation Plans or other Federally sponsored or recognized resource management plans. Furthermore, designation of a more inclusive service area may be appropriate for mitigation banks whose primary purpose is to compensate for linear projects that typically involve numerous small impacts in several different watersheds.

4. Use of a Mitigation Bank vs. On-Site Mitigation

The agencies' preference for on-site mitigation, indicated in the 1990 Memorandum of Agreement on mitigation between the EPA and the Department of the Army, should not preclude the use of a mitigation bank when there is no practicable opportunity for on-site compensation, or when use of a bank is environmentally preferable to on-site compensation. On-site mitigation may be preferable where there is a practicable opportunity to compensate for important local functions including local flood control functions, habitat for a species or population with a very limited geographic range or narrow environmental requirements, or where local water quality concerns dominate.

In choosing between on-site mitigation and use of a mitigation bank, careful consideration should be given to the likelihood for successfully establishing the desired habitat type, the compatibility of the mitigation project with adjacent land uses, and the practicability of long-term monitoring and maintenance to determine whether the effort will be ecologically sustainable, as well as the relative cost of mitigation alternatives. In general, use of a mitigation bank to compensate for minor aquatic resource impacts (e.g., numerous, small impacts associated with linear projects; impacts authorized under nationwide permits) is preferable to on-site mitigation. With respect to larger aquatic resource impacts, use of a bank may be appropriate if it is capable of replacing essential physical and/or biological functions of the aquatic resources which are expected to be lost or degraded. Finally, there may be circumstances warranting a combination of on-site and off-site mitigation to compensate for losses.

5. In-kind vs. Out-of-kind Mitigation Determinations

In the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g., of greater ecological value to a particular region). However, non-tidal wetlands should typically not be used to compensate for the loss or degradation of tidal wetlands. Decisions regarding out-of-kind mitigation are typically made on a case-by-case basis during the permit evaluation process. The banking instrument may identify circumstances in which it is environmentally desirable to allow out-of-kind compensation within the context of a particular mitigation bank (e.g., for banks restoring a complex of associated wetland types). Mitigation banks developed as part of an area-wide management plan to address a specific resource objective (e.g., restoration of a particularly vulnerable or valuable wetland habitat type) may be such an example.

6. Timing of Credit Withdrawal

The number of credits available for withdrawal (i.e., debiting) should generally be commensurate with the level of aquatic functions attained at a bank at the time of debiting. The level of function may be determined through the application of performance standards tailored to the specific restoration, creation or enhancement activity at the bank site or through the use of an appropriate functional assessment methodology.

The success of a mitigation bank with regard to its capacity to establish a healthy and fully functional aquatic system relates directly to both the ecological and financial stability of the bank. Since financial considerations are particularly critical in early stages of bank development, it is generally appropriate, in cases where there is adequate financial assurance and where the likelihood of the success of the bank is high, to allow limited debiting of a percentage of the total credits projected for the bank at maturity. Such determinations should take into consideration the initial capital costs needed to establish the bank, and the likelihood of its success. However, it is the intent of this policy to ensure that those actions necessary for the long-term viability of a mitigation bank be accomplished prior to any debiting of the bank. In this regard, the following minimum requirements should be satisfied prior to debiting: (1) banking instrument and mitigation plans have been approved; (2) bank site has been secured; and (3) appropriate financial assurances have been established. In addition, initial physical and biological improvements should be completed no later than the first full growing season following initial debiting of a bank. The temporal loss of functions associated with the debiting of projected credits may justify the need for requiring higher compensation ratios in such cases. For mitigation banks which propose multiple-phased construction, similar conditions should be established for each phase.

Credits attributed to the preservation of existing aquatic resources may become available for debiting immediately upon implementation of appropriate legal protection accompanied by appropriate changes in land use or other physical changes, as necessary.

7. Crediting/Debiting/Accounting Procedures

Credits and debits are the terms used to designate the units of trade (i.e., currency) in mitigation banking. Credits represent the accrual or attainment of aquatic functions at a bank; debits represent the loss of aquatic functions at an impact or project site. Credits are debited from a bank when they are used to offset aquatic resource impacts (e.g. for the purpose of satisfying Section 10/404 permit or FSA requirements).

An appropriate functional assessment methodology (e.g., Habitat Evaluation Procedures, hydrogeomorphic approach to wetlands functional assessment, other regional assessment methodology) acceptable to all signatories should be used to assess wetland and/or other aquatic resource restoration, creation and enhancement activities within a mitigation bank, and to quantify the amount of available credits. The range of functions to be assessed will depend upon the assessment methodology identified in the banking instrument. The same methodology should be used to assess both credits and debits. If an appropriate functional assessment methodology is impractical to employ, acreage may be used as a surrogate for measuring function. Regardless of the method employed, the number of credits should reflect the difference between site conditions under the with- and without-bank scenarios.

The bank sponsor should be responsible for assessing the development of the bank and submitting appropriate documentation of such assessments to the authorizing agency(ies), who will distribute the documents to the other members of the MBRT for review. Members of the MBRT are encouraged to conduct regular (e.g., annual) on-site inspections, as appropriate, to monitor bank performance. Alternatively, functional assessments may be conducted by a team representing involved resources and regularly agencies and other appropriate parties. The number of available credits in a mitigation bank may need to be adjusted to reflect actual conditions.

The banking instrument should require that bank sponsors establish and maintain an accounting system (i.e., ledger) which documents the activity of all mitigation bank accounts. Each time an approved debit/credit transaction occurs at a given bank, the bank sponsor should submit a statement to the authorizing agency(ies). The bank sponsor should also generate an annual ledger report for all mitigation bank accounts to be submitted to the MBRT Chair for distribution to each member of the MBRT.

Credits may be sold to third parties. The cost of mitigation credits to a third party is determined by the bank sponsor.

Party Responsible for Bank Success

The bank sponsor is responsible for assuring the success of the debited restoration, creation, enhancement and preservation activities at the mitigation bank, and it is therefore extremely important that an enforceable mechanism be adopted establishing the responsibility of the bank sponsor to develop and operate the bank properly. Where authorization under Section 10/404 and/or FSA is necessary to establish the bank, the Department of the Army permit or NRCS plan should be conditioned to ensure that provisions of the banking instrument are enforceable by the appropriate agency(ies). In circumstances where establishment of a bank does not require such authorization, the details of the bank sponsor's responsibilities should be delineated by the relevant authorizing agency (e.g., the Corps in the case of Section 10/404 permits) in any permit in which the permittee's mitigation obligations are met through use of the bank. In addition, the bank sponsor should sign such permits for the limited purpose of meeting those mitigation responsibilities, thus confirming that those responsibilities are enforceable against the bank sponsor if necessary.

E. Long-Term Management, Monitoring and Remediation

1. Bank Operational Life

The operational life of a bank refers to the period during which the terms and conditions of the banking instrument are in effect. With the exception of arrangements for the long-term management and protection in perpetuity of the wetlands and/or other aquatic resources, the operational life of a mitigation bank terminates at the point when (1) Compensatory mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice by the bank sponsor provided to the Corps or NRCS and other members of the MBRT, and (2) it has been determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument.

2. Long-term Management and Protection

The wetlands and/or other aquatic resources in a mitigation bank should be protected in perpetuity with appropriate real estate arrangements (e.g., conservation easements, transfer of title to Federal or State resource agency or non-profit conservation organization). Such arrangements should effectively restrict harmful activities (i.e., incompatible uses [2]) that might otherwise jeopardize the purpose of the bank. In exceptional circumstances, real estate arrangements may be approved which dictate finite protection for a bank (e.g., for coastal protection projects which prolong the ecological viability of

[2] For example, certain silvicultural practices (e.g. clear cutting and/or harvests on short-term rotations) may be incompatible with the objectives of a mitigation bank. In contrast, silvicultural practices such as long-term rotations, selective cutting, maintenance of vegetation diversity, and undisturbed buffers are more likely to be considered a compatible use.

the aquatic system). However, in no case should finite protection extend for a lesser time than the duration of project impacts for which the bank is being used to provide compensation.

The bank sponsor is responsible for securing adequate funds for the operation and maintenance of the bank during its operational life, as well as for the long-term management of the wetlands and/or other aquatic resources, as necessary. The banking instrument should identify the entity responsible for the ownership and long-term management of the wetlands and/or other aquatic resources. Where needed, the acquisition and protection of water rights should be secured by the bank sponsor and documented in the banking instrument.

3. Monitoring Requirements

The bank sponsor is responsible for monitoring the mitigation bank in accordance with monitoring provisions identified in the banking instrument to determine the level of success and identify problems requiring remedial action. Monitoring provisions should be set forth in the banking instrument and based on scientifically sound performance standards prescribed for the bank. monitoring should be conducted at time intervals appropriate for the particular project type and until such time that the authorizing agency(ies), in consultation with the MBRT, are confident that success is being achieved (i.e., performance standards are attained). The period for monitoring will typically be five years; however, it may be necessary to extend this period for projects requiring more time to reach a stable condition (e.g., forested wetlands) or where remedial activities were undertaken. Annual monitoring reports should be submitted to the authorizing agency(ies), who is responsible for distribution to the other members of the MBRT, in accordance with the terms specified in the banking instrument.

4. Remedial Action

The banking instrument should stipulate the general procedures for identifying and implementing remedial measures at a bank, or any portion thereof. Remedial measures should be based on information contained in the monitoring reports (i.e., the attainment of prescribed performance standards), as well as agency site inspections. The need for remediation will be determined by the authorizing agency(ies) in consultation with the MBRT and bank sponsor.

5. Financial Assurances

The bank sponsor is responsible for securing sufficient funds or other financial assurances to cover contingency actions in the event of bank default or failure. Accordingly, banks posing a greater risk of failure and where credits have been debited, should have comparatively higher financial sureties in place, than those where the likelihood of success is more certain. In addition, the bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, as well as beyond the operational life if not self-sustaining. Total funding requirements should reflect realistic cost estimates for monitoring, long-term maintenance, contingency and remedial actions.

Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, letters of credit, legislatively-enacted dedicated funds for government operate banks or other approved instruments. Such assurances may be phased-out or reduced, once it has been demonstrated that the bank is functionally mature and/or self-sustaining (in accordance with performance standards).

F. Other Considerations

1. In-lieu-fee Mitigation Arrangements

For purposes of this guidance, in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development projects, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts. Moreover, such arrangements do not typically provide a clear timetable for the initiation of mitigation efforts. The Corps, in consultation with the other agencies, may find there are circumstances where such arrangements are appropriate so long as they meet the requirements that would otherwise apply to an offsite, prospective mitigation effort and provides adequate assurances of success and timely implementation. In such cases, a formal agreement between the sponsor and the agencies, similar to a banking instrument, is necessary to define the conditions under which its use is considered appropriate.

2. Special Considerations for ''Swampbuster''

Current FSA legislation limits the extent to which mitigation banking can be used for FSA purposes. Therefore, if a mitigation bank is to be used for FSA purposes, it must meet the requirements of FSA.

III. Definitions

For the purposes of this guidance document the following terms are defined:

A. *Authorizing agency.* Any Federal, state, tribal or local agency that has authorized a particular use of a mitigation bank as compensation for an authorized activity; the authorizing agency will typically have the enforcement authority to ensure that the terms and conditions of the banking instrument are satisfied.

B. *Bank sponsor.* Any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

C. *Compensatory mitigation.* For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

D. *Consensus.* The term consensus, as defined herein, is a process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. While the primary goal of consensus is to reach agreement on an issue by all parties, unanimity may not always be possible.

E. *Creation.* The establishment of a wetland or other aquatic resource where one did not formerly exist.

F. *Credit.* A unit of measure representing the accrual or attainment of aquatic functions at a mitigation bank; the measure of function is typically indexed to the number of wetland acres restored, created, enhanced or preserved.

G. *Debit.* A unit of measure representing the loss of aquatic functions at an impact or project site.

H. *Enhancement.* Activities conducted in existing wetlands or other aquatic resources which increase one or more aquatic functions.

I. *Mitigation.* For purposes of Section 10/404 and consistent with the Council on Environmental Quality regulations, the Section 404(b)(1) Guidelines and the Memorandum of Agreement Between

the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

J. *Mitigation bank.* A mitigation bank is a site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. For purposes of Section 10/404, use of a mitigation bank may only be authorized when impacts are unavoidable.

K. *Mitigation Bank Review Team (MBRT).* An interagency group of Federal, state, tribal and/or local regulatory and resource agency representatives which are signatory to a banking instrument and oversee the establishment, use and operation of a mitigation bank.

L. *Practicable.* Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

M. *Preservation.* The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

N. *Restoration.* Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

O. *Service area.* The service area of a mitigation bank is the designated area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources.

John H. Zirschky,

Acting Assistant Secretary (Civil Works), Department of the Army.

Robert Perciasepe,

Assistant Administrator for Water, Environmental Protection Agency.

Thomas R. Hebert,

Acting Undersecretary for Natural Resources and Environment, Department of Agriculture.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere, Department of Commerce.

[FR Doc. 95–28907 Filed 11–27–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES:

Thursday, December 7, 1995: 9:00 a.m.–4:30 p.m.

Friday, December 8, 1995: 8:30 a.m.–3:00 p.m.

ADDRESSES: Columbia River Red Lion, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

December Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Update on Congressional Budget Action, the Waste Management Programmatic Environmental Impact Statement, Status of Tri-Party Agreement Milestone, M–33, and the Strategic Planning Process. The Committee will also receive updates from various Subcommittees, including reports on: the Plutonium Disposition Final Report, the Quarterly Progress Report from DOE, and EPA's Budget and Reorganization in Region 10.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)–376–9628.

Issued at Washington, DC on November 21, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer.

[FR Doc. 95–29023 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting:

Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, December 20, 1995: 6:00 pm–9:00 pm.

ADDRESSES: Oak Ridge Mall Community Room, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

December Meeting Topics

The Board members will continue to address issues required for the Board to function routinely. Topics to be discussed are largely organizational. The Board members will have an opportunity to discuss issues related to the Environmental Restoration program to help guide the waste management and cleanup program on the Oak Ridge Reservation.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on November 21, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer.

[FR Doc. 95–29022 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site Membership Replacement Subcommittee.

DATES AND TIMES: Thursday and Friday, December 7–8, 1995: 8:30 a.m. to 6:00 p.m.

ADDRESSES: Holiday Inn—Shipwatch Room, One Center Street, Folly Beach, S.C.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Thursday, December 7, 1995

8:30 a.m.
Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy
6:00 p.m.
Adjourn

Friday, December 8, 1995

8:30 a.m.
Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy
6:00 p.m.
Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC on November 21, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer

[FR Doc. 95–29021 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Inventory of Current DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Department of Energy's inventory of energy information collections, including reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information

collections (including reporting and recordkeeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1995, the first day of Fiscal Year (FY) 1996. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Assistant Secretary for Human Resources and Administration and are not included in these notices.

The listing that is attached, hereto, includes DOE energy information collections that had OMB approval as of October 1, 1995. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Herbert Miller, Energy Information Administration (EI–73), 1000 Independence Avenue, S. W., Washington, D. C. 20585, (202) 426–1103 (e-mail = hmiller@eia.doe.gov and FAX 202–426–1081). Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–231), 1000 Independence Avenue, S. W., Washington, D. C. 20585, (202) 586–8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1996 (October 1, 1995 through September 30, 1996), Federal Register notices will be published informing the public. Such notices not only provide an opportunity for the public to review and comment on the collections, but also notify the public of proposed changes to the inventory. Questions concerning this notice should be directed to Mr. Miller at the address above.

Statutory Authority:

Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, D. C., Nov. 17, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

OCTOBER 1, 1995 INVENTORY: PART I—DOE ACTIVE INFORMATION COLLECTIONS

DOE Number and Title	OMB Control No.	Expiration date
Civilian Radioactive Waste Management:		
NWPA–830R–A–G—Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste	19010260	05/31/97
RW–859—Nuclear Fuel Data	19010287	12/31/97
Department of Energy:		
DOE–887—DOE Customer Surveys	19010302	05/31/97
Energy Information Administration:		
EIA–1—Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form)	19050167	03/31/96
EIA–3—Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/96
EIA–3A—Annual Coal Quality Report—Manufacturing Plants	19050167	03/31/96
EIA–4—Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/96
EIA–5—Coke Plant Report—Quarterly	19050167	03/31/96
EIA–5A—Annual Coal Quality Report—Coke Plants	19050167	03/31/96
EIA–6—Coal Distribution Report	19050167	03/31/96
EIA–7A—Coal Production Report	19050167	03/31/96
EIA–14—Refomers' Monthly Cost Report	19050174	09/31/96
EIA–20—Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	03/31/96
EIA–23—Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/97
EIA–34P—Oil and Gas Well Operator List Update Report	19050057	12/31/97
EIA–28—Financial Reporting System	19050149	12/31/96
EIA–63A/B—Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey	19020292	08/31/98
EIA–64A—Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/97
EIA–176—Annual Report of Natural and Supplemental Gas Supply and Disposition	19050175	12/31/96
EIA–182—Domestic Crude Oil First Purchase Report	19050174	09/31/96
EIA–191—Underground Gas Torage Report	19050175	12/31/96
EIA–191S—Weekly Underground Gas Storage Report (Standby Form)	19050175	12/31/96
EIA–254—Semiannual Report on Status of Reactor Construction	19050160	12/31/97
EIA–412—Annual Report of Public Electric Utilities	19050129	12/31/95
EIA–457A/H—Residential Energy Consumption Survey	19050092	06/30/96
EIA–627—Annual Quantity and Value of Natural Gas Report	19050175	12/31/96
EIA–759—Monthly Power Plant Report	19050129	12/31/95
EIA–782A—Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA–782B—Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA–782C—Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption	19050174	09/30/96
EIA–800—Weekly Refinery Report	19050165	01/31/96
EIA–801—Weekly Bulk Terminal Report	19050165	01/31/96
EIA–802—Weekly Product Pipeline Report	19050165	01/31/96
EIA–803—Weekly Crude Oil Stocks Report	19050165	01/31/96
EIA–804—Weekly Imports Report	19050165	01/31/96
EIA–807—Propane Telephone Survey	19050165	01/31/96
EIA–810—Monthly Refinery Report	19050165	01/31/96
EIA–811—Monthly Bulk Terminal Report	19050165	01/31/96
EIA–812—Monthly Product Pipeline Report	19050165	01/31/96
EIA–813—Monthly Crude Oil Report	19050165	01/31/96
EIA–814—Monthly Imports Report	19050165	01/31/96
EIA–816—Monthly Natural Gas Liquids Report	19050165	01/31/96

OCTOBER 1, 1995 INVENTORY: PART I—DOE ACTIVE INFORMATION COLLECTIONS—Continued

DOE Number and Title	OMB Control No.	Expiration date
EIA–817—Monthly Tanker and Barge Movement Report	19050165	01/31/96
EIA–819A—Annual Oxygenate Capacity Report	19050165	01/31/96
EIA–819M—Monthly Oxygenate Telephone Report	19050165	01/31/96
EIA–820—Annual Refinery Report	19050165	01/31/96
EIA–821—Annual Fuel Oil and Kerosene Sales Report	19050174	09/30/96
EIA–825—Petroleum Facility Operator Identification Survey	19050165	01/31/96
EIA–826—Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/95
EIA–846 (A, B, C)—Manufacturing Energy Consumption Survey	19050169	04/30/98
EIA–851—Domestic Uranium Mining Production Report	19050160	12/31/97
EIA–856—Monthly Foreign Crude Oil Acquisition Report	19050174	09/30/96
EIA–857—Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/96
EIA–857S—Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050175	12/31/96
EIA–858—Uranium Industry Annual Survey	19050160	12/31/97
EIA–860—Annual Electric Generator Report	19050129	12/31/95
EIA–861—Annual Electric Utility Report	19050129	12/31/95
EIA–863—Petroleum Product Sales Identification Survey	19050174	09/30/96
EIA–867—Annual Nonutility Power Producer Report	19050129	12/31/95
EIA–871A/F—Commercial Buildings Energy Consumption Survey	19050145	07/31/98
EIA–876A/E—Residential Transportation Energy Consumption Survey	19050068	01/31/97
EIA–877—Winter Heating Fuels Telephone Survey	19050174	09/30/96
EIA–878—Motor Gasoline Price Survey	19050174	09/30/96
EIA–882T—Generic Clearance for Questionnaire Testing, Evaluation, and Research	19050186	06/30/96
EIA–885—Propane Provider Fleet Survey	19050187	04/30/97
EIA–886—Alternative Fuel Vehicles Suppliers' Annual Report	19050191	01/31/98
EIA–888—On-Highway Diesel Fuel Price Survey	19050174	09/30/96
EIA–890—Clean City Vehicle Fleet Survey	19050189	06/30/97
EIA–895—Monthly Quantity of Natural Gas Report	19050192	12/31/97
EIA–1605—Voluntary Reporting of Greenhouse Gases	19050194	05/31/98
EIA–1605EZ—Voluntary Reporting of Greenhouse Gases	19050194	05/31/98
Federal Energy Regulatory Commission:		
FERC–1—Annual Report of Major Electric	19020021	07/31/98
FERC–1–F—Annual Report of Nonmajor Public Utilities and Licensees	19020029	07/31/98
FERC–2—Annual Report of Major Natural Gas Companies	19020028	07/31/96
FERC–2A—Annual Report of Nonmajor Natural Gas Companies	19020030	07/31/96
FERC–6—Annual Report of Oil Pipeline Companies	19020022	08/31/96
FERC–8—Underground Gas Storage Report	19020026	08/31/98
FERC–11—Natural Gas Pipeline Company Monthly Statement	19020032	06/30/96
FERC–73—Oil Pipeline Service Life Data	19020019	08/31/98
FERC–80—Licensed Hydropower Development Recreation Report	19020106	10/31/95
FERC–423—Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	12/31/96
FERC–556—Cogeneration and Small Power Production	19020075	03/31/98
FERC–561—Annual Report of Interlocking Positions	19020099	10/31/95
FERC–580—Fuel Purchase Practices	19020137	06/30/97
FERC–592—Marketing Affiliates of Interstate Pipelines	19020157	12/31/96
FERC–597—Customer Satisfaction Survey	19020163	11/30/96
FERC–714—Annual Electric Power System Report	19020140	01/31/97
FERC–715—Annual Transmission Planning and Evaluation Report	19020171	01/31/97
FPC–14—Annual Report for Importers and Exporters of Natural Gas	19020027	08/31/98
Fossil Energy:		
EIA–767(3)—Steam Electric Plant Operation and Design Report	19010298	05/31/97
FE–748—Enhanced Oil Recovery Annual Report	19010291	12/31/95
FE–781R—Annual Report of International Electrical Export/Import Data	19010296	12/31/97
Nonproliferation and National Security:		
OE–417R—Power System Emergency Reporting Procedures	19010288	08/31/98
Policy: OE–411—Coordinated Regional Bulk Power Supply Program Report	19010286	10/31/96
Policy, Safety, and Environment: EIA–767(2)—Steam Electric Plant Operation and Design Report	19010267	05/31/97

OCTOBER 1, 1995 INVENTORY: PART II—DOE ACTIVE INFORMATION COLLECTIONS

[Not utilizing structured forms]

DOE number and title	OMB Control No.	Expiration date	CFR citation
Economic Regulatory Administration:			
ERA–766R—Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	10/31/96	10 CFR 210.1.
Federal Energy Regulatory Commission:			
FERC–16A—Monitoring (Omnibus) Report (stand-by authority)	19020105	11/30/95	18 CFR 375.307.
FERC–16AT—Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/96	By FERC Order.

OCTOBER 1, 1995 INVENTORY: PART II—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Not utilizing structured forms]

DOE number and title	OMB Control No.	Expiration date	CFR citation
FERC–500—Application For License for Hydropower Projects Greater Than 5MW.	19020058	11/30/97	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200–.202, 16.1, 16.14–16.
FERC–505—Application for License for Water Projects 5MW or Less	19020115	11/30/97	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.113, 4.201–.202.
FERC–510—Application for Surrender of Electric License	19020068	05/31/96	18 CFR 6.1, 6.3.
FERC–511—Application for Transfer of Electric License	19020069	12/31/97	18 CFR 9.1, 9.2, 9.10.
FERC–512—Application for Preliminary Permit	19020073	11/30/97	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82.
FERC–515—Hydropower License—Declaration of Intention	19020079	12/31/97	18 CFR 24.1.
FERC–516—Electric Rate Schedule Filings	19020096	02/29/96	18 CFR 35, Subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301.
FERC–519—Disposition of Facilities, Mergers, and Acquisitions of Securities.	19020082	03/31/96	18 CFR 33.
FERC–520—Application for Authority to Hold Interlocking Directorate Positions.	19020083	02/28/96	18 CFR 45.
FERC–521—Headwater Benefits	19020087	08/31/98	18 CFR 11.16.
FERC–523—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.	19020043	03/31/98	18 CFR 20, 34, 131.43, 131.50.
FERC–525—Financial Audits	19020092	02/28/98	18 CFR 41, 101, 116, 125, 141.1, 158, 216, 225, 260, 351, 356.
FERC–537—Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	06/30/98	18 CFR 2.79, 157.5–.21, .100, .201–.218, 159.1, 284.107, .127, .221.
FERC–538—Gas Pipeline Certificate: Initial Service	19020061	04/30/97	18 CFR 156.3, 156.4, 156.5.
FERC–539—Gas Pipeline Certificate: Import/Export Related	19020062	05/31/97	18 CFR 153.
FERC–541—Gas Pipeline Certificate: Curtailment Plan	19020066	05/31/97	18 CFR 2.78, 281.
FERC–542—Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	05/31/97	18 CFR 154.38, 154.61–154.67.
FERC–542A—Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	02/28/97	18 CFR 154.201–154.213.
FERC–543—Gas Pipeline Rates: Purchased Gas Adjustment Tracking ..	19020152	05/31/97	18 CFR 154.38.
FERC–544—Gas Pipeline Rates: Rate Change (Formal)	19020153	05/31/97	18 CFR 154.63–154.67.
FERC–545—Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	06/30/96	18 CFR 154.63–154.67.
FERC–546—Gas Pipeline Rates: Certificated Rate Filings	19020155	05/31/97	18 CFR 154.62–154.67.
FERC–547—Gas Pipeline Rates: Refund Obligations	19020084	05/31/95	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302
FERC–549—Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions.	19020086	02/28/98	18 CFR Sub. A/D/E/H, 284.7–.11, .102, .105, .106, .122, and others.
FERC–549B—Gas Pipeline Rates: Capacity Release Information	19020169	12/31/96	18 CFR 284(b)(5).
FERC–550—Oil Pipeline Rates: Tariff Filings	19020089	08/31/98	18 CFR 340–345, 347.
FERC–555—Preservation of Records of Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies.	19020098	06/30/98	18 CFR 125, 150, 160.1, 225, 276.108, 277.210, 356.
FERC–566—Report of Utility's Twenty Largest Purchasers	19020114	06/30/98	18 CFR 46.3.
FERC–567—Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	08/31/96	18 CFR 260.8, 284.12.
FERC–576—Report by Certain Natural Gas Companies on Service Interruptions.	19020004	06/30/98	18 CFR 260.9.
FERC–577—Gas Pipeline Certificates: Environmental Impact Statement	19020128	12/31/97	18 CFR 157.14.
FERC–581—Management and Procurement Reporting and Recordkeeping Requirements.	19020130	11/30/96	48 CFR 30 Subtitle A, Chapter 9.
FERC–582—Oil, Gas, Electric Fees and Annual Charges	19020132	10/31/96	18 CFR 381.106, 382.105(A), 382.201(B)(4).
FERC–583—Hydroelectric Fees and Annual Charges	19020136	10/31/96	18 CFR 11.1, 11.3, 11.4, 11.6.
FERC–585—Reports on Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	12/31/96	18 CFR 294.202.
FERC–588—Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	05/31/97	18 CFR 284, Subpart I.
FERC–598—Certification of Entities Seeking Exempt Wholesale Generator Status.	19020166	04/30/96	18 CFR 365.
FERC–716—Good Faith Request for Transmission Services and Response by Transmitting Utility.	19020170	11/30/96	18 CFR 2.20.
FERC–716A—Application for Transmission Services Under Section 211 of the Federal Power Act.	19020168	10/31/96	18 CFR 36.

OCTOBER 1, 1995 INVENTORY: PART II—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Not utilizing structured forms]

DOE number and title	OMB Control No.	Expiration date	CFR citation
Fossil Energy:			
FE–329R—Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	08/31/98	10 CFR 500, 501, 503, 504, 505, 508, 515.
FE–746R—Import and Export of Natural Gas	19010294	01/31/96	10 CFR 205, 590.

[FR Doc. 95–29024 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corporation; Notice of Settlement Conference

November 21, 1995.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on November 29, 1995, at 10:00 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. The conference will continue through November 30, 1995, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations, 18 CFR 385.214.

For additional information, contact Thomas J. Burgess at (202) 208–2058 or David R. Cain at (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28962 Filed 11–27–95; 8:45am]

BILLING CODE 6717–01–M

[Docket No. CP96–64–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 21, 1995.

Take notice that on November 13, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP96–64–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate as a jurisdictional facility, a delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act, under Koch Gateway's blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the certification of the facilities would enable Koch Gateway to provide transportation services under its blanket transportation certificate to Entex, Inc., a local distribution company, in Rankin County, Mississippi.

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

Lois D. Cashell,

Secretary.

[FR Doc. 95–28959 Filed 11–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–000 and RP94–242–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

November 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, November 30, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–0053.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28961 Filed 11–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–60–008]

Overthrust Pipeline Company; Notice of Report of Refund

November 21, 1995.

Take notice that on October 20, 1995, Overthrust Pipeline Company, tendered for filing a refund report. The report documents the payment of Deferred Income Tax (DIT) refunds on August 24, 1995, of $57,739.32 and $57,749.09 for years 1993 and 1994, to Columbia Gas Transmission Corporation (Columbia) pursuant to Overthrust's settlement in Docket Nos. RP85–60–000 and RP85–60–007. Overthrust originally withheld Columbia's refund amounts pending payment by Columbia of past-due transportation charges associated with its bankruptcy proceeding.

Overthrust states that on June 15, 1995, in Docket No. RP95–204, the Commission approved a settlement agreement between Columbia and Overthrust resolving all bankruptcy issues with respect to Overthrust. Overthrust explains that the settlement terms became effective on August 16, 1995. Overthrust also states that it is filing the refund report pursuant to Article V of its settlement approved by the Commission on May 21, 1991. Overthrust explains that Article V of the settlement as modified, requires Overthrust to file an annual report 60

days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest should be filed on or before November 28, 1995. Protest will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28960 Filed 11–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–43–000]

Pacific Gas Transmission Company; Notice of Motion For Limited Waiver of Tariff Provisions

November 21, 1995.

Take notice that on November 15, 1995, Pacific Gas Transmission Company (''PGT'') filed a motion for temporary, limited waiver of provisions of its FERC Gas Tariff governing crediting revenues received from interruptible, parking and imbalance services on PGT's system, until thirty (30) days after issuance of a final order in PGT's on-going Section 4 rate proceeding in Docket No. RP94–149–000.

PGT asserts that the purpose of this filing is to seek a temporary waiver of Sections 35 and 38 of its FERC Gas Tariff, First Revised Volume No. 1–A, which require PGT to determine total revenues received from interruptible, parking and imbalance services over and above costs allocated to those services and credit difference to eligible firm shippers.

PGT states that because the rates and costs for the above services are subject to retroactive adjustment as determined by PGT's ongoing rate proceeding, it is impossible at this time to determine the appropriate level of revenue crediting. PGT further states it proposes to issue refunds 45 days after a final decision in its rate proceeding, including interest from the date such credits accrue.

PGT states that a copy of this filing has been served upon its jurisdictional customers and upon interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28964 Filed 11–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–34–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 21, 1995.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 17, 1995, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, six copies of substitute revised tariff sheets listed on Appendix A to the filing.

The proposed effective date of these substitute revised tariff sheets is December 1, 1995.

Texas Eastern states that these substitute revised tariff sheets are being filed in substitution for revised tariff sheets filed by Texas Eastern on October 31, 1995 in Docket No. RP96–34–000. Texas Eastern states that it has discovered a transposition error in the workpaper contained in the October 31, 1995 filing supporting the Spot Fuel Components proposed to be effective December 1, 1995. Texas Eastern states that correcting the transposition error has a relatively small impact on the Spot Fuel Components proposed to be effective December 1, 1995. Texas Eastern estimates that the annual revenue impact of the correction will be a net reduction of approximately $66,000.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern, interested state commissions, all interruptible shippers as of the date of the filing, as well as all parties to the Settlement in Docket No. RP85–177–119, et al.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28963 Filed 11–27–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–AU–143, for the sale of one milligram of uranium-233 as uranium oxide and 10 micrograms of thorium-229 as nitrate solution to La Trobe University in Australia for use in disequilibrium studies of geological samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29025 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–JA–462 for the sale of 5 grams of uranium, enriched to >99% in the isotope U-234, in the form of uranium oxide to the Toshiba Corporation for manufacturing neutron detectors to be sold to electric power companies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29026 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–76, for the transfer of 13.5 grams of uranium containing 0.54 grams of the isotope uranium-235 (4 percent enrichment) from EURATOM to Japan for use as reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29027 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/NO(SW)–24, for the transfer of 10 kilograms of uranium samples containing up to 500 grams of the isotope U235 (enrichments between 0.25 percent and 5 percent) for use as safeguards and control analysis.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29028 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–EU–1045, for the sale of 49.5 grams of uranium, enriched to 19.8% in the isotope U–235, to the Joint Research Centre of the Commission of the European Communities in Belgium for preparation of certified reference material for uranium accountancy measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29029 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–75, for the transfer of 20 grams of uranium containing 18.6 grams of the isotope uranium-235 (93 percent enrichment) from EURATOM to Japan for research purposes.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29030 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(CA)–5, for the transfer of 420.2 grams of uranium containing 82.9 grams of the isotope uranium-235 (19.75 percent enrichment) from Canada to the Republic of Korea for re-installation in the KAERI reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29031 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonprolifeation, Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed subsequent arrangement.

The subsequent arrangement to be carried out involves approval for the government-to-government supply of the following material:

Subsequent Arrangement WC-PC–1, for the supply of 500 millicuries Tungsten-188/Rhenium-188 to Beijing Normal University in China, and 500 millicuries Tungsten-188/Rhenium-188 to the Shanghai Institute for Nuclear Research in China. The shipment is part of a Cooperative Research Project with Oak Ridge National Laboratory which will use the materials for medical research in cancer therapy.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1995.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–29032 Filed 11–27–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5334–9]

Agency Information Collection Activities Up for Renewal: Import of Pesticides or Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted January 29, 1996.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture and Ecosystems Division, Agriculture Branch (2225A), 401 M Street, SW. Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Howie, 202–564–4146/fx202–564–0028/Frank Coleman, 202–564–5012/fx202–564–0028.

SUPPLEMENTARY INFORMATION:

Affected Entities: This action affects entitites which import pesticides or devices into the continental United States.

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1), OMB No. 2070–0020, Expiration Date: 04/30/96.

Abstract: Pursuant to section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) U.S. Customs is required to notify EPA prior to the import of pesticides or devices into the United States. To assist in meeting this requirement, importers, who may be represented by brokers, agents, or consignees, must present a Notice of Arrival (NOA, EPA Form 3540–1) to the EPA informing the Agency of the arrival of the imported pesticide products as required by 19 CFR 12.112. The form is submitted to the regional headquarters address (printed on the reverse side of the form) having jurisdiction over the

port through which the product or device is to be imported.

Part I of the form requests identification and address information of the importer or his agent followed by information on the imported pesticide or device, e.g., the active ingredients or devices produced, brand name, and the product registration number (for pesticides but not devices) and the establishment registration number. Certain information reported on the form (names and addresses of broker or agent, of importer or consignee, and of shipper, along with unit size, quantity, total net weight, country of origin, port of entry, carrier, entry number, and entry date) may be claimed as Confidential Business Information (CBI). Other information (EPA Registration Number, EPA Producer Establishment Number, the brand name of product, and major active ingredients and percentage of each) may not be claimed as CBI.

EPA Regional personnel review the completed form for completeness and accuracy and to determine: (1) If the product is registered and has a valid registration number, (2) if the product contains an active ingredient that has been suspended or cancelled, (3) if the pesticide was produced in a registered and active pesticide producing establishment, and (4) if the product is misbranded. EPA resolves any discrepancies on the report with the importer or his agent. If the information on the form is correct, Part II is signed and the form is returned to the respondent with approval.

Upon the arrival of the shipment, the importer presents the NOA to the District Director of U.S. Customs at the port of entry. U.S. Customs compares entry documents for the shipment with the Notice of Arrival; it notifies the EPA Regional Office of any discrepancies between the NOA and the entry documents and releases the shipment for entry after receipt of EPA clearance. Customs signs Part III of the form, returns the Official File Copy to EPA, and retains the Customs' Copy to complete this portion of the transaction.

The purpose of this reporting requirement is to insure that no unregistered or misbranded pesticides enter the U.S. Uniform reporting of information submitted for pesticides arriving in the customs territory of the U.S. is necessary to monitor compliance with FIFRA, to identify the responsible party in cases of violations, and to determine specific information regarding the source of any pesticide in question. The information permits EPA to trace ineffective, contaminated, or otherwise violative products to their source, and minimizes any adverse environmental impact that might arise from this importation of violative products. Additionally, by requiring brokers/agents to offer documentation to Customs and EPA of the importation of registered pesticides the flow of commerce for approved products is facilitated.

The information collected is used by EPA Regional pesticide enforcement and compliance staffs and the Headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. Customs, the U.S. Department of Agriculture, the Food and Drug Administration, and other federal agencies may also make use of this information.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Burden Hours per Response: 0.3 hour per NOA to include time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Frequency of Response: Once per shipment of pesticide or device imported.

Number of Respondents: 7,000 annually.

Total annual reporting and record-keeping burden: 2,100 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are displayed in 40 CFR part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: November 13, 1995.

Elaine S. Stanley,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 95–29038 Filed 11–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5335–1]

Notice of Intent to Reissue an Exemption From the Land Disposal Restrictions of the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) Regarding Injection of Hazardous Waste to Cabot Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Reissue an Exemption to Cabot Corporation (Cabot) of Tuscola, Illinois, for the Injection of Waste Hydrochloric Acid and Specified Hazardous Constituents Found in Ground Water at the Tuscola Facility.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today proposing to reissue an exemption from the ban on disposal of certain hazardous wastes through injection wells to Cabot Corporation for its site at Tuscola, Illinois. On November 6, 1990, the Agency issued Cabot an exemption for injection of certain hazardous wastes into Waste Disposal Well (WDW) No. 2 after determining that there is a reasonable degree of certainty that Cabot's injected wastes will not migrate out of the injection zone within the next 10,000 years. On February 4, 1991, Cabot was granted an exemption to allow use of WDW No. 1 at the facility for the disposal of the same wastes injected through the WDW No. 2. The exemption was modified on November 4, 1994, to include monitor well purge water. If granted, the proposed reissuance would allow Cabot to inject the RCRA

regulated wastes D002, F003, and F039, which are already injected through WDWs Nos. 1 and 2, through WDW No. 3 and will add information gained as a result of the drilling of WDW No. 3 to the administrative record. WDW No. 1 will be closed after WDW No. 3 is put on line.

DATES: The EPA is requesting public comments on its proposed decision to reissue the exemption condition described above. Comments will be accepted until 45 days after the date of publication of the notice in local newspapers. Comments on any aspect of the no-migration demonstration and integrity of the deepwell disposal system are admissible because the exemption is proposed for reissuance in its entirety. Comments postmarked after the close of the comment period will be stamped ''Late''. A public information meeting and a public hearing to allow comment on this action may be scheduled if significant comments are received, and a notice of these meetings will be given in a local paper and to all people on a mailing list developed by the Agency. If you wish to request that a public hearing be held or to be notified of the date and location of any pubic hearing held, please contact the lead petition reviewer listed below.

ADDRESSES: Submit written comments, by mail, to: United States Environmental Protection Agency, Region 5, Underground Injection Control Branch (WD–17J), 77 West Jackson Street, Chicago, Illinois 60604, Attention: Rebecca L. Harvey, Chief.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, UIC Section, Water Division; Office Telephone Number: (312) 886–2939; 17th Floor, Metcalfe Building, 77 West Jackson Street, Chicago, Illinois.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who manage hazardous waste. The amendments prohibit the land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA Sections 3004 (d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA Section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Part 268 pursuant to Section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR Part 148, Subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking this ''no-migration'' exemption from the ban must demonstrate to a reasonable degree of certainty that hazardous waste will not leave the injection zone until either:

(a) The waste undergoes a chemical transformation within the injection zone through attenuation, transformation, or immobilization of hazardous constituents so as to no longer pose a threat to human health and the environment; or

(b) The fluid flow is such that injected fluids will not migrate vertically upward out of the injection zone, or laterally to a point of discharge or interface with an underground source of drinking water (USDW), for a period of 10,000 years.

The EPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the injection well disposal prohibition (40 CFR Part 148). Most companies seeking exemption have opted to demonstrate waste confinement (option (b) above) rather than waste transformation (option (a) above). A time frame of 10,000 years was specified for the confinement demonstration not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer time period, and also to allow time for geochemical transformations which would render the waste immobile. The Agency's confinement standard thus does not imply that leakage will occur at some time after 10,000 years, rather, it is a showing that leakage will not occur within that time frame and probably much longer.

The EPA regulations at 40 CFR 148.20(e) provide that any person who has been granted an exemption to the land disposal restrictions may request that the Agency reissue the exemption to include additional wastes, or modify any conditions placed on the exemption by the Director. If the petitioner complies with 40 CFR 148.20 (a), (b), and (c) the exemption shall be reissued. Reissuance allows reconsideration of all factors involved in the determination that land disposal through injection is protective of the health of persons. Cabot has submitted data from testing of WDW No. 3 that shows that the assumptions used in 1990 to calculate the distance of migration of hazardous constituents were very conservative. In fact, the distance of waste migration can be expected to be considerably less than previously determined. Cabot has requested that the administrative record be updated to include this new information and to show that the earlier modeling results are considerably more conservative than necessary.

Neither the existing exemption from the restrictions of the HSWA to RCRA nor this reissuance exempts Cabot from the duty to comply with other laws or regulations.

B. Facility Operation and Process

The Cabot facility in Tuscola, Illinois, is a chemical manufacturing plant designed to produce fumed silica, SiO_2 or silicon dioxide, which is used as an additive in many products. The central reaction in the manufacturing process is combination of silicon tetrachloride with oxygen and hydrogen to produce both fumed silica and hydrogen chloride vapor. Separation results in fumed silica, product hydrochloric acid, and wastewaters contaminated with hydrochloric acid which must be disposed of. This waste, along with rainwater runoff and seepage into a subsurface drainage system, are normally injected into Cabot's on-site, Class I hazardous waste injection wells.

C. Exemption

The current exemption allows Cabot to inject wastes bearing RCRA waste codes D002, F003, and F039 into parts of the Franconia, Potosi, and Eminence Dolomites, the Gunter Sandstone Formation, and Oneota Dolomite found between 5,400 and 4,442 feet below the kelly bushing elevation in WDW No. 2 and extending radially 23,500 feet from WDW No. 2.

D. Submission

On August 15, 1995, Cabot submitted a written request that its exemption be reissued to change the condition that wastes be injected only through WDWs No. 1 and 2 to include WDW No. 3. WDW No. 3 was constructed to replace WDW No. 1 which has a limited capacity due to size of well elements, and it has had mechanical problems which threaten its usefulness. In addition, Cabot wished to add information relevent to the

demonstration of no migration gained as a result of testing carried out during the construction of WDW No. 3. The submissions were reviewed by staff at the EPA to ensure that requirements of 40 CFR 148.120(a)(2)(iv) were met and that the conclusions based on testing are consistent with the test data.

II. Basis for Determination

A. Mechanical Integrity of WDW No. 3

On January 19, 1995, a standard annulus pressure test of WDW No. 3 demonstrated the absence of leaks in the tubing, packer, and casing, and on January 20, a radioactivity tracer test was used to demonstrate the integrity of the annular seal and bottom-hole cement of WDW No. 3 as required by 40 CFR 148.20(a)(2)(iv). The results of these tests were submitted as parts of the completion report for WDW No. 3, and are incorporated into the administrative record for this proposed decision.

B. Model Demonstration of No Migration

The grant of an exemption from the land disposal restrictions imposed by the HSWA of RCRA is based on a demonstration that disposed wastes will not migrate out of the waste management unit, which is defined as the injection zone and is specifically those parts of the Franconia, Potosi, and Eminence Dolomites, the Gunter Sandstone Formation, and Oneota Dolomite found between depths of 5,400 and 4,442 feet from the kelly bushing elevation in WDW No. 2 and extending radially 23,500 feet from WDW No. 2. The no-migration demonstration is made through use of mathematical simulations which use geological information collected at the site or which is found to be appropriate for the site and mathematical models which have been proven to be capable of simulating natural responses to injection. The simulation is calibrated by matching simulator results against observations at the site. The exemption was based on the injection through two wells with the premise that, at the plume boundary, the effects of injection through two or more wells in close proximity are indistinguishable from those of injection through a single well. Substitution of WDW No. 3 for WDW No. 1 would not require a revision of the modeling, because any change in the plume extent will be contained within the conservatively delineated boundaries established in 1990.

In 1990, Cabot used volumetric calculations including dispersivity to find that the greatest lateral extent of movement by the waste plume will be 17,700 feet. The limit of the waste plume during the life of the facility is the distance required for the pH to be increased to 2 from an original pH of 0.5 due to mixing during advective flow of three times the volume of waste injection expected during the wells' operational lives. No consideration of reaction of injected waste acid and host dolomite which will result in a much more rapid pH neutralization was considered. Additional movement of waste constituents at hazardous levels for the 10,000-year post operating period was determined by calculating the extent of natural ground water movement, including buoyancy and dispersion. The total distance of travel from the wells' centroid required to increase pH from 0.5 to 2 with additional movement of 3,300 feet due to natural flow and 2,500 feet due to buoyancy effects results in a total movement of 23,500 feet. The lateral extent of migration was shown to be less than distances to features which might allow discharge of hazardous waste constituents into USDWs.

The limit of vertical movement was determined by a similar process. The lower starting point used to calculate the distance upward to the point where dispersion would result in waste dilution 10 times greater than that required to increase the waste's pH from 0.5 to 2 was 4,830 feet, the greatest depth at which the packer of WDW No. 1 could be set with no indication of leakage. Long-term vertical movement is primarily due to molecular diffusion through 10,000 years. The calculation showed that the total vertical distance from the surface to the plume boundary is 4,592 feet from the surface. This vertical plume was contained within the waste management unit defined for Cabot's two injection wells. Therefore, the Agency accepted the demonstration and granted an exemption in 1990.

The petitioner has complied with 40 CFR §§ 148.20(a), (b), and (c) by the demonstration described in the proposal to grant the original exemption published in the Federal Register on August 24, 1990, at 55 FR 34739 et seq. The petitioner has further demonstrated the protective nature of land disposal through injection by the submission of additional geological and hydrological data on August 16, 1995. Accordingly, U.S. EPA proposes to reissue the exemption as requested.

III. Conditions of Petition Approval

The existing exemption was granted with conditions. All of the conditions attached to the exemption and modifications remain in force except Nos. 5 and 6 of the exemption granted on February 4, 1991. Condition No. 5 required that an oxygen activation log be run in WDW No. 1 in 1991. Condition No. 6 required annual temperature logging of WDW No. 1. These conditions will be moot after the plugging of WDW No. 1. No new conditions are attached to this reissuance of the exemption.

Dated: November 20, 1995.

Rebecca L. Harvey,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 95–29035 Filed 11–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5334–8]

Common Sense Initiative Council, Metal Finishing Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting of the Public Advisory Common Sense Initiative Council, Metal Finishing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that, pending resolution of EPA's FY 1996 appropriation, the Metal Finishing Sector Subcommittee of the Common Sense Initiative Council will meet on Thursday and Friday, December 14 and 15, 1995 in Washington, D.C. The Subcommittee will continue project workplan development and discuss procedural substantive issues of importance to the Sector. Limited time will be provided for members of the public to make oral comments at the meeting.

Open Meeting Notice: Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Metal Finishing Sector Subcommittee on Thursday and Friday, December 14 and 15, 1995. The meeting will begin on December 14, at 10:00 a.m. EST and run until noon EST. Workgroup meeetings will be held from noon EST until 5:00 p.m. EST. On Friday, December 15, workgroups will reconvene at 8:00 a.m. EST and meet until 10:00 a.m. EST. The Subcommittee will then reconvene and meet from 10:00 a.m. EST until 3:00 p.m. EST. The Subcommittee will be held at the Washington Marriott Hotel, 22nd and M Streets, NW, Washington, D.C. telephone number 202-872-1500. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Metal Finishing Subcommittee will convene to consider such issues as the strategic environmental goals for the sector, public participation in regional pilot projects, and compliance and enforcement issues associated with project implementation. Open workgroup meetings will continue the development of the pilot projects that have been endorsed by the subcommittee, and will consider new project ideas and related issues as well.

Inspection of subcommittee documents: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821M of EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.gov.

FOR FURTHER INFORMATION CONTACT: For more information about and verification of this meeting, please call Mr. Bob Benson at 202–260–8668 in Washington, D.C.

Dated: November 21, 1995.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 95–29039 Filed 11–27–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 95–1874]

Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (Order). CC Docket No. 90–571, adopted and released on August 25, 1995, the Commission suspended enforcement of the requirement that the Telecommunications Relay Services (TRS) be capable of handling coin sent-paid calls until August 26, 1997. The Commission also ordered that common carriers providing telephone voice transmission services, and TRS providers, make payphones accessible to TRS users during the suspension pursuant to an alternative plan. The Commission took these actions after determining that the provision of TRS coin sent-paid service was not currently feasible.

FOR FURTHER INFORMATION CONTACT: Pamela Gerr, Network Services Division, Common Carrier Bureau, (202) 418–2357.

SUPPLEMENTARY INFORMATION: The alternative plan includes the following elements: (1) Local TRS payphone calls to be provided free of charge; (2) toll TRS payphone calls to be chargeable to calling cards and/or prepaid (debit) cards, with rates not to exceed those that would apply to similar non-TRS calls made using coin sent-paid service; and (3) programs to educate TRS users about these alternative payment options and to make calling cards and/or prepaid cards available to TRS users. The Commission ordered that the alternative plan be implemented as soon as possible, with implementation to be completed within ninety (90) days after the release date of the order. The Commission also required parties that had filed petitions in this proceeding to join with any other interested parties wishing to participate to prepare and file joint status reports with the Commission. These status reports are to be filed with the Commission on August 26, 1996 and February 26, 1997 and shall address the effectiveness of the alternative plan in making payphones accessible to TRS users. The later status report must also address the technical feasibility and cost of providing TRS coin sent-paid service and provide data on TRS and non-TRS payphone use. These reporting requirements are subject to approval by the Office of Management and Budget (OMB). Public reporting burden for the collections of information is estimated as follows:

Requirement	No. of respondents	Est. avg. hours per response	Annual hours
12-month joint status report	30	7	210
18-month joint status report	30	9	270
Disclosure requirements	3000	2.5	7500
Total Annual Burden: 7980.			
Frequency of Response: On occasion.			

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Federal Communications Commission.

Linda Dubroof,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 95–28906 Filed 11–27–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Premier Insurance Services, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 12, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Premier Financial Services, Inc., Freeport, Illinois; to acquire Premier Insurance Services, Inc., Warren, Illinois, and thereby engage in general insurance agency activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. The sale of insurance will be limited to villages of less than 5,000 persons in which the bank holding company or its subsidiaries have lending offices, these include: Warren, Stockton, Mt. Carroll and Polo, all in Illinois.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Colonial Banc Corp, Eaton, Ohio; to acquire Financial Services, Inc., Eaton, Ohio, and thereby engage in the business of real estate appraising, pursuant to § 225.25(b)(13) of the Board's Regulation Y. This activity will be conducted throughout the State of Ohio.

Board of Governors of the Federal Reserve System, November 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28983 Filed 11–27–95; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 22, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp, Princeton, New Jersey; to merge with The Summit Bancorporation, Chatham, New Jersey, and thereby indirectly acquire Summit Bank, Chatham, New Jersey.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First Bancorp, Inc., Reynoldsville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Reynoldsville, Reynoldsville, Pennsylvania.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FNB Financial Corporation, Three Rivers, Michigan; to become a bank holding company by acquring 100 percent of the voting shares of The First National Bank of Three Rivers, Three Rivers, Michigan.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company San Francisco, California; to acquire at least 50.1 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of Alaska, N.A., Anchorage, Alaska; First Interstate Bank of Arizona, N.A., Phoenix, Arizona; First Interstate Bank of California, Los Angeles, California; First Interstate Bank of Denver, N.A., Denver, Colorado; First Interstate Bank of Englewood, N.A., Englewood, Colorado; First Interstate Bank of Idaho, N.A., Boise, Idaho; First Interstate Bank of Montana, N.A., Kalispell, Montana; First Interstate Bank of Nevada, N.A., Las Vegas, Nevada; First Interstate Bank of New Mexico, N.A., Santa Fe, New Mexico; First Interstate Bank of Oregon, N.A., Portland, Oregon; First Interstate Bank of Texas, N.A., Houston, Texas; First Interstate Bank of Utah, N.A., Salt Lake City, Utah; First Interstate Bank of Washington, N.A., Seattle, Washington; First Interstate Bank of Wyoming, N.A., Casper, Wyoming; First Interstate Bank, Ltd., Los Angeles, California; and First Interstate Central Bank, Calabasas, California.

Board of Governors of the Federal Reserve System, November 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28984 Filed 11–27–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Tuesday, December 5, 1995 from 9:00 a.m. to 4:00 p.m. in room 4N30 of the General Accounting Office, 441 G St. NW., Washington, D.C. The purpose of the hearing is to hear testimony from interested parties on the Supplementary Stewardship Reporting exposure draft, issued in August 1995.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774, (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 22, 1995.
Ronald S. Young,
Executive Director.
[FR Doc. 95–29058 Filed 11–27–95; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Tetsuya Matsuguchi, M.D., Ph.D., Dana-Farber Cancer Institute: On November 3, 1995, ORI found that Tetsuya Matsuguchi, M.D., Ph.D., formerly a Harvard Medical School Research Fellow at the Dana-Farber Cancer Institute, committed scientific misconduct by intentionally falsifying data by artificially darkening one band each on two autoradiographs in figures that he had prepared for a presentation at an intramural research seminar and by altering three bands on the print of an immunoblot included in Figure 2A of a paper published in the EMBO Journal. This research was supported by a Public Health Service grant.

Dr. Matsuguchi has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning November 3, 1995:

(1) From any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, Federal nonprocurement transactions (e.g., grants and cooperative agreements), of the United States Government, as defined in 45 C.F.R. Part 76 and 48 C.F.R. Subparts 9.4 and 309.4 (Debarment Regulations); and

(2) From serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion, however, shall not apply to Dr. Matsuguchi's future training or practice of clinical medicine whether as a medical student, resident, fellow, or licensed practitioner unless that practice involves research or research training.

Dr. Matsuguchi has agreed to submit a letter to the EMBO Journal requesting correction of the article entitled ''Tyrosine phosphorylation of $p85^{Vav}$ in myeloid cells is regulated by GM-CSF, IL–3, and Steel factor and is constitutively increased by $p210^{BCR/ABL}$'' (EMBO Journal 14:257–265, 1995) by retracting Figure 2A, because Dr. Matsuguchi enhanced the *Vav* bands in lanes 2, 3, and 4 without the knowledge of the other authors, and by substituting the correct Figure 2A.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,
Director, Office of Research Integrity.
[FR Doc. 95–28916 Filed 11–27–95; 8:45 am]
BILLING CODE 4160–17–P

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter K, Administration for Children and Families (ACF) (60 FR 40586); Chapter KL, The Office of Staff Development and Employee Relations (OSDER); and Chapter KS, The Office of Human Resources and Equal Employment Opportunity/Civil Rights (OHREEO/CR), as last amended, August 9, 1995. This reorganization will establish a new servicing personnel office, Office of Human Resource Management.

1. Amend K.10 Organization. After ''Office of Legislative Affairs and Budget (KT),'' add the following: ''Office of Human Resource Management (KU)''

2. Delete Chapter KL. ''The Office of Staff Development and Employee Relations,'' retitle it as the ''Office of Staff Development and Organizational Resources'' and replace with the following:

The Office of Staff Development and Organizational Resources

KL.00 Mission
KL.10 Organization
KL.20 Functions

KL.00 Mission. The Office of Staff Development and Organizational Resources (OSDOR) serves as principal advisor to the Deputy Assistant Secretary for Program Operations and provides consultation, policy development, technical assistance and related services to all ACF components in the areas of training, staff development, organizational development and organizational analysis. Supports the implementation of ACF's streamlining efforts.

KL.10 Organization. The Office of Staff Development and Organizational Resources is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KL.20 Functions. The Office of Staff Development and Organizational Resources provides leadership in directing and managing agency-wide staff development and training activities for ACF. The Office is responsible for the functional management of training and development in the agency, including policy development, guidance, and technical assistance and evaluation of all aspects of career, employee, supervisory, management, executive and organizational development. Provides leadership in implementing the recommendations of the Staff Development and Training Team, by creating, managing/overseeing and monitoring an ACF training resource center and institutionalizing long-term developmental training for ACF employees.

The Office serves as the principal source of advice through the Deputy Assistant Secretary for Program Operations to the Assistant Secretary on organizational design by collaborating with staff to develop high-leverage, tailored solutions to achieve measurable outcomes and to transform the agency to a quality organization that supports ACF's vision, values and goals. The Office advises the Assistant Secretary through the Deputy Assistant Secretary for Program Operations on all aspects of ACF organizational analysis including: planning for new organizational elements; and planning, organizing and performing studies, analysis and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Conducts the review process for ACF reorganization proposals. Acts as liaison with the HHS Office of the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority and maintains the guidelines related to the delegations of authority.

3. Delete Chapter KS. ''The Office of Human Resources and Equal Employment Opportunity/Civil Rights,'' retitle it as the ''Equal Employment

Opportunity/Civil Rights and Special Initiatives Staff'' and replace with the following:

Equal Employment Opportunity/Civil Rights and Special Initiatives Staff

KS.00 Mission
KS.10 Organization
KS.20 Functions

KS.00 Mission. The Equal Employment Opportunity/Civil Rights and Special Initiatives Staff (EEO/CRSIS) directs and manages the ACF Equal Employment Opportunity and Civil Rights program. The Staff is responsible for all special initiative activities for ACF.

KS.10 Organization. The Equal Employment Opportunity/Civil Rights and Special Initiatives Staff is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KS.20 Functions. The Equal Employment Opportunity/Civil Rights and Special Initiatives Staff serves as the principal advisor to the Deputy Assistant Secretary for Program Operations on all aspects of the Equal Employment Opportunity and Civil Rights program. Serves as the liaison between ACF and the HHS Office for Civil Rights. Provides leadership for all special initiative activities for ACF; participates in pilot projects; and represents ACF on committees which relate to the functions of the Staff. Manages and coordinates honor awards programs for ACF.

The Staff directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. Immediate oversight is provided by a staff under the direction of the ACF EEO Officer. Plans, develops, and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. Responsible for implementing and evaluating a cost-effective, timely, and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. Provides information, guidance, advice, and technical assistance to ACF supervisors and managers on Affirmative Employment planning and other means of achieving parity and promoting work force diversity. Responsible for ensuring that ACT-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. Monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended and the Age Discrimination Act of 1975, as amended. Implements the applicable provisions of the Americans with Disabilities Act of 1990.

4. Establish a new ''Chapter KU,'' as follows:

Office of Human Resource Management

KU.00 Mission
KU.10 Organization
KU.20 Functions

KU.00 Mission. The Office of Human Resource Management (OHRM) is the principal advisor to the Deputy Assistant Secretary for Program Operations on all personnel administration and management areas.

KU.10 Organization. The Office of Human Resource management is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KU.20 Functions. The Office of Human Resource Management directs and manages the personnel operations and services for the Administration for Children and Families (ACF). Provides advice and assistance to ACF managers in their personnel management activities including workforce planning, recruitment, selection, position management, performance management, and incentive awards. Provides a variety of services to ACF employees, including provision of employee assistance services and career, retirement and benefits counseling. Provides the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, personnel management evaluation, personnel action processing and recordkeeping. Manages the merit promotion, special hiring and placement programs.

Provides leadership, oversight, and coordination for the planning, analysis, and development of human resource policies and programs. Serves as liaison between ACF, the Department, and the Office of Personnel Management. Provides technical advice and assistance on policy, legal and regulatory matters. Formulates and interprets policies pertaining to all areas related to personnel administration and management. Formulates and interprets new human resource programs and strategies.

Formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service, and SES equivalent recruitment, staffing, position establishment, compensation, award, performance management and other related personnel areas. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB) and the Performance Review Board (PRB). Coordinates the Schedule C and Executive personnel activity with the Office of the Secretary. Is the focal point for data, reports, and analyses relating to SES, Schedule C and other executive personnel, such as those in Executive Level positions.

Provides management advisory service on all labor management and employee relations issues. Plans and coordinates ACF-wide employee relations and labor relations activities, including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations, and appeals. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point on all issues pertaining to the Labor-Management Partnership Council. Provides leadership in assuring the integrity, effectiveness and impartiality of ACF's alternative dispute resolution programs, grievances, and merit systems program. Participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71).

Administers ACF's personnel security responsibilities and ethics program. Coordinates the ethics program with the Department's Office of Special Counsel for Ethics.

Dated: November 20, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–28982 Filed 11–27–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee and Idaho National Engineering Laboratory Worker Epidemiologic Study: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease

Control and Prevention (CDC) announce the following meeting.

Name: Citzens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering Laboratory Health Effects Subcommittee (INEL).

Times and Dates: 9 a.m.–4 p.m., December 12, 1995; 9 a.m.–12 noon, December 13, 1995.

Place: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83401, telephone 208/523–8000, FAX 208/529–9610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the pubic; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: The purpose of this meeting is to begin work to update the pubic on the status of CDC's and ATSDR's community involvement plans, health research, and public health activities and present consensus advice and recommendations to CDC and ATSDR regarding these plans.

Matters to be Discussed: The Subcommittee will take into consideration information provided by technical experts on the history of the Idaho National Engineering Laboratory and present operations there, as well as updates on the Idaho National Engineering Laboratory Dose Reconstruction findings and implications. The Subcommittee will also work on organizational issues relating to its future activities.

Name: Idaho National Engineering Laboratory Worker Epidemiologic Study.

Time and Date: 7 p.m.–9 p.m., December 13, 1995.

Place: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83401, telephone 208/523–8000, FAX 208/529–9610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The National Institute for Occupational Safety and Health will hold its annual public meeting for the Idaho National Engineering Laboratory Worker Epidemiologic Study. The purpose of this meeting is to inform the public on the progress of this study.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: November 20, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–29013 Filed 11–27–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Anti-Infective Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee

Date, time, and place. December 13, 1995, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Ermona B. McGoodwin or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530.

General function of the committees. The Anti-Infective Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will meet jointly to discuss data relevant to: (1) Supplemental new drug application (NDA) 50–662/S10 for Biaxin Filmtab® (clarithromycin tablets, Abbott Laboratories), clarithromycin in combination with omeprazole for the treatment of active duodenal ulcers and prevention of recurrence of duodenal ulcers associated with *Helicobacter pylori*; and (2) NDA 20–558 for ranitidine bismuth citrate tablets plus amoxicillin (Tritec®, Glaxo Wellcome, Inc.), and NDA 20–559 for ranitidine bismuth citrate tablets plus clarithromycin (Tritec®, Glaxo Wellcome, Inc.), for healing and prevention of duodenal ulcer relapse

due to *H. pylori* infection when used in conjunction with clarithromycin or amoxicillin.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 20, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–29084 Filed 11–28–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Corrective Action Plan (Medicaid Eligibility Quality Control); *Form No.:* HCFA–320; *Use:* Medicaid Eligibility Quality Control is a State administered management system designed to improve the administration of the Medicaid program. States are required to submit a corrective action plan annually. The plan must detail the initiatives the State will implement in order to reduce the type of errors found. *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Hours:* 20,400.

To request copies of the proposed paperwork collection referenced above, E-Mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 13, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28915 Filed 11–27–95; 8:45 am]

BILLING CODE 4120–03–P

[OPL–007–N]

Medicare Program; December 11, 1995 Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 11, 1995, from 9 a.m. until 4:30 p.m. e.s.t. (The Spring meeting is tentatively scheduled for March 18, 1996.)

ADDRESSES: The meeting will be held in the Auditorium, 1st Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Samuel Shekar, M.D., Executive Director, Practicing Physicians Advisory

Council, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–5463.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, effective on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Kenneth D. Hansen, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; Kenneth M. Viste, Jr., M.D.; James C. Waites, M.D.; and one vacancy. We are planning to fill this vacancy from the list of nominees received from last year's solicitation notice. (In addition, we are developing a separate notice to solicit nominations from medical organizations representing physicians for individuals to fill future vacancies on the Council.) The chairperson is Kenneth M. Viste, Jr., M.D.

The next meeting of the Council will be held on December 11, 1995. The Council agenda will provide for discussion and comment on the following three items:

- Medicare and Medicaid Health Plan Employer Data Information Set (HEDIS).
- The role of carrier medical directors in Medicare policy development and implementation.
- Telemedicine demonstration projects and telecommunications coverage policy.

In addition, Council members will receive a legislative update and be briefed on HCFA's consumer-focused clinical initiatives and program integrity (fraud and abuse) activities. Those individuals or organizations who wish to make 5-minute oral presentations on the first three issues listed should contact the Executive Director by 12:00 noon, November 27, 1995, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, December 1, 1995. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. Anyone who is not scheduled to speak may also submit written comments to the Executive Director by 12:00 noon, December 1, 1995. The meeting is open to the public, but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–29137 Filed 11–24–95; 11:17 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel

Agenda/Purpose: To review and evaluate grant applications.

Committee name: National Institute of Mental Health Special Emphasis Panel.

Date: November 30, 1995.

Time: 4 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29073 Filed 11–27–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 30, 1995.

Time: 10 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Multidisciplinary Sciences.

Date: December 1, 1995.

Time: 2:15 p.m.

Place: NIH, Rockledge 2, Room 5100, Telephone Conference.

Contact Person: Dr. Elliot Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, Maryland 20892, (301) 435–1750.

Name of SEP: Clinical Sciences.

Date: December 5, 1995.

Time: 3 p.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Behavioral and Neurosciences.
Date: December 6, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5186, Telephone Conference.
Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435–1252.

Name of SEP: Behavioral and Neurosciences.
Date: December 8, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.
Date: December 8, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 6178, Telephone Conference.
Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological Sciences.
Date: December 11, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 6178, Telephone Conference.
Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Clinical Sciences.
Date: December 12, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: December 12, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: December 13, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.
Date: December 18, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29072 Filed 11–27–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–96–1320–01; COC 54608]

Notice of Coal Lease Re-Offering By Sealed Bid; COC 54608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be re-offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). On August 18, 1995, these resources were re-offered for competitive lease by sealed bid to the highest qualified bidder provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Cyprus Western Coal Company was the only bidder. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected and the tract is being re-offered. A third sale was scheduled for November 16, 1995; however, due to the federal employee furlough, the sale is rescheduled.

DATES: The lease sale will be held at 11 a.m., Friday, December 22, 1995. Sealed bids must be submitted no later than 10 a.m., Friday, December 22, 1995.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT:

Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 25 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale. COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam on the Twentymile Tract in the following lands:

Sixth Principal Meridian

T. 5 N., R. 86 W.,
Sec. 21, N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, N½, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼,

The land described contains 2,600 acres, more or less.

The recoverable reserves have been adjusted down to 23.87 million tons to account for coal purchased by Cyprus Western Coal Company for two mineral R/W's. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received basis is as follows:

Btu—11,745 Btu/lb.
Moisture—7.76%
Sulfur Content—0.48%
Ash Content—8.80%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: November 21, 1995.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–28989 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of Draft Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plan for *Jacquemontia reclinata. Jacquemontia reclinata* is restricted to the barrier islands of Florida's southeastern coast from Palm Beach County to Miami.

DATES: Comments on the draft recovery plan must be received on or before January 29, 1996 to receive consideration by the Service.

ADDRESSES: Copies can be obtained from Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. Comments and material received are available upon request for public inspection at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dr. L. Karolee Owens at 904/232–2580.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Jacquemontia reclinata was listed as an endangered species on November 24, 1993. Fewer than 1000 individual plants are presently found in small, widely separated populations in Broward, Dade, and Palm Beach Counties in Florida. The primary habitat is beach strand and maritime hammock vegetation. Its range has been further limited by habitat loss resulting from urban development, beach erosion, invasion of exotic plant species, and

park maintenance activities, including mowing and herbicide use. *J. reclinata* does not tolerate shade and requires open areas, which were maintained historically by hurricanes and, possibly, by fire. The ecological characteristics and requirements, population structure and dynamics, and responses to habitat changes and management manipulations by *Jacquemontia reclinata* are not known.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to the approval of the plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 9, 1995.

David J. Wesley,

Field Supervisor.

[FR Doc. 95–28920 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To prepare an Environmental Impact Statement for the Acquisition of Lands for the Big Muddy National Fish and Wildlife Refuge in Counties Adjacent to the Missouri River From the Confluence of the Kansas and Missouri Rivers Near Kansas City, Missouri, to the Confluence of the Missouri and Mississippi Rivers Near St. Louis, Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare an Environmental Impact Statement (EIS) for the acquisition of lands for the Big Muddy National Fish and Wildlife Refuge (refuge) in Missouri. Public ''open house'' meetings will be held. Dates, times, and locations of the open house scoping meetings will be published in local media in advance.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by March 27, 1996. Public open house meetings will be held from 1:00 p.m. to 8:00 p.m. as follows:

January 8, 1996, Park Place Hotel, 1601 Universal, Kansas City, Missouri 64120.

January 9, 1996, Marshall Inn, Highway 65 Bypass, Marshall, Missouri 65340.

January 10, 1996, Capitol Plaza Hotel, 415 West McCarty, Jefferson City, Missouri 65101.

January 11, 1996, Jaycees Hall, City park, Washington and 11th Streets, Hermann, Missouri 65041.

January 12, 1996, The Heart of St. Charles Banquet Center, 1400 South 5th Street, St. Charles, Missouri 63301.

FOR FURTHER INFORMATION CONTACT:

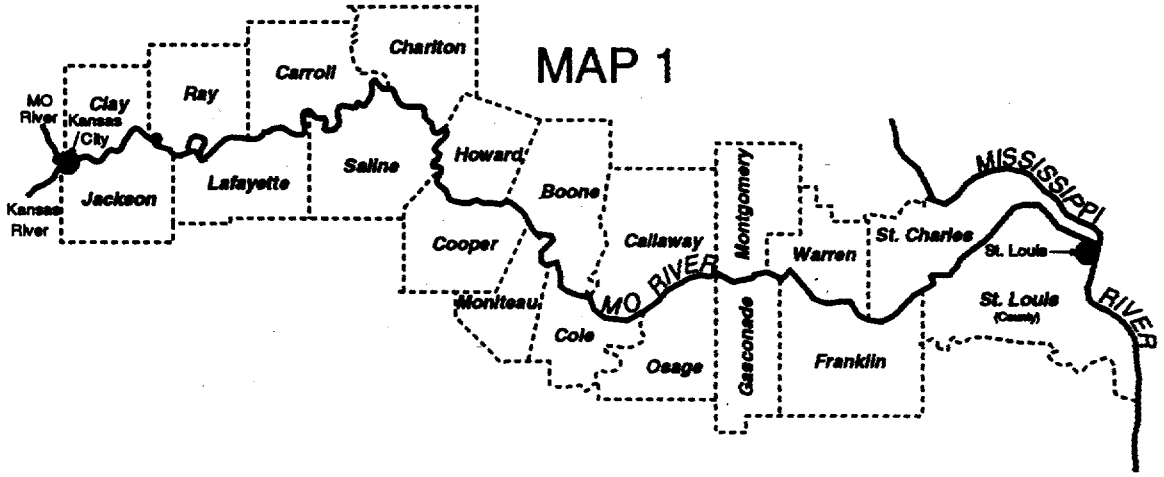
J.C. Bryant, Project Leader, Big Muddy National Fish and Wildlife Refuge, 4200 New Haven Road, Columbia, Missouri 65201–9643; Telephone 1–800–611–1826.

SUPPLEMENTARY INFORMATION: R. Wayne Weier, Wildlife Biologist, U.S. Fish and Wildlife Service, 24385 State Highway 51, Puxico, Missouri 63960 is the primary author of this document.

Proposed Action

The Service proposes to acquire 60,000 acres, more or less, of Missouri River floodplain land at multiple sites along the Kansas City to St. Louis reach (Map 1) for management as a unit of the National Wildlife Refuge System. The project area encompasses River Miles 367 to 0 and includes the lower 10 miles of tributary streams and rivers. Land would be acquired from willing sellers through fee less, easement, or other property transfer arrangements. The project would involve less than ten percent of the floodplain in this river reach if the entire acreage were acquired.

BILLING CODE 4310–55–M



BILLING CODE 4310–55–C

Map. 1. Study area for proposed land acquisition.

Purpose of Action

The purpose of the proposed action is to contribute to the Service's resource responsibilities, as stated in the Service's mission statement, through protection, restoration, and management of Missouri River floodplain lands in the benefit of fish, wildlife, and their habitats and to provide for compatible public use.

Need for Action

The action is proposed to meet Service stewardship mandates for interjurisdictional fish, migratory birds, and threatened and endangered species. Channelization and floodplain development have led to the loss of over 500,000 acres of aquatic and terrestrial habitat in the Lower Missouri River floodplain (between Sioux City, Iowa, and St. Louis, Missouri) since 1912. Consequently, native fish and wildlife resources dependent upon the river and its associated floodplain have declined dramatically. Land acquisition and habitat restoration would benefit a diversity of fish and wildlife resources, including native river fishes, birds such as waterfowl, shorebirds, and passerine birds, and advance the recovery of Federally-listed threatened and endangered species.

Related Actions of Other Agencies

Acquisition of lands and rights to lands under existing Service authorities would complement other floodplain land acquisition being done along this reach of the Missouri River by the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, the Missouri Department of Conservation, and the Federal Emergency Management Agency. Depending on agency missions, these acquisitions are being made to restore Missouri River habitats, contribute to the river's floodway, or to alleviate past or future flood damage.

Alternatives

Alternatives for the Service to pursue restoration of the Missouri River ecosystem to benefit fish and wildlife include: (1) Acquiring appropriate ownership interest in floodplain lands and managing those lands as Big Muddy National Fish and Wildlife Refuge—a unit of the National Wildlife Refuge System, (2) non-acquisition methods, such as private lands initiatives or public information thrusts, and (3) no action. These alternatives, along with others identified during the scoping process, may or may not be examined in detail in the EIS.

Issues

The following would be likely issues under the Service's proposed action: (1) Floodplain land use: Agricultural uses of acquired lands would mostly cease. Forest and wetland habitat, and areas available for outdoor recreation, would increase. Acquired lands would no longer be available to others for purchase. New or expanded transportation and utility systems across refuge land could be authorized through Service issuance of right-of-way permits. (2) Fish and wildlife: The river eventually would reconnect to its floodplain on the refuge, restoring floodplain habitats and functions to the benefit of fish and wildlife, including Federally-listed threatened and endangered species. (3) Economics: Both pluses and minuses would occur. On acquired lands, economic returns from agriculture would mostly cease, while returns from outdoor recreation would likely increase. Long-term, increases in economic returns from commercial fishing and timber harvest could be possible. Little impact on commercial navigation is expected. (4) Drainage and flooding: Previously established drainage across the refuge would continue. The Missouri River would have a larger floodway in certain areas. (5) Levee and drainage districts: The Service would develop cooperative agreements with levee and drainage districts as required to address specific needs, including levee and drainage system maintenance. (6) County tax revenues: Lands and Service acquired in fee title would be removed from county tax rolls; tax revenue losses would be offset by annual payments to those counties through the Refuge Revenue Sharing Act. (7) Taxes associated with transfer of title: On accreted lands, or for long-term ownerships, capital gains taxes could be so high as to deter land sales by certain owners who would otherwise be willing to sell.

Other Information

The environmental review of this proposal will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

We estimate the Draft EIS will be available to the public by Fall, 1996.

Dated: October 27, 1995.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 95–28918 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Meeting of the National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that an orientation meeting of the National Park System Advisory Board will be held on December 7–8, 1995, at the U. S. Department of the Interior, 1849 C Street, NW, Washington, DC, Rooms 5160 and 7000–A. The Board will convene in Room 5160 at about 9:30 a.m., Thursday, December 7, and will meet until about 5 p.m. The Board will reconvene in Room 7000–A at about 9 a.m., on Friday, December 8, and the meeting will be adjourned about 12 noon, that day.

On December 7, following opening remarks by the Director of the National Park Service, the Board will be addressed by the Deputy Director, Associate Directors, and other National Park Service officials, providing an overview of the National Park Service (NPS), including NPS partnerships, National Historic Landmark and National Natural Landmark programs, and the recent NPS restructuring.

On December 8, the Board will be addressed regarding issues that will be brought before the Board in the immediate future. The Board will elect officers and determine committee assignments.

The Board may be addressed at various times by other officials of the National Park Service and 2 the Department of the Interior, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Geraldine Smith, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in Room 1217, Main Interior Building, 1849 C Street, NW, Washington, DC.

John Reynolds,

Deputy Director.

[FR Doc. 95–28912 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 18, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 13, 1995.

Patrick Andrus,

Acting Keeper of the National Register.

COLORADO

Denver County

Joshel, Lloyd M., House, 220 S. Dahlia St., Denver, 95001456

MAINE

Franklin County

Madrid Village Schoolhouse, Reeds Mills Rd. W side, 0.05 mi. N of jct. with ME 4, Madrid, 95001460

Hancock County

Cover Farm, Off ME 3 W side, 0.3 mi. NW of jct. with Crooked Rd., Hulls Cove, 95001464

Lincoln County

Loudville Church, Center of Louds Island, Loudville vicinity, 95001457

Oxford County

Philbrook, John M., House, 32 Main St., Bethel, 95001465

Sagadahoc County

Swan Island Historic District, Kennebec R., between Richmond and Dresden, Richmond vicinity, 95001461

Somerset County

Holden, Samuel, House, US 201 E side, 0.25 mi. N of jct. with MDOT Rd., Moose River, 95001459

Waldo County

Belfast Historic District (Boundary Increase), 121 High St., Belfast, 95001476

York County

Division No. 9 School, ME 9 S side, 0.15 mi. E of jct. with Bragdon Rd., North Berwick vicinity, 95001463

Ogunquit Playhouse, US 1 E side, 0.2 mi. S of jct. with Bourne Rd., Ogunquit, 95001458

Way Way General Store, 93 Buxton Rd., Saco vicinity, 95001462

MASSACHUSETTS

Suffolk County

Riviera, The, 270 Huntington Ave., Boston, 95001450

NEW MEXICO

Curry County

Santa Fe Passenger Depot—Clovis, 221 W. First St., Clovis, 95001451

Lincoln County

Aguayo Family Homestead (Homesteads on the Lincoln National Forest, New Mexico MPS) Tortolita Canyon, W of Nogal, Nogal vicinity, 95001478

Santa Fe County

Nuestra Senora de Luz Church and Cemetery (Religious Properties of New Mexico MPS) 13 mi. SE of Santa Fe, N of I–25 frontage rd., Canoncito, 95001452

OKLAHOMA

Oklahoma County

Crown Heights Historic District, Roughly bounded by NW. 36th St., N. Western Ave., NW. 43rd St. and N. Walker Ave., Oklahoma City, 95001467

Jefferson Park Historic District, Roughly bounded by NW. 23rd St., N. Walker Ave., NW. 30th St. and I–235, Oklahoma City, 95001466

SOUTH DAKOTA

Dewey County

Laurens Polygonal Hog House (South Dakota's Round and Polygonal Barns and Pavilions MPS) SD 63, 1 mi. N of US 212, Eagle Butte vicinity, 95001468

Jones County

Freier Round Barn (South Dakota's Round and Polygonal Barns and Pavilions MPS) 2 mi. N and 2 mi. E of Draper, Draper vicinity, 95001471

Minnehaha County

Austin—Olson Farm (South Dakota's Round and Polygonal Barns and Pavilions MPS) 24993 465th Ave., Colton vicinity, 95001474

Shafer Round Barn (South Dakota's Round and Polygonal Barns and Pavilions MPS) 1600 S. Powder House Rd., Sioux Falls vicinity, 95001470

Moody County

Little Village Farm Sale Barn (South Dakota's Round and Polygonal Barns and Pavilions MPS) Off US 77, NE of Dell Rapids, Dell Rapids vicinity, 95001469

Pennington County

Sitting Bull Crystal Cavern Dance Pavilion (South Dakota's Round and Polygonal

Barns and Pavilions MPS) US 16 NE of Rockerville, Rockerville vicinity, 95001475

Turner County

Bones Hereford Ranch Sale Barn (South Dakota's Round and Polygonal Barns and Pavilions MPS) 45874 268th St., Parker vicinity, 95001472

TENNESSEE

Washington County

Shelbridge, Jct. of N. Roan and E. 11th Sts., Johnson City, 95001477

TEXAS

Goliad County

San Antonio River Valley (West of Goliad) Rural Historic District, Address Restricted, Goliad vicinity, 95001453

WISCONSIN

Rock County

Crosby, James B., House, 1005 Sutherland Ave., Janesville, 95001454

Taylor County

Saint Ann's Catholic Church and Cemetery, W3963 Brehm Ave., Greenwood, 95001455

[FR Doc. 95–29015 Filed 11–27–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–365 and 366 (Final)]

Certain Pasta From Italy and Turkey

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–365 and 366 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Italy and Turkey of certain pasta,[1] provided for in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determinations to coincide with those to be made in the ongoing antidumping investigations on certain pasta from Italy and Turkey. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for December 15, 1995).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy and Turkey of certain pasta. The investigations were requested in a petition filed on May 12, 1995, by Borden, Inc., Columbus, OH; Hershey Foods Corp., Hershey, PA; and Gooch Foods, Inc. (Archer Daniels Midland Co.), Lincoln, NE.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than 21 days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29054 Filed 11–27–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–379]

Certain Starter Kill Vehicle Security Systems; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 18, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Code-Alarm, Inc., 950 East Whitcomb, Madison Heights, Michigan 48071–6408. Supplements to the complaint were filed on November 2, November 13, and November 20, 1995. The complaint alleges a violation of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain starter kill vehicle security systems by reason of alleged contributory and induced infringement of claims 7 and 8 of U.S. Letters Patent

[1] "Certain pasta," the imported product subject to these investigations, consists of non-egg dry pasta in packages of 5 pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to 2 percent egg white. Certain pasta is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions. Excluded from the definition of certain pasta are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to 2 percent egg white.

4,740,775. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 20, 1995, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain starter kill vehicle security systems by reason of infringement of claims 7 or 8 of U.S. Letters Patent 4,740,775, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Code-Alarm, Inc., 950 East Whitcomb, Madison Heights, Michigan 48071–6408.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Directed Electronics, Inc., 2560 Progress Drive, Vista, California 92083

Nutek Company, 150 Muhhsin Road, Section 3, Taipei, Taiwan

(c) Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to section 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29053 Filed 11–27–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–135]

Synthetic Organic Chemicals (SOC) Reports

AGENCY: International Trade Commission.

ACTION: Phaseout of report series and termination of investigation.

EFFECTIVE DATE: November 14, 1995.

SUMMARY: The Commission has published both the annual and the quarterly reports on synthetic organic chemicals (SOC) on an annual basis since 1917 (the one exception being 1931). Beginning in 1982, the annual and quarterly data were collected and published through self-initiated Investigation No. 332–135 under the authority of section 332(b) of the Tariff Act of 1930. Effective May 13, 1988, that authority was changed to section 332(g) at the request of the House Committee on Ways and Means. Notice of this action was published in the Federal Register of May 25, 1988 (53 FR 18912).

By letter of October 17, 1995, the Committee on Ways and Means requested that the Commission terminate publication of the quarterly and annual SOC Reports by October 1, 1996. Accordingly, the Commission will publish a final annual report in 1995 and quarterly reports covering all quarters through June 1996. The Commission will terminate the investigation effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Ms. Elizabeth Nesbitt (202–205–3355), Energy, Chemicals, and Textiles Division, Office of Industries, or from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

By order of the Commission.

Issued: November 20, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29055 Filed 11–27–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–207]

The U.S. Automobile Industry Monthly Report on Selected Economic Indicators

AGENCY: International Trade Commission.

ACTION: Phaseout of report series and termination of investigation.

SUMMARY: In December 1980, the House Committee on Ways and Means requested that the Commission provide it with monthly data on U.S. automobile imports, sales, production, and prices. In December 1980, the Commission instituted Investigation No. 332–121, U.S. Automobile Industry Monthly Report on Selected Economic Indicators. The request by the Committee for monthly data on the automobile industry was renewed four times during 1981–85, with the final request in 1985 having no fixed date for termination.

Notice of the current investigation, Investigation No. 332–207 was published in the Federal Register of March 13, 1985 (50 FR 10118).

EFFECTIVE DATE: November 14, 1995.

By letter of October 17, 1995, the Committee requested that the Commission change its publication schedule from monthly to quarterly reports, effective immediately, and by January 1996 move to annual publication and finally, terminate the report by January 1998. Accordingly, the Commission has determined to publish one quarterly report for the Oct.–Dec. 1995 period and one annual report for 1996, and will terminate the investigation effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Mr. Michael Hagey (202–205–3392), Services, Electronics, and Transportation Division, Office of Industries, or from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Issued: November 20, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29056 Filed 11–27–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs, Bureau of Justice Statistics

Information Collection Under Review

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through he use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy contact: Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 633 Indiana Avenue NW., Washington, DC 20531. Telephone: 202–307–0765.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with Change, of a Previously Approved Collection for which Approval has Expired.

(2) *Title of the Form/Collection:* Survey of Inmates in State Correctional Facilities—1996, and Survey of Inmates in Federal Correctional Facilities—1996.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms NPS–13, and NPS–25. Sponsored by the Bureau of Justice Statistics and the Federal Bureau of Prisons, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: Federal and State Prison Management Officials. Other: None. Federal and State Prison Management Officials will be asked to furnish a list of all inmates in custody. The list will be checked for completeness with the NPS–13. Approximately 19,150 sampled State and Federal inmates will be asked a series of questions in a personal interview (NPS–25) using Computer Assisted Personal Interviewing. The interview will collect information on the controlling offense, demographic characteristics of the inmate, criminal history, alcohol and drug use, victims of violent crime and conditions of confinement. The Bureau of Justice Statistics uses this information in published reports, and for the United States Congress, the Executive Office of the President, practitioners, researchers, and others in the criminal justice community.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 278 responses at 1 hour each for the NPS–13 and 19,150 responses at 1 hour each for the NPS–25.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 19,428 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 95–29005 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collection Under Review

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Mr.

Richard Florence, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, Washington, DC 20535.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Age, Sex, Race, and Ethnic Origin of Persons Arrested (Over 18). Age, Sex, Race, and Ethnic Origin of Persons Arrested (Under 18).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: I–708, I–708a. Federal Bureau of Investigation, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: None. These two forms are used to collect the age, sex, race, and ethnic origin of persons arrested. Resulting statistics are published in the annual ''Crime in the United States'' publication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,148 respondents 12 responses per year at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 60,888 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 95–29006 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–02–M

Information Collection Under Review

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Charlotte C. Black, Assistant General Counsel, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Innovative Community Policing Grants Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form COPS 016/01. Office of Community Oriented Policing Services (COPS), United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: None. This collection will be used to collect information relating to applications to initiate, support, and enhance innovative and collaborative projects implementing community policing. The information will be used to make determinations of competitive grant awards.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,210 responses per year at 14 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 67,781 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–29007 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collection Under Review

The Notice Below is a Correction to the Notice on Page 54515–16 of The Federal Register, Vol. 60, No. 205, Tuesday, October 24, 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Audrey B. LaSante, Federal Bureau of Investigation, FBI Academy, Washington Dorm, Quantico, Va. 22135.

Overview of this information collection:

(1) *Type of Information Collection:* Existing Collection in use without an OMB Control Number.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy Survey Booklet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: None. This is program evaluation data collected to verify the appropriateness of courses offered at the FBI Academy to state and local law enforcement officers. Respondents are graduates of the FBI National Academy Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 907 responses per year at .75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 680 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–29009 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–02–M

Information Collection Under Review

The Notice Below is a Correction to the Notice on Page 54516 of the Federal Register, Vol. 60, No. 205, Tuesday, October 24, 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: MS. Ellen Westley, Office of Justice Programs, Room 401, Indiana Building, 633 Indiana Ave., NW., Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* The Parole Data Survey and the Probation Data Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* CJ7—The Parole Data Survey, CJ8—The Probation Data Survey. Bureau of Justice Statistics, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: State, Local or Tribal Governments. These data will provide the Bureau of Justice Statistics with aggregate information about offenders under the supervision of parole and probation agencies across the country. Data are collected from 93 central respondents and 234 local respondents. Since over 70% of the 5.1 million offenders under correctional supervision are under parole or probation supervision it is essential for any criminal justice reporting system to include this segment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 327 responses per year at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 491 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–29011 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collection Under Review

The Notice Below is a Correction to the Notice on Page 54515 of the Federal Register, Vol. 60 No. 205, Tuesday, October 24, 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Ellen Westley, Office of Justice Programs, Room 401, Indiana Building, 633 Indiana Ave., NW., Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None. Bureau of Justice Statistics, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: None. This collection covers the forms used to administer formula grant awards under the provisions of Subtitle C—State and Local Law Enforcement Assistance Act of the Anti-Drug Abuse Act of 1988, as amended by the Crime Control and the Immigration Acts of 1990.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 70,108 responses per year at .38 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,829 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–29010 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collection Under Review

The Notice Below is a Correction to the Notice on Page 55600 of the Federal Register, Vol. 60, No. 211, Wednesday, November 1, 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Jill Ptacek, Room 9828, Judiciary Center Building, 555 4th Street, NW, Washington, DC 20001.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms: ATR–139, ATR–140. Antitrust Division, United States Department of Justice.

(4) *Who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchange of federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves and the reserves subject to the federal lease. The Department uses this information to determine whether the lease transfer is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses per year at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530.

Dated: November 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–29008 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–11–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that on July 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Object Management Group, Framingham, MA; Panther Software Corporation, Calgary, Alberta, CANADA; Kestrel Data Limited, Calgary, Alberta, CANADA; System Development Inc.; Houston, TX; MATE srl, Milan, ITALY; IEDS Limited, Tetbury, Gloucesteshire, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on April 19, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–28919 Filed 11–27–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,531]

Allegheny Ludlum Corporation, Brackenridge, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 16, 1995 in response to a worker petition which was filed October 4, 1995 on behalf of workers at Allegheny Ludlum Corporation, Brackenridge, Pennsylvania (TA–W–31,531).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–31,231A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 9th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28971 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–30–M

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA–W–31,114, Pennzoil Exploration & Production Company, Midland, Texas and Operating in the States of TA–W–31,114A Louisiana; TA–W–31,114B Mississippi; TA–W–31,114C Texas (excluding Midland); TA–W–31,114D Alabama; TA–W–31,114E Tennessee; TA–W–31,114F Utah; TA–W–31,114G Colorado.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 7, 1995, applicable to all workers of Pennzoil Exploration & Production Company located at Midland, Texas. The notice was published in the Federal Register on July 19, 1995 (60 FR 37082).

New information received from the company shows that workers of the subject firm operating in other States were inadvertently excluded from the certification. The company reports that worker separations occurred in Louisiana, Mississippi, locations in Texas other than Midland, Alabama, Tennessee, Utah and Colorado. The workers are engaged in seismic analysis related to the production of crude oil and natural gas. Based on these findings, the Department is amending the certification to cover workers of Pennzoil Exploration & Production in those States.

The intent of the Department's certification is to include all workers of Pennzoil Exploration & Production Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,114 is hereby issued as follows:

''All workers of Pennzoil Exploration & Production Company, Midland, Texas (TA–W–31,114), and other States cited below, engaged in seismic analysis related to the production of crude oil and natural gas who became totally or partially separated from employment on or after May 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,114A Louisiana;
TA–W–31,114B Mississippi;
TA–W–31,114C Texas (excluding Midland);
TA–W–31,114D Alabama;
TA–W–31,114E Tennessee;
TA–W–31,114F Utah;
TA–W–31,114G Colorado.''

Signed at Washington, D.C. this 9th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28972 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–30–M

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Allegheny Ludlum Corporation, TA–W–31, 231, Bagdad Plant Leechburg, Pennsylvania; TA–W–31, 231A, Brackenridge, Pennsylvania; and TA–W–31, 231B, Natrona, Pennsylvania.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 8, 1995, applicable to all workers of Allegheny Ludlum Corporation located in Leechburg, Pennsylvania. The notice was published in the Federal Register on September 26, 1995 (60 FR 49634).

New information received from the company shows that worker separations have occurred at the subject firm's silicon electrical steel production facilities in Brackenridge and Natrona, Pennsylvania. Based on these new findings, the Department is amending the certification to cover workers of Allegheny Ludlum Corporation at those facilities.

The intent of the Department's certification is to include all workers of Allegheny Ludlum Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,231 is hereby issued as follows:

''All workers of Allegheny Ludlum Corporation, Bagdad Plant, Leechburg, Pennsylvania (TA–W–31,231); Brackenridge, Pennsylvania (TA–W–31,231A) and Natrona, Pennsylvania (TA–W–31,231B) who became totally or partially separated from employment on or after July 3, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 9th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28973 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 8, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/06/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,601	Continental Emsco (Wkrs)	Garland, TX	10/17/95	Barrel Tubes, Plungers, Polish Rods.
31,602	Crown Textile Co. (UNITE)	Talladega, AL	10/23/95	Apparel Interlinings.
31,603	Diesel ReCon Company (Comp)	Santa Fe Sprgs, CA	10/25/95	Industrial Engines.
31,604	Fernbrook Company #3 (UNITE)	Neffs, PA	10/23/95	Ladies' Apparel.
31,605	General Dynamics Land (UAW)	Eynon, PA	10/23/95	Machined Parts for Military Tanks.
31,606	Kerr McGee Refining (Wkrs)	Houston, TX	10/12/95	Marketing, Accounting Operations.
31,607	Signal Apparel Company (Comp)	Bean Station, TN	10/18/95	Cotton Tee Shirts.
31,608	Paxar Woven Label (UTWA)	Paterson, NJ	10/20/95	Woven Labels for Suits, Coats.
31,609	Empire Stamp and Seal Co. (Comp)	New York, NY	10/24/95	Rubber Stamps.
31,610	Toll Gate Garment Co. (Comp)	Hamilton, AL	10/26/95	Men's Sport Shirts.
31,611	Plains Blouse Co. (UNITE)	Plains, PA	10/26/95	Men's & Ladies' Tee Shirts.
31,612	Rita's Sportswear Co. (UNITE)	Moscow, PA	10/26/95	Ladies' Sportwear.
31,613	American White Cross, Inc (UNITE)	Dayville, CT	10/26/95	Cosmetic Machinery.
31,614	Christian Fashions (Co.)	El Paso, TX	10/25/95	Ladies' Sportswear.
31,615	Dalen Resources Oil & Gas (Co.)	Dallas, TX	10/24/95	Crude Oil, Natural Gas.
31,616	Ozone Industries, Inc. (Wkrs)	Ozone Park, NY	10/26/95	Landing Gears for Jets.

[TA–W–31,548]

General Electric Company, GE Transportation Systems Erie, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 23, 1995 in response to a worker petition which was filed on October 23, 1995 on behalf of workers at General Electric, GE Transportation Systems, Erie, Pennsylvania.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–31,536). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28970 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Portac Incorporated of Washington; Notice of Revised Determination on Reconsideration

In the matter of TA–W–31,295, Beaver, Washington; TA–W–31,296, Forks, Washington.

On October 6, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the Federal Register on October 20, 1995 (60 FR 54259).

Investigation findings show that the workers produced softwood lumber products. The workers were denied TAA because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. The test is generally determined through a survey of the workers' firm's major declining customers.

Findings on reconsideration show that the quantity of U.S. imports of softwood lumber increased from 1993 through June 1995. New investigation findings show that a major customer of Portac changed its earlier statement to the Department and reported that, during the base period in question, it purchased imports of softwood lumber.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Portac Incorporated of Tacoma, in Beaver and Forks, Washington were adversely affected by increased imports of articles like or directly competitive with softwood lumber produced at the subject firm.

''All workers of Portac Incorporated of Tacoma, Beaver, Washington (TA–W–31,295) and Forks, Washington (TA–W–31,296) who became totally or partially separated from employment on or after July 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 9th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28974 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–103; Exemption Application No. D–09611, et al.]

Grant of Individual Exemptions; General Motors, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Motors Retirement Program for Salaried Employes; General Motors Hourly Rate Employes Pension Plan; the Saturn Individual Retirement Plan for Represented Team Members; Saturn Personal Choices Retirement Plan for Non-Represented Team Members; and Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption No. 95–103; Application Nos. D–09611, D–09612, and D–09809]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code [1] shall not apply, effective May 21, 1993, to the purchase by a partnership (the Partnership) of a parcel of improved real property (the Property) located in Washington, DC, from Collin Equities, Inc. (the Seller), a party in interest with respect to the Plans, pursuant to an agreement which provided that the Plans would invest in the Partnership upon purchase of the Property, provided the following conditions are met:

(a) the terms of the purchase of the Property were no less favorable to the Plans than those negotiated at arm's length in similar circumstances with unrelated third parties;

(b) the fair market value of the Property was determined by an independent, qualified appraiser;

(c) the Plans paid no commissions or fees in regard to the transaction; and

(d) prior to investing in the Partnership an independent, qualified fiduciary acting on behalf of the Plans, reviewed and recommended approval of the transaction and determined that the transaction was in the best interest of the Plans and the participants and beneficiaries of such Plans.

EFFECTIVE DATE: The exemption is effective retroactively, as of May 21, 1993.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. All comments and requests for hearing were due by September 29, 1995.

During the comment period, the Department received no requests for a hearing but did receive one letter from an interested person commenting on the exemption. With respect to this comment letter, the Department forwarded a copy to the applicant and requested that the applicant address in writing the concerns raised by the commentator. In this regard, the commentator raised four points which the applicant responded to in turn. A description of the comments and the applicant's responses are summarized below.

The commentator first alleges that General Motors Investment Management Corporation (GMIMCO) would ''make sure they take care of themselves and their fiduciary agents before they look after the interests of the participants.'' The applicant notes that the commentator cites no specific factual basis for his concerns other than an unsupported assertion that ''the Corporation provides a profitable interest to those fiduciary agents who do business with them, so that such agents will act in kind for GM, regardless of the potential harm to the Plan participants.'' In response, the applicant reiterates the fact that it was completely coincidental that the Seller happened to be a party in interest with respect to the Plans in this transaction and that it was not known that the Seller was a party in interest at the time the initial offering price was formulated. The applicant further states that at no time after the Seller was identified as a subsidiary of a service provider with respect to the Plans until the offer was first submitted to the Seller, did GMIMCO argue or urge in any way to have the price increased. Further, the applicant asserts that GMIMCO did not profit from the transaction. Accordingly, the applicant maintains that there is nothing in the record to indicate an intent on the part of GMIMCO to favor either itself or the Seller.

In his second comment, the commentator cites the bailout of the Savings and Loan industry, arising from bad real estate investments, as a precedent for his uncertainty that the transaction is in the best interest of the participants. In addition, the commentator expresses concern that the desire and intention of GMIMCO to make money ultimately may result in a loss to the Plans and the participants and beneficiaries of such Plans. In response, the applicant submits that the experience of the Savings and Loan industry in the late 1980's is not relevant to this application for exemption, except perhaps to the extent that it may have helped lay the backdrop for a depressed real estate market in the early 1990's that appears to have enabled the Plans to make a

[1] For purposes of this exemption reference to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

favorable investment for their real estate portfolio in entering this transaction. Further, the applicant maintains that it has provided ample information on the value of the Property as part of its submissions in support of the exemption. While the applicant agrees that while intentions to make a profit can result in losses, it does not follow that the transaction which is the subject of this exemption was imprudent or was undertaken in a way that was not protective of the interest of the Plans.

In his third comment, the commentator objected to the fact that the Property was only 55.2% leased, as of March 1, 1993. In this regard, the applicant notes that the fact that the Property was newly constructed and was not fully leased at the time of the purchase was taken into account in its pricing strategy and resulted in a substantially discounted price for the Property in relation to similar fully-leased Class A office buildings in the same market. Further, the applicant points out that the Property is now essentially 100 percent (100%) leased, and has met or exceeded all expectations for its value.

Finally, the commentator notes that the transaction is ''not entirely free from doubt, in part because of the dearth of authority on what constitutes an indirect prohibited transaction, regardless of its ''arm's length negotiation.'' In response, the applicant requests that the dearth of legal authority in this area and the admitted uncertainty of a legal conclusion of applicant's counsel, should not penalize the applicant for its decision to seek the Department's guidance or an exemption to cover the transaction.

After giving full consideration to the entire record, including the written comments by the commentator and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comment submitted to the Department and the responses of the applicant have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Friday, July 21, 1995, 60 FR 37677.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Prudential Property Investment Separate Account (PRISA) and Prudential Property Investment Separate Account II (PRISA II), Located in Newark, NJ

[Prohibited Transaction Exemption No. 95–104; Application Nos. D–09845 and D–09846]

Exemption

The restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[2] shall not apply, effective December 31, 1995, to the advanced commitment to provide an enhanced return and the payment of such return by the Prudential Insurance Company of America (Prudential) to various employee benefit plans (the Plan or Plans) on the assets of such Plans which are invested either in PRISA and/or PRISA II (the Account or Accounts), as of April 1, 1994, and which remain invested for all or any portion of a twenty-one (21) month period, beginning April 1, 1994, and ending December 31, 1995, (the Investment Period), provided that the following conditions are met:

(1) the decision to invest funds in either or both of the Accounts for all or a portion of the Investment Period has been and will be made by fiduciaries of the Plans independent of Prudential;

(2) the amount of the enhanced return payment with respect to the assets of the Plans that are invested in either or both of the Accounts for only a portion of the Investment Period will be calculated in the same manner as the amount of the enhanced return payment with respect to the assets of the Plans that remain invested in either or both of the Accounts for the entire Investment Period;

(3) the enhanced return will be derived by comparing the cumulative total return for the Investment Period reported by the expanded NCREIF Property Index (the Index) with the cumulative total return of PRISA or PRISA II for the same period;

(4) the Plans will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index;

(5) the payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed;

(6) every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser;

(7) a valuation policy committee, consisting of representatives from an valuation management firm (the Valuation Management Firm), Prudential Real Estate Investors (PREI), the interim and permanent advisory councils (the Advisory Council or Advisory Councils) composed of investors in PRISA and PRISA II and their consultants, and other clients of PREI, will meet at least quarterly and set valuation policy for the Accounts;

(8) the Valuation Management Firm, an independent third party, will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(9) the Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(10) in connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) any required state insurance regulatory approvals are obtained for the transaction; and

(12) the Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

EFFECTIVE DATE: This exemption will be effective on December 31, 1995.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the Federal Register on September 13, 1995. All

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

comments and requests for hearing were due by October 30, 1995.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter from Prudential, dated September 20, 1995. In this letter, Prudential requested a clarification of the meaning of one of the operant conditions of the proposed exemption and suggested that certain revisions to the Summary of Facts and Representations (SFR) would more accurately describe the transactions.

With respect to Prudential's requested clarification of the operant language of the exemption, on page 47594, column 1, lines 35–40, the sixth condition in the Notice reads as follows: ''Every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser.'' Prudential represents that in accordance with current policy and practice and state regulatory approvals, every property held by PRISA and PRISA II is valued at least once in each calendar year by an independent qualified appraiser. Accordingly, each such property will be valued at least once during the Investment Period (*i.e.* the period April 1, 1994 through December 31, 1995). Although there are at present no plans to seek regulatory approval to change the current policy and practice of obtaining independent valuations at least annually, it is Prudential's understanding that the above-quoted language of condition six is not intended to preclude future modification of this policy and practice. The Department concurs in Prudential's understanding in this matter. However, we do note that condition 6, which requires that every property held by the Accounts be valued at least annually, must be met until the successful completion of the payment of the enhanced return by Prudential to the Plans which were invested in the Accounts on April 1, 1995, and remain invested in the Accounts for any portion of the Investment Period.

With respect to Prudential's suggested revisions of the facts as reflected in the SFR, on page 47595, column 3, lines 19–25, with regard to the expanded Russell-NCREIF Property Index (the Index), the Notice reads as follows: ''The Index is produced in partnership between Russell Real Estate Consulting (a division of the Frank Russell Company, an investment consulting firm) and the National Council of Real Estate Investment Fiduciaries (NCREIF).'' Prudential has informed the Department that, while the statement in the Notice correctly identifies the parties responsible for the production of the Index through the final quarter of 1994, commencing with the first quarter of 1995, the Index has been produced solely by NCREIF without participation by Russell Real Estate Consulting and, accordingly, is currently referred to as the NCREIF Property Index. The Department concurs with this comment and has incorporated this change in the reference to the Index in condition three of the operant language of this exemption.

On page 47596, column 2, lines 52–58, regarding the PRISA and PRISA II Advisory Councils, the Notice reads as follows: ''It is represented that formal meetings of the Advisory Councils will be held quarterly approximately thirty (30) days following the end of each quarter, with additional meetings to be held at the discretion of the Advisory Councils.'' Prudential has informed the Department that meetings of the PRISA and PRISA II Advisory Councils are scheduled at the discretion of each respective Advisory Council. In this regard, during 1994, both Advisory Councils met more frequently than quarterly. During 1995, the PRISA Advisory Council has met four times and is expected to have at least one more meeting before year end. The PRISA II Advisory Council has met once during 1995, and is expected to have at least one more meeting before year end. Both Advisory Councils have the discretion to schedule additional meetings. The Department concurs in this comment.

After giving full consideration to the entire record, including the written comment from Prudential, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by Prudential to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U. S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Wednesday, September 13, 1995, at 60 FR 47593.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Plumbers and Steamfitters Local No. 177 Health and Welfare Fund (the Welfare Plan), and Plumbers and Steamfitters Local No. 177 Pension Trust Fund (the Pension Plan; collectively, the Plans) Located in Brunswick, Georgia

[Prohibited Transaction Exemption 95–105; Exemption Application Nos. L–09927, D–09928 and L–09929]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective February 17, 1994, to the past sale by the Welfare Plan of an office building located in Brunswick, Georgia (the Office Building) to Plumbers and Steamfitters Local No. 177 (the Union), a party in interest with respect to the Plans; and (2) effective February 16, 1995, to the leases of space in the Office Building by the Union to the Plans (the Leases); provided the following conditions are satisfied:

(a) The purchase price paid by the Union for the Office Building was no less than the fair market value of the Office Building as of the date of the sale;

(b) All terms of the Leases are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties;

(c) Rents paid under the Leases do not exceed the fair market rental values of the leased spaces;

(d) The interests of the Plans under the Leases for all purposes are represented by a qualified independent fiduciary who monitors the Leases and takes appropriate action to enforce the Union's compliance with all Lease terms and conditions; and

(e) Within 60 days of the publication in the Federal Register of this notice granting the exemption, the Union pays any excise taxes applicable under section 4975(a) of the Code by virtue of the past Leases for the period commencing February 17, 1994 to February 16, 1995.

EFFECTIVE DATE: This exemption is effective as of February 17, 1994 with respect to the sale of the Office Building, and February 16, 1995 with respect to the Leases.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on September 21, 1995 at 60 FR 49014.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Mutual Life Assurance Company of America (State Mutual) Located in Worcester, MA

[Prohibited Transaction Exemption 95–106; Exemption Application No. D–10008]

Exemption

Section I. Covered Transactions.

Effective October 16, 1995, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (a) the receipt of common stock of Allmerica Financial Corporation, State Mutual's prospective sole owner, or (b) the receipt of cash or policy credits, by or on behalf of an employee benefit plan policyholder of State Mutual (the Plan), other than any policyholder which is a Plan maintained by State Mutual or an affiliate of State Mutual for its own employees (the State Mutual Plans), in exchange for such policyholder's membership interest in State Mutual, in accordance with the terms of a plan of reorganization (the Demutualization Plan) adopted by State Mutual and implemented pursuant to section 19E (Section 19E) of Chapter 175 of the Massachusetts General Laws.

In addition, effective October 16, 1995, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by the Allmerica Financial Cash Balance Pension Plan (the Allmerica Pension Plan), of employer securities in the form of excess stock, in accordance with the terms of the Demutualization Plan.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions.

(a) The Demutualization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts law and is subject to the review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to certain policyholders of State Mutual, which include, but are not limited to the subject Plans and the State Mutual Plans (the Eligible Policyholders), as part of such Commissioner's review of the Demutualization Plan, and approves the Demutualization Plan following a determination that such Demutualization Plan is not prejudicial to all Eligible Policyholders.

(c) The Demutualization Plan is filed with the New York Superintendent of Insurance (the Superintendent) who determines whether the Demutualization Plan is fair and equitable to Eligible Policyholders from New York.

(d) Each Eligible Policyholder has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such Eligible Policyholder by State Mutual, of the terms of the Demutualization Plan.

(e) Any election by an Eligible Policyholder which is a Plan (including the State Mutual Plans), to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither State Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(f) In the case of the State Mutual Plans, where the consideration is in the form of stock, the Independent Fiduciary—

(1) Elects the form of consideration that such Plans receive;

(2) Monitors, on behalf of such Plans, the acquisition and holding of the stock;

(3) Makes determinations on behalf of such Plans with respect to the voting, the continued holding or the disposition of such stock; and

(4) Disposes, in a prudent manner, shares of stock exceeding the 10 percent holding limitation of section 407(a)(2) of the Act within 90 days following its receipt by the Allmerica Pension Plan. Such shares that are not disposed of during this initial 90 day period must be disposed of within an additional period of 90 days.

(g) After each Eligible Policyholder entitled to receive stock is allocated at least 28 shares of stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of State Mutual which formulas have been approved by the Commissioner and the Superintendent.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(j) All of State Mutual's policyholder obligations remain in force and are not affected by the Demutualization Plan.

Section III. Definitions.

For purposes of this proposed exemption:

(a) The term ''State Mutual'' means State Mutual Life Assurance Company of America and any affiliate of State Mutual as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of State Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with State Mutual. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder whose name appears on the conversion date on the insurer's records as owner of a participating policy under which there is a right to vote and which is in full force on both the December 31 immediately preceding the conversion date and the date the insurer's board of directors first votes to convert to stock form. Under Massachusetts law, only such policyholders are entitled to receive consideration in the demutualization. Policyholders who are not Eligible Policyholders will not receive any stock or other consideration. As used herein, the term ''Eligible Policyholder'' includes, but is not limited to, the State Mutual Pension Plan as well as those Plans that are not sponsored by State Mutual.

(d) The term ''policy credit'' means (i) for an individual life insurance policy, an increase in the dividend accumulation account, (ii) for an individual deferred annuity policy where the owner has elected a dividend accumulation option, an increase in the dividend accumulation account, (iii) for all other individual deferred annuity policies, an increase to the dividend addition value, and (iv) for a supplementary contract or settlement option issued by State Mutual to effect the annuitization of an individual deferred annuity, an increase in the contract reserve which shall provide for an increase in the monthly income payment equal to the ratio of the reserve

increase to the then current contract reserve.

EFFECTIVE DATE: This exemption is effective as of October 16, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 21, 1995 at 60 FR 49016.

Written Comments

The Department received one written comment with respect to the Notice. The comment was submitted by State Mutual and is intended to clarify information contained in the Notice. Discussed below is State Mutual's comment.

1. *Form of Transaction.* State Mutual represents that in describing the demutualization transaction, the Notice refers to the receipt by policyholders of common stock of State Mutual and the substitution of the common stock of Allmerica, State Mutual's prospective sole owner, for the State Mutual stock. State Mutual explains that while this structure was initially considered, the Demutualization Plan ultimately adopted called for the issuance of Allmerica stock directly to policyholders in exchange for such policyholder's membership interests in State Mutual. Accordingly, State Mutual represents that reference to the issuance of State Mutual stock to policyholders and the substitution of the Allmerica stock should be amended to reflect the direct issuance of Allmerica stock to policyholders in exchange for their policyholder interests.

2. *The Initial Public Offering (the IPO).* State Mutual explains that the Notice states that Allmerica ''may'' sell new Allmerica stock in an underwritten IPO. However, State Mutual advises that the Demutualization Plan now requires the IPO as a condition to the effectiveness of the reorganization.

3. *Adoption of Demutualization Plan, Policyholder Vote and Hearing.* State Mutual notes that its Board of Directors adopted the Demutualization Plan on February 28, 1995 and that on June 30, 1995, the Demutualization Plan was approved by a vote of the policyholders. On June 17 and June 27, 1995, State Mutual represents that the Commissioner held a hearing on the Demutualization Plan and issued an order on August 2, 1995, approving such plan.

4. *Minimum Consideration.* State Mutual explains that the Notice states that each Eligible Policyholder will be allocated a minimum consideration of 30 shares. While section 7.1(b)(i) of the Demutualization Plan refers to a fixed component of consideration equal to 30 shares, that number, according to State Mutual, is subject to proportional adjustment as provided in section 9.6 of the Demutualization Plan. Pursuant to this provision, State Mutual asserts that the number of shares constituting the minimum consideration has been adjusted to 28 shares and that the exemption should be amended to reflect 28 shares rather than 30 shares as the minimum consideration.

5. *Definition of Policy Credit.* State Mutual points out that the Notice contained the following definition of the term ''policy credit'' which it now considers to be out of date:

> ''(d) The term ''policy credit'' means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.''

To make the definition more comprehensive, State Mutual has redefined this term as follows:

> ''(d) The term ''policy credit'' means (i) for an individual life insurance policy, an increase in the dividend accumulation account, (ii) for an individual deferred annuity policy where the owner has elected a dividend accumulation option, an increase in the dividend accumulation account, (iii) for all other individual deferred annuity policies, an increase to the dividend addition value, and (iv) for a supplementary contract or settlement option issued by State Mutual to effect the annuitization of an individual deferred annuity, an increase in the contract reserve which shall provide for an increase in the monthly income payment equal to the ratio of the reserve increase to the then current contract reserve.''

6. *Plan Name Change and Coverage.* State Mutual represents that the Notice describes the State Mutual Companies' Pension Plan (the State Mutual Pension Plan) as covering exclusively eligible career agents, general agents and clerical employees of State Mutual and its affiliates. State Mutual wishes, however, to clarify that the name of the State Mutual Pension Plan has been changed to the ''Allmerica Financial Cash Balance Pension Plan'' and to explain that this Plan covers all eligible employees of State Mutual.

7. *Trustee Change.* State Mutual advises that the trustee of the Allmerica Pension Plan (i.e., the former State Mutual Pension Plan) is currently First National Bank of Boston and not Mechanics Bank of Worcester.

8. *Independent Fiduciary.* State Mutual represents that the Notice requires State Street Bank & Trust Company (State Street), an independent fiduciary, to act on behalf of all State Mutual Plans. Specifically, State Street is required to—(a) elect the form of consideration that such Plans receive; (b) monitor, on behalf of such Plans, the acquisition and holding of the stock; (c) make determinations on behalf of the Plans with respect to the voting, the continued holding or the disposition of such stock; and (d) dispose, in a prudent manner, shares of stock exceeding the 10 percent holding limitation of section 407(a)(2) of the Act within 90 days following its receipt by the Allmerica Pension Plan. Such shares that are not disposed of during this initial 90 day period must be disposed of within an additional period of 90 days.

Although State Street has been retained as independent fiduciary on behalf of all of the State Mutual Plans throughout the demutualization process, State Mutual believes that once the transaction has been consummated and the Allmerica Pension Plan has reduced its holdings of employer stock to under the 10 percent limitation of section 407(a)(2) of the Act, the retention of State Street should not be required indefinitely. Therefore, State Mutual wishes to clarify that once a State Mutual Plan's holdings have been reduced to below the 10 percent threshold, the continued retention of State Street will be at the discretion of a State Mutual Plan's named fiduciary.

9. *Retroactivity of Exemption.* State Street requests that the exemption reflect a retroactive effective date of October 16, 1995 which is the closing date of the demutualization and the IPO.

The Department does not object to any of the clarifications or modifications of the Notice that have been described by State Street in its comment letter and it has revised the exemption, accordingly.

Thus, after giving full consideration to the entire record, the Department has decided to grant the subject exemption. State Street's comment letter has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Charleston Area Medical Center Deferred Profit Sharing Plan (the Plan); Located in Charleston, West Virginia

[Prohibited Transaction Exemption 95–107; Exemption Application No. D–10009]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past cash sale by the Plan to the Camcare & Affiliates Malpractice Self-Insurance Trust (the Malpractice Trust) of certain publicly-traded securities, provided the following conditions were satisfied: a) the sale was a one-time transaction for cash; b) the Plan paid no commissions or other fees in connection with the transaction; and c) the transaction involved publicly-traded securities, the fair market values of which were determined by an independent bank by reference to the closing price for the securities on the New York Stock Exchange.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 1995 at 60 FR 49423.

EFFECTIVE DATE: This exemption is effective November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 21st day of November, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–28911 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09840, et al.]

Proposed Exemptions; World Omni Financial Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

World Omni Financial Corporation and its Affiliates, Located in Deerfield Beach, Florida

[Application No. D–09840]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by the servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S. below.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poors Corporation, Moody's Investor Service,

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Inc., Duff & Phelps Inc., or Fitch Investors Service, Inc. (collectively, the Rating Agencies);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933;

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed at the time of the issuance of certificates by the trust, additional leases may be added to the portfolio for a period of no more than 15 consecutive months from the cut-off date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) all such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an ''eligible lease'' (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) shall be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. below) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular trust, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other trusts; and

(11) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. World Omni and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A. (1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this proposed exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;[4]

[4] It is the Department's view that the definition of ''Trust'' contained in Section III.B. includes a

Continued

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest categories by the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called ''asset-backed'' securities that is substantially similar in format and structure to this proposed exemption (the Underwriter Exemptions); [5] or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means an entity, independent of World Omni or affiliated with World Omni, that organizes a trust by depositing obligations therein in exchange for certificates provided that, if such entity is independent of World Omni, the servicer of the trust is an affiliate of World Omni.

E. ''Master Servicer'' means World Omni or an entity affiliated with World Omni that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means World Omni or an entity affiliated with World Omni which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means World Omni or an entity affiliated with World Omni which services leases contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means an entity that is independent of World Omni and its affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) Property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments for a lease in the trust. For any qualified motor vehicle leases contained in a trust as described herein, ''obligor'' shall include any owner of property subject to a lease included in the trust, or subject to a lease securing an obligation in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person shall be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption applicable to sales are met.

Q. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

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two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[5] For a current listing of the Underwriter Exemptions, see Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995).

contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing for the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust shall not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

V. ''Lease Rate'' means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a ''Lease Rate'', each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. ''Average Lease Rate'' means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. ''Eligible Lease'' or ''Eligible Lease Contract'' means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the Federal Register on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for all transactions described herein which occurred on or after June 27, 1994.

Summary of Facts and Representations

1. World Omni Financial Corporation (World Omni) is a Florida corporation which is a wholly-owned subsidiary of J.M. Family Enterprises, Inc. (JMFE). JMFE also owns Southeast Toyota Distributors, Inc., which is the exclusive distributor of Toyota cars and light duty trucks in Alabama, Florida, Georgia, North Carolina and South Carolina (the Five-State Area). World Omni provides consumer lease and installment contract financing to retail customers of, and floorplan financing to, automobile and light-duty truck dealers located primarily in the Five-State Area.

World Omni Lease Securitization L.P. is a Delaware limited partnership, the sole general partner of which is World Omni Lease Securitization, Inc., a Delaware corporation that is a wholly-owned subsidiary of World Omni, and the sole limited partner of which is World Omni.

Auto Lease Finance L.P. is a Delaware limited partnership, the sole general partner of which is Auto Lease Finance, Inc., a Delaware corporation that is a wholly-owned subsidiary of World Omni, and the sole limited partner of which is World Omni.

2. World Omni and its Affiliates, including World Omni Lease Securitization, L.P., and Auto Lease Finance L.P., seek an exemption to permit employee benefit plans to invest in certificates indirectly representing undivided interests in a trust which contains motor vehicle leases and the motor vehicles related to those leases. The exemption World Omni seeks is substantially similar to the Underwriter Exemptions granted by the Department to various broker-dealers and banks to permit investments in, among other things, motor vehicle receivable investment trusts. In the exemption sought by World Omni, the primary asset of the trust in which investors have beneficial interests (i.e. the Securitization Trust) is a special unit of beneficial interest (SUBI) in a separate trust that actually holds the motor vehicle leases and related motor vehicles (i.e. the Origination Trust). The Underwriter Exemptions may also include such a two-tier trust structure (as noted above in Footnote 5). However, unlike the trusts described in the Underwriter Exemptions, the Origination Trusts established by World Omni do not contain fixed pools of assets (i.e. qualified motor vehicle leases and related motor vehicles) for at least a year, as discussed further below. World Omni states that the Securitization Trusts meet all other requirements of the Underwriter Exemptions. Such requirements include: (i) That investor certificates covered by the exemption have one of the three highest ratings from the Rating Agencies; (ii) that there be no subordination of investor certificates purchased by employee benefit plans to the rights and interests evidenced by other certificates of the same trust; and (iii) that there be a pass-through of principal, interest and other payments received by the trust relating to the receivables beneficially owned by the trust, less certain specified servicing fees which are disclosed and approved by the investors prior to the acquisition of any trust certificates.

3. The Origination Trust is formed pursuant to a trust agreement between the sponsor of the Origination Trust and its trustee (the Origination Trustee). The sponsor of the Origination Trust is generally a wholly-owned subsidiary of World Omni (or a limited partnership in which such a wholly-owned subsidiary is the sole general partner), but could be an entity independent of World Omni and its affiliates. The Origination Trustee is a wholly-owned subsidiary of an independent entity qualified to provide trust services, and in fact

provides such services to the Origination Trust under contract with its subsidiary (i.e. the Trust Agent). Currently, the Trust Agent is Bank of America Illinois (Bank of America). Bank of America is not affiliated in any way with World Omni, other than as a service provider. World Omni or an affiliate acts as servicer (the Servicer) for all of the leases and leased vehicles owned by the Origination Trust, pursuant to a servicing agreement with the Origination Trustee (the Servicing Agreement).

4. The assets of the Origination Trust include retail closed-end automobile and light-duty truck lease contracts assigned to the Origination Trust by dealers in the World Omni family, the automobiles and light duty trucks relating thereto, all proceeds thereof (including any sale of such vehicles), and payments made under certain insurance policies relating to such leases or the related lessees or leased vehicles. World Omni is the initial holder of a sole beneficial interest (i.e. the ''Undivided Trust Interest'' or ''UTI'') in the Origination Trust.

The Origination Trusts are open-ended; that is, as leases are originated, they and the related vehicles are assigned to the Origination Trust by World Omni. When the aggregate dollar amount of leases and leased vehicles in the Origination Trust grows large enough to justify a securitization, World Omni, as holder of the UTI, may direct the trustee of the Origination Trust to segregate from among all the leases and leased vehicles within the Origination Trust a specified portfolio of leases and related leased vehicles. The trustee then issues to World Omni a separate certificate representing a ''Separate Unit of Beneficial Interest'' or ''SUBI'' in that segregated portfolio. It is this SUBI that becomes the basis for a securitization and the creation of a separate Securitization Trust.

Any leases and leased vehicles held by the Origination Trust that are not included in a SUBI portfolio at the time of such segregation, as well as any new leases and related vehicles acquired subsequent to the ''cut-off date'' on which the new SUBI portfolio is identified, remain part of the UTI portfolio, and the original UTI continues to represent a beneficial interest therein.

New leases and related leased vehicles are added to the SUBI's segregated portfolio by World Omni in an aggregate amount approximately equal to principal collections on the leases and leased vehicles already allocated to the SUBI,[6] for a fixed period (which will be no more than fifteen consecutive months) after the cut-off date used for the initial allocation of leases made to create the SUBI. (This period is referred to hereafter as the ''revolving period''). The applicant represents that this fixed ''revolving period'' for principal collections on the leases and leased vehicles is established so that the investor certificates issued by the Securitization Trust are treated as debt for Federal and state income tax purposes, but does not affect the characterization of those certificates as beneficial interests in the Securitization Trust property for accounting and other state law purposes.

After the ''revolving period'', the pool of leases and leased vehicles allocated to the SUBI (i.e. the SUBI portfolio) remains fixed. Any leases which are added to the SUBI portfolio during the ''revolving period'' must meet the same terms and conditions for eligibility as the original leases in the portfolio, as described in the prospectus or private placement memorandum, which terms and conditions have been approved by the Rating Agencies prior to the ''revolving period''. However, World Omni states that the terms and conditions for an ''eligible lease'' (as defined in Section III.X above) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies. Further, under the conditions of the proposed exemption, World Omni must ensure that the additional leases added to the SUBI portfolio do not result in the certificates receiving a lower credit rating from the Rating Agencies at the end of the ''revolving period'' than the rating that was obtained at the time of the initial issuance of the certificates by the trust (see Section II.A.(7)(b) above).

World Omni states that for the duration of the ''revolving period'', principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. above) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth (i.e. on a ''FIFO basis), beginning with any lease contracts that have been reserved by World Omni specifically for such purposes at the time of the initial allocation of leases to the particular SUBI portfolio. However, those lease contracts reserved for allocation to, or actually allocated to, other pools of leases (i.e. other SUBI portfolios used to create different trusts) will be excluded from the available additional leases to be added to the particular SUBI portfolio. World Omni states that no adverse selection procedures may be employed in selecting leases during the ''revolving period''. Thus, World Omni represents that it will not be able to manipulate the order in which leases are added to a particular SUBI portfolio during the ''revolving period'' in order to improve its economic position with respect to the assets held in a particular SUBI portfolio. World Omni states further that at all times there will be a clear identification within the Origination Trust of which leases and leased vehicles belong in each SUBI portfolio and which belong in the UTI or ''residual'' portfolio. The holders of beneficial interests in each SUBI have also agreed in writing to rely solely upon the assets contained within their respective portfolios to satisfy any payment obligations.

This ''revolving period'' arrangement differs from the Underwriter Exemptions wherein each trust contains a ''fixed pool'' of assets and substitution of receivables by the trust sponsor is permitted only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. The applicant states that in the present case, during the ''revolving period'', the outstanding principal balance of the SUBI's portfolio of leases remains unchanged and the certificateholders receive only interest payments with respect to their certificates. Once the ''revolving period'' ends, principal payments are no longer reinvested but rather are paid out to certificateholders.

To the extent that leases added to the SUBI portfolio during the ''revolving period'' have a higher Lease Rate (as defined in Section III.V. above) than do the original leases in the SUBI portfolio at the time of the initial offering of the certificates to investors, total returns on the ultimate lease pool in excess of that promised to investors on the trust certificates may inure to affiliates of the Servicer. However, the applicant states

[6] World Omni represents that the aggregate amount of new leases added to a SUBI portfolio is approximately equal, rather than exactly equal, to principal collections on the existing leases because, when additional leases are added, the outstanding principal balance of the new leases is not always equal to the principal collections available for reinvestment. The uninvested principal amounts are held by the Securitization Trust in a cash account and temporarily invested in short-term investments, with interest thereon accruing to the Securitization Trust, until such amounts can be reinvested in additional leases for the SUBI portfolio. World Omni states that any uninvested principal amounts, and interest on such amounts, held by the Securitization Trust are distributed to the certificateholders once principal payments on the leases in the SUBI portfolio are passed-through to investors.

that the Average Lease Rate (as defined in Section III.W. above) for the pool of leases allocated to a SUBI portfolio owned by a particular Securitization Trust, after accounting for all the leases added to the SUBI portfolio during the ''revolving period'', shall not be more than 200 basis points (i.e. 2 percent) greater than the Average Lease Rate for the leases in the SUBI portfolio on the cut-off date used for the initial allocation of leases to the SUBI portfolio owned by the Securitization Trust.

The Average Lease Rate for the leases in the trust at the time of the initial offering of the certificates is described in the prospectus or offering memorandum provided to investors. The applicant represents that changes to the Average Lease Rate based on new leases added to a trust during the ''revolving period'' depend on current interest rates and market conditions as well as the amount of lessee prepayments and repossessions on the leased vehicles. Thus, potential plan investors at the time of the initial offering of trust certificates know the total dollar amount of leases in the trust, the Average Lease Rate on those leases, the fact that principal received by the trust during the ''revolving period'' is used to invest in additional leases, and the length of the ''revolving period''. Under the terms of the proposed exemption, potential plan investors shall also be provided with a statement disclosing the fact that the relief provided by the exemption shall be available to the Servicer and its affiliates only if the additional leases do not cause the Average Lease Rate for the leases in the pool after the ''revolving period'' to increase by more than 200 basis points.

5. Pursuant to a supplement to the Origination Trust Agreement and a supplement to the Servicing Agreement, World Omni, acting as Servicer on behalf of the Origination Trustee, selects the assets to be represented by each SUBI (as discussed above). Certificates representing the entire beneficial interest in each SUBI are issued to the sponsor of the Securitization Trust. The sponsor is usually a wholly-owned subsidiary of World Omni (or a partnership in which such a subsidiary is the sole general partner), but in some cases could be an entity that is independent of World Omni and its affiliates provided that World Omni or an affiliate acts as the Servicer of the trust. The sponsor creates the Securitization Trust and transfers a certificate representing approximately a 99.8 percent beneficial interest in the SUBI to the Securitization Trust, pursuant to a trust agreement between the sponsor and the trustee of the Securitization Trust (the Securitization Trustee).[7] The Securitization Trustee is an unrelated commercial institution with trust powers, meeting certain specified requirements. Currently, the trustee of the Securitization Trusts is the Bank of America. In addition, pursuant to the Securitization Trust agreement, the Securitization Trust issues to its sponsor investor certificates representing fractional undivided interests in the assets of the Securitization Trust (i.e. the 99.8 percent interest in the SUBI, which itself represents a beneficial interest in a portfolio of motor vehicle leases and related leased motor vehicles held by the Origination Trust).

6. The sponsor of the Securitization Trust sells approximately 96 percent of the certificates to various outside investors, including employee benefit plans subject to the Act. World Omni retains a subordinated interest in the Securitization Trust of approximately 4 percent, as required by the Rating Agencies, so that unanticipated losses with the SUBI portfolio will first by borne by World Omni. With respect to the certificates sold to outside investors, there may be two or more classes of securities. The investor certificates are either publicly or privately offered. In the public lease securitizations completed by World Omni thus far, approximately 92.5 percent of the certificates were sold to investors publicly and approximately 3.5 percent of the certificates were sold to investors privately. The public investor certificates had a AAA/Aaa rating from the Rating Agencies. The private investor certificates had a single ''A'' rating from the Rating Agencies because such certificates were subordinated to the public investor certificates.[8] Except under rare circumstances, physical certificates are not issued to investors in a public senior class of certificates. Instead, the Securitization Trust uses a book entry registration system through the Depository Trust Company (DTC), a limited-purpose trust company organized under New York law, which is a member of the Federal Reserve system, and a clearing agency under Section 17A of the Securities Exchange Act of 1934.

Investors are entitled to receive monthly payments of interest at a fixed certificate rate, and after the ''revolving period'' described above, payments of principal. Principal payments are based on the decline in the value of the pool of leases and vehicles allocated to each SUBI, based on certain standard depreciation schedules for the related motor vehicles. All net collections collected for the assets underlying each SUBI, including all net proceeds from the sale of a vehicle upon repossession, early lease termination or maturity of the related lease, are available to make payments on the investor certificates.

The price of the investor certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand and the Average Lease Rate for the leases allocated to the particular SUBI. The applicant states that the Average Lease Rate generally is determined by the same market forces that determine the price of the investor certificates. Certificate interest rates are set at the time of the pricing of each securitization. While the Average Lease Rate for the particular lease portfolio is a factor in the interest rates a Securitization Trust will be able to pay, the actual interest rate set for the certificates issued is determined by a combination of additional factors. Specifically, these factors include: (a) the then-current yields on U.S. Treasury Notes with a remaining term equivalent to the anticipated average life of the particular Securitization Trust, and (b) the then-current ''spreads'' on similarly-rated competitive investments available in the marketplace, as determined by

[7] World Omni or an affiliate retains a de minimis interest in each SUBI portfolio which represents a subordinated interest in the portfolio, under requirements established by the Rating Agencies, in order to meet certain Federal tax code objectives.

[8] The applicant is not requesting an exemption for the purchase of any subordinated class of certificates by employee benefit plans. However, the applicant is requesting relief for prohibited transactions that may occur as a result of the investments in a trust made by an insurance company's general account which are considered to be ''plan assets'' under the recent U.S. Supreme Court decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank,* 114 S.Ct. 517 (1993) (Harris Trust). As a result of the decision in Harris Trust and the Department's plan assets regulation (see 29 CFR 2510.3–101), an insurance company investing general account assets could be viewed as a ''benefit plan investor'' for purposes of calculating the 25 percent significant participation test in section 2510.3– 101(f)(1) of the regulation.

The Department notes that Section III of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (PTE 95–60, 60 FR 35925, July 12, 1995) provides an exemption for transactions in connection with the operation of asset pool investment trusts notwithstanding that the certificates acquired by the general account are subordinated to the rights and interests evidenced by other certificates of the same trust. In this regard, the Department has included a paragraph at the end of the operative language of the proposed exemption which states that this exemption, if granted, will be included within the definition of the term ''Underwriter Exemption'' under Section V(h) of PTE 95–60. Therefore, the exemptive relief provided by PTE 95–60 will be available for subordinated investments in a trust described herein by insurance company general accounts.

the Rating Agencies. Once the certificate rate is set for the certificates issued by the Securitization Trust, that rate remains fixed for its duration, regardless of any changes to the Average Lease Rate of the SUBI portfolio occurring during the ''revolving period''. The price of an investor certificate and the certificate rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the certificate rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

7. The origination of the leases held by the Origination Trust begins with World Omni, which enters into arrangements with its network of dealers allowing it to cause the assignment of leases and related vehicles originated by those dealers either directly to World Omni or to any other specified entity, including the Origination Trust. Once assigned to the Origination Trust for ultimate inclusion in a portfolio of SUBI assets for securitization as described above, this mechanism enables World Omni to go to the capital markets directly for financing and thereby enhance its leasing capacity without outside financing.

World Omni and/or one or more wholly-owned subsidiaries of World Omni, or partnerships in which such a wholly-owned subsidiary is the sole general partner, are responsible for creating each SUBI, creating the Origination Trust and each Securitization Trust, and designating the Trust Agent and the Securitization Trustee.

The Trust Agent, its subsidiary the Origination Trustee, and the Securitization Trustee, are each independent entities, unrelated to World Omni, the underwriter or placement agent. The Origination Trustee is the legal owner of the motor vehicle leases and related leased motor vehicles allocated to a SUBI. The Securitization Trustee is the legal owner of the obligations in the Securitization Trust and is responsible for enforcing all the rights created thereby in favor of certificateholders, whether independently or through the Origination Trustee. The applicant represents that each Securitization Trustee and Trust Agent are substantial financial institutions or trust companies experienced in trust activities. The Trust Agent and Securitization Trustee receive a fee for their services, which is paid out of assets of the Origination Trust or the Securitization Trust, as applicable. The method of compensating each for its service related to a SUBI is specified in the Origination Trust Agreement or Securitization Trust Agreement, as applicable, and disclosed in the prospectus or private placement memorandum relating to the offering of the investor certificates.

8. The Servicer administers the leases on behalf of the beneficial owners of the Origination Trust, including the holders of SUBI certificates and, indirectly, the holders of the investor certificates. The Servicer's functions involve monitoring of leases, maintenance of records, institution of proceedings in the event of default, and sale of vehicles after lease maturity, as well as certain functions relating to the qualifications and permits required to be obtained by the Origination Trustee.[9] The Servicer, the sponsor of the Origination Trust, and the sponsor of the Securitization Trust are unrelated to the underwriter and to DTC. DTC has public senior investor certificates registered in its name (or that of its nominee) and maintains procedures for the distribution of notices, reports, distributions and statements to certificateholders.

As compensation for performing its servicing duties for the Origination Trust, the Servicer is paid a fee equal to a specified percentage (usually no more than one percent) of the balance of the leases it services, including those leases allocated to the SUBI. The Servicer may receive additional compensation related to the SUBI in the form of interest on various accounts of the Origination Trust and/or the Securitization Trust containing proceeds of the leases and related leased motor vehicles allocated to each SUBI as well as interest on certain cash deposits. The Servicer is required to pay the administrative expenses of servicing the Origination Trust out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Securitization Trust or otherwise arranges to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and may be either paid out of the income received on the leases in excess of the certificate rate or paid in a lump sum at the time the Securitization Trust is established. The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor under a lease, provided that such fees are ''qualified administrative fees'' as defined under Section III.S. These administrative fees fall into three categories: (a) prepayment processing fees; (b) late payment fees; and (c) fees and charges associated with the purchase of a leased vehicle by an obligor as well as any repossession of such vehicle, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Payments on leases may be made by lessees to the Servicer at various times during the period preceding any date on which payments to the Origination Trust are due. In some cases, the Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a lease and the date payment is due to the Origination Trust. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments on leases are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments into an Origination Trust account by a date specified in the Servicing Agreement.

All compensation payable to the Servicer with regard to the leases allocated to a SUBI is set forth or referred to in the Servicing Agreement, and described in reasonable detail in the prospectus or private placement memorandum relating to the investor certificates.

9. Participating underwriters or placement agents receive a fee in connection with the securities underwriting or private placement of investor certificates. In a firm commitment underwriting, this fee would consist of the difference between what such underwriter receives for the certificates that it distributes and what it pays the sponsor of the Securitization Trust for those certificates.[10] In a private placement, the fee normally takes the form of an agency commission paid by the sponsor of the Securitization Trust.

The arrangements among underwriters typically are set forth in an ''Agreement Among Underwriters'', which gives the managing underwriter, as lead manager of the offer, the authority to act on behalf of all the underwriters. This agreement also

[9] World Omni states that these functions are necessary since, as noted in Paragraph 4 above, the Origination Trust is the owner of, and holds title to, the vehicle unless the lessee chooses to purchase such vehicle under the terms of the lease.

[10] World Omni represents that a ''best efforts'' underwriting would not ordinarily be used for the investor certificates because of their high credit ratings.

imposes customary restrictions on the underwriters' dealings in the offered securities as are necessary to comply with securities laws and to ensure the orderly distribution of the offered securities.

10. The applicant represents that as the principal amount of the leases allocated to a SUBI is reduced by payments thereon and recoveries on the disposition of leased vehicles, the cost of separately administering the assets allocated to that SUBI generally increases, making the servicing of those assets prohibitively expensive at some point. Consequently, the Securitization Trust Agreement generally provides that the sponsor of the Securitization Trust may repurchase the 99 percent interest in the SUBI when the aggregate principal balance of the investor certificates is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate investor certificate balance. The terms of such repurchase are specified therein and are at least equal to the unpaid principal balance on the investor certificates plus accrued interest. The supplement to the Origination Trust Agreement generally provides that upon such a repurchase of the Securitization Trust's interest in the SUBI by its sponsor, the Origination Trust may repurchase the entire SUBI from the sponsor and thereby terminate the SUBI. The terms of such repurchase are specified therein and generally are at least equal to the value of the pool of leases and leased vehicles allocated to the SUBI.

11. The senior class of investor certificates must receive one of the three highest ratings available from the Rating Agencies. Insurance or other credit support is obtained by the sponsor of the Securitization Trust or the Origination Trust to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level expected to be a multiple of the worst historical net credit loss experience for leases of automobiles and light-duty trucks such as those allocated to the SUBI.

World Omni states that the Rating Agencies, before granting AAA/Aaa ratings for the publicly issued securitization certificates, review the underlying portfolio of assets securing payment to the investors to determine, among other things, if (a) The principal value of the assets is sufficiently greater than the aggregate face amount of the investor certificates as to provide protection against defaults or losses, and (b) there is a sufficient ''spread'' between the overall yield, based on the Average Lease Rate, being earned on the portfolio and the certificate rate to cover servicing costs, expenses and losses. In the case of World Omni's current public securitizations of leases, the Rating Agencies have required that (i) The face value of public investor senior certificates not exceed 92.5 percent of the principal value of the underlying assets, and (ii) the ''spread'' (after the discounting procedure described below) between the overall yield, based on the Average Lease Rate, of the SUBI portfolio and the certificate rate be approximately 200 basis points. Thus, for example, a SUBI portfolio with a principal value of $100,000,000 would support the issuance of certificates with a face value of only $92,500,000, and a certificate rate of 6 percent per annum would require an overall yield, based on the Average Lease Rate, for that SUBI portfolio of approximately 8 percent per annum. World Omni states that the Rating Agencies will always require a specific ''spread'' between the certificate rate and the overall yield for leases in the particular SUBI portfolio before providing their initial credit ratings for the certificates. World Omni must maintain this ''spread'' when leases are added to the SUBI portfolio during the ''revolving period'' or risk a lower credit rating for the certificates (see Section II.A.(7)(b) above).

For purposes of the securitization described above, World Omni represents that each individual lease should yield a rate of return, based on the Lease Rate (as defined in Section III.V. above), which is at least equal to the certificate rate plus approximately 200 basis points. However, where the spread required by the Rating Agencies is not met as to any lease based solely on the Lease Rate, the Rating Agencies require that World Omni ''discount'' the principal value of that lease so that such lease is treated as having a ''net investment value'' less than its actual outstanding principal balance. In such instances, the lease is discounted to a level at which the actual lease charges to be collected under the lease (including expected principal payments) would yield, on a percentage basis, an overall rate of return which exceeds the certificate rate by the amount specified by the Rating Agencies. Thus, for each individual lease included in a securitization, its principal value is either: (a) Its outstanding principal balance, if its Lease Rate is equal to or greater than the ''spread'' required by the Rating Agencies; or (b) its discounted net investment value, if its Lease Rate is less than the ''spread'' so required.[11] World Omni states that the use of discounted aggregate net investment values in measuring the ratio of certificate face values to the discounted principal balance of the SUBI portfolio can only further assure that investors are paid interest and principal on their certificates on a timely basis.

12. In some cases, the Servicer may provide temporary or permanent credit support to the trust (i.e. act as an insurer). As a temporary provider of credit support, the Servicer typically would advance funds to the full extent that it determines that such advances are recoverable (a) Out of late payments by the lessees, (b) from a permanent credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. The Servicer would advance such funds in a timely manner. When the Servicer temporarily advances funds, the amount so advanced is recoverable by the Servicer out of future payments on or for leases or leased vehicles allocated to the SUBI to the extent that such amounts are not covered by the other sources described above, including payments from a permanent credit support provider.

In some cases, the Servicer may be called upon to provide permanent credit support in the form of funds to cover defaulted payments to the full extent of its obligations as insurer. When the Servicer is the provider of permanent credit support and provides its own funds to cover defaulted payments, it does so either on the initiative of the Origination Trustee or Securitization Trustee, or on its own initiative on behalf of such trustees. The applicant states that in either event the Servicer

[11] For example, if the certificate rate for a transaction were 8 percent, then, in determining the aggregate face value amount of certificates that could be issued with respect to a given SUBI portfolio, World Omni could include each lease with a Lease Rate of 10 percent or more at its current outstanding principal balance without any discounting. However, if the portfolio included individual leases each with outstanding principal balances of $20,000 and Lease Rates of only 5 percent, then World Omni would have to ''discount'' the value of each such lease for purposes of the securitization to a low enough net investment value (approximately $18,000) so that the same overall monthly lease payment for each lease would now yield a Lease Rate of 10 percent. World Omni notes that any ''discounting'' of leases added to the SUBI portfolio during the ''revolving period'' will result in more leases being added to the portfolio in order to maintain a constant outstanding principal balance during such period. Thus, when interest rates used to determine the Lease Rate for leases added to a SUBI portfolio are declining, the ''discounting'' of leases adds more ''collateral'' to secure payments of the certificate rate.

provides such funds to cover payments to the full extent of its obligations under the credit support mechanism. If the Servicer fails to advance funds, fails to call upon a credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the Securitization Trustee would be required to enforce the investor certificateholders' rights, in its capacity as a third-party beneficiary of the Servicing Agreement, as owner of the estate of the Securitization Trust, and as an indirect beneficial owner of the Origination Trust assets allocated to a SUBI (including rights under any credit support mechanism). Therefore, the Securitization Trustee, who is independent of the Servicer, ultimately has the right to enforce any credit support arrangement.

13. The applicant represents that there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the leases allocated to a SUBI as payments for these leases and the related vehicles are used to make payments to the Securitization Trust, as holder of an interest in the SUBI, and then to investors. These safeguards include the following:

(a) There is a disincentive to postponing credit losses because the sooner repossession or sale activities are commenced, the more value generally will be realized on the leased vehicle.

(b) The Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which a lessee's obligations ordinarily are deemed uncollectible. The Servicing Agreement requires the Servicer to follow its normal servicing guidelines. In addition, a supplement to the Servicing Agreement sets forth the Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible.

(c) As frequently as payments are due on the investor certificates (monthly, quarterly or semi-annually, as set forth in the Securitization Trust Agreement), the Servicer is required to report to the Securitization Trustee the amount of all past-due payments and the amount of all Servicer advances, along with other current information as to collections on the leases, recoveries on the related leased vehicles, and draws upon the credit support. Further, the Servicer is required to deliver to the trustee annually a certificate from an executive officer of the Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Servicing Agreement or, if the Servicer has defaulted under any of its obligations, specifying any such default. The Servicer's reports are reviewed at least annually by independent accountants to ensure that the Servicer is following its normal servicing standards and that the reports conform to the Servicer's internal account records. The results of the independent accountants' review are delivered to the Securitization Trustee.

(d) In cases where the Servicer and an insurer providing credit support are affiliated or are the same entity, the credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the SUBI, whether due to Servicer advances or any other cause. The floor amount may be a fixed dollar amount or a multiple of the balance of one or more of the largest obligations outstanding. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws on such amount. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the principal balance of the leases allocated to the SUBI. The applicant states that where the floor is a fixed dollar amount, the amount of credit support ordinarily would increase as a percentage of the principal balance during the period that the floor is in effect.

14. In connection with the original issuance of investor certificates, a prospectus or private placement memorandum is furnished to investing plans. The prospectus or private placement memorandum contains information material to a plan fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the Origination Trust and Securitization Trust as legal entities and a description of how they were formed by their respective sponsors;

(c) Identification of the Trust Agent, Origination Trustee and Securitization Trustee;

(d) A description of the leases and related leased vehicles allocated to each SUBI, including the diversification of the leases and vehicles, the principal terms of the leases, and their material legal aspects;

(e) A description of the sponsors of the Origination Trust and the Securitization Trust, and of the Servicer;

(f) A description of the servicing arrangements set forth in the Servicing Agreement, and the agreements governing the Origination Trust and the Securitization Trust, including a description of the Servicer's principal representations and warranties as to the leases and leased vehicles allocated to each SUBI and the remedies for any breach thereof;

(g) A description of the procedures for collection of payments on or for leases and related leased vehicles and for making distributions to the Securitization Trust, as holder of an interest in the SUBI, and then to investor certificateholders, and a description of the accounts into which such payments are deposited and from which such distributions are made;

(h) Identification of the servicing compensation and any fees for credit support that are deducted from payments on or for leases or related leased vehicles before distributions are made to investors;

(i) A description of periodic statements provided to the Securitization Trustee, and such statements that are provided or made available to investors by the Securitization Trustee;

(j) A description of the events that constitute events of default under the Servicing Agreement and a description of the Securitization Trustee's and the investors' remedies;

(k) A description of any credit support;

(l) A general discussion of the principal Federal income tax consequences of the purchase, ownership and disposition of the investor certificates by a typical investor;

(m) A description of the underwriters' plan for distributing the certificates to investors; and

(n) Information about the scope and nature of the secondary market for the certificates.

Reports indicating the amount of payments of principal and interest are provided to investors at least as frequently as distributions are made to investors. Investors are also provided with periodic information statements setting forth material information concerning the leases and related vehicles allocated to each SUBI, including information as to the amount

and number of delinquent and defaulted leases.

15. In the case of the offer and sale of investor certificates in a registered public offering, the Securitization Trustee, the Servicer or the sponsor of the Securitization Trust will file periodic reports as required by the Securities Exchange Act of 1934 (the 1934 Act). Although some trusts that offer certificates in a public offering file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained or available for the Securitization Trust, it normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Securitization Trust and the investor certificates. World Omni states that while the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning the Securitization Trust shall be filed to the extent required under the 1934 Act.

At the time distributions are made to certificateholders, a report is delivered to the trustee as to the status of the Securitization Trust and each SUBI, including the assets allocated to the SUBI. Such report contains information regarding, among other things, the leases and related vehicles allocated to the SUBI, payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report is also delivered to or made available to the Rating Agency or Agencies that have rated the investor certificates. A statement based on this report is also provided to certificateholders either by the Securitization Trustee, the Servicer, or DTC as depository of the investor certificates, including a summary statement regarding the Securitization Trust and the assets allocated to the SUBI. The statement contains information regarding payments and prepayments, delinquencies, the remaining amount of credit support, a breakdown of payments between principal and interest and other information concerning the leases and leased vehicles allocated to the SUBI.

With respect to payments on the certificates, World Omni states that such payments are legally obligated to be made by the Securitization Trustee to DTC, the record owner of the certificates. World Omni represents that DTC makes payments to the beneficial owners of the certificates as required by New York Stock Exchange Regulations, SEC Regulations and the rules of the U.S. Federal Reserve Board.

16. In general, it is the policy of many underwriters to make a market for securities for which they are the lead or co-managing underwriter. It is also the policy of many placement agents to facilitate sales by investors who purchase certificates if the placement agent has acted as a principal or agent in the original private placement of the certificates and if the investors request the placement agent's assistance. In this regard, the applicant states that many underwriters have made a secondary market in certificates sponsored by World Omni and its Affiliates and that the wide range of investors involved have made such certificates fairly liquid investments.[12]

17. World Omni has requested that the relief proposed herein be made retroactive to June 27, 1994, which is the date upon which World Omni states that the conditions of this proposed exemption were satisfied. World Omni does not believe that it has engaged in any prohibited transactions that would be covered by the requested exemption. However, since June 27, 1994, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, the applicant states that it is not always possible to identify whether the percentage interest of plans in a trust is or is not ''significant'' for purposes of the Department's ''plan asset'' regulation (see 29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the ''publicly-offered security'' exception contained in that regulation (29 CFR 2510.3–101(b)), the applicant states that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers. Thus, World Omni requests an exemption which would provide the relief described herein as of June 27, 1994.

18. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Securitization Trust holds an interest in a SUBI, which generally represents a ''fixed pool'' of leases and related leased vehicles, other than the obligation to reinvest principal collections on the leases and leased vehicles in additional qualifying leases and leased vehicles during a fixed ''revolving period'' of no more than 15 months.

(b) The Average Lease Rate for the leases in the portfolio used to create a trust, after accounting for all leases added to such portfolio during the ''revolving period'', will not exceed by more than 200 basis points the Average Lease Rate for the original portfolio of leases used to create the trust.

(c) Certificates in which employee benefit plans invest have been rated in one of the three highest rating categories by the Rating Agencies. Credit support is obtained to the extent necessary to attain the desired rating. In addition, leases added to a trust portfolio during the ''revolving period'' will not result in the certificates receiving a lower credit rating from the Rating Agencies, at the end of the ''revolving period'', than the rating that was obtained at the time of the initial issuance of the certificates by the trust.

(d) All transactions for which the applicant seeks exemptive relief are governed by the Origination Trust Agreement, the Servicing Agreement and any applicable supplements thereto, and the Securitization Trust Agreement. These agreements as well as the prospectus or private placement memorandum are made available to plan fiduciaries for their review prior to the plan's investment in the certificates.

(e) Exemptive relief from sections 406(b) and 407(a) of the Act for sales to employee benefit plans is substantially limited.

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[12] The Department notes that on April 3, 1995, World Omni and a number of respondents involving some 55 Toyota dealers (the Toyota Dealers) entered into an agreement with the State of Florida (the Agreement) following an investigation by the State. The investigation apparently resulted from allegations by Florida consumers of unfair trade practices by various Florida dealers, including but not limited to certain Toyota Dealers. Under the terms of the Agreement, a restitution fund of up to $4.5 million (the Restitution Fund) was created for consumers in connection with certain leases originated by the Toyota Dealers from January 1, 1989 through December 31, 1994. Initial ''advance'' payments into the Restitution Fund were made by an affiliate of World Omni. However, the Toyota Dealers ultimately will be responsible for most of the restitution payments made to consumers.

World Omni and its Affiliates represent that they will abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

World Omni represents that the Agreement did not require any payment from or adjustment to any assets of a Securitization Trust and, according to the applicant, is not material to World Omni as Servicer or to any such trust.

(f) Many underwriters have made, and the applicant anticipates that such underwriters will continue to make, a secondary market in investor certificates sponsored by World Omni and its Affiliates.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan (the Hourly Plan), General Motors Retirement Program for Salaried Employes, Saturn Individual Retirement Plan for Represented Team Members and Saturn

Personal Choices Retirement Plan for Non-Represented Team Members (the Saturn Plans), and Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan; collectively, the Plans) Located in New York, New York

[Application Nos. D–09930 & D–09931]

Proposed Exemption

(a) General Exemption. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) or the borrowing or lending of money in connection therewith, between a party in interest and the Plans, provided that the following conditions are satisfied:

(1) The terms of the transaction are negotiated on behalf of the Plans by, or under the authority and general direction of, General Motors Investment Management Corporation (GMIMCo), as described in the summary of facts in the notice of proposed exemption, and GMIMCo makes the decision to invest the assets of the Plans in such transaction. Notwithstanding the foregoing, a transaction involving an amount of $20 million or more, which has been negotiated on behalf of a Plan by GMIMCo will not fail to meet the requirements of this section (a)(1) solely because General Motors Corporation or its designee retains the right to veto or approve such transaction;

(2) Any such party in interest is not—

(i) GMIMCo or any person directly or indirectly controlling, controlled by, or under common control with GMIMCo, any officer, director or employee of GMIMCo or any of its subsidiaries, or any partnership in which GMIMCo is a 10 percent or more (directly or indirectly in capital or profits) partner;

(ii) General Motors Corporation (GM) or any of its subsidiaries, any officer or director of GM or any of its subsidiaries;

(iii) any named fiduciary of any Plan, or any person who has discretionary authority in the selection, supervision or operation of GMIMCo or any of its officers, directors or employees;

(iv) a sponsor of any of the Plans (Plan Sponsor) or any subsidiary of a Plan Sponsor, or a ten percent or more shareholder, partner, or joint venturer of a Plan Sponsor, or any officer or director of any of them;

(v) any person who exercises discretionary authority, responsibility or control, or who provides investment advice [within the meaning of 29 CFR 2510.3–21(c)], with respect to the investment of Plan assets involved in the transaction;

(3) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(4) GM or GMIMCo shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of GM and GMIMCo, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest except GM and GMIMCo shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below;

(5)(i) Except as provided in subsection (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at GM's headquarter offices, or, upon prior arrangement with GM, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary, and

(C) Any participant or beneficiary of any Plan or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine GM's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific exemption.* The restrictions of sections 406(a)(1) (A) through (D) and sections 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of a Plan if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this exemption are met.

EFFECTIVE DATE: This exemption, if granted, will be effective as of July 1, 1994.

TEMPORARY NATURE OF THE EXEMPTION: The exemption proposed herein, if granted, will be temporary in nature and will expire on the date of publication by the Department of the final class exemption for plan asset transactions determined by in-house asset managers, which was proposed by the Department on March 24, 1995 at 60 FR 15597 (application no. D–09602).

Summary of Facts and Representations

1. The Plans are defined benefit plans sponsored by the General Motors Corporation (GM) and subsidiaries of GM. As of December 31, 1994, there were approximately 835,700 active participants in the Plans, and the Plans held assets totaling approximately $44.2 billion. Approximately 5.6 percent of the Plans' total assets is currently invested, or committed for specific investment, in real estate or real estate related investments.

2. The Plans are administered by the Finance Committee of GM's board of directors (the Finance Committee) as the

named fiduciary with respect to each of the Plans, except for the Employee's Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan), discussed below. The Finance Committee, among other functions, is responsible for the direction and oversight of each Plan's investment policy, monitors each Plan's performance, and adopts broad investment policy guidelines. The Finance Committee receives assistance from an Investment Policy Committee (IPC), which periodically reviews and makes recommendations on investment policy guidelines. The IPC is comprised of officers of GM and officers of the General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of GM. Further, the Finance Committee has authorized the IPC to approve all investment commitments involving more than one percent of the assets of any Plan's trust. The Finance Committee has also appointed GMIMCo to act as an investment manager with respect to the Plans. In that regard, GMIMCo is actively involved in real estate transactions undertaken by the Plans, including transactions under the direct management of third party investment managers.

The named fiduciary of the GMAC Plan is the GMAC Mortgage Corporation Pension Committee (GMAC Committee). The assets of the GMAC Plan have been commingled with the assets of the Hourly Plan and Saturn Plans for investment purposes. As a result, GMIMCo acts also as an investment manager with respect to the GMAC Plan.

Real estate transactions involving the Plans' assets may be undertaken directly by GMIMCo's real estate portfolio group (the R.E. Group) or indirectly through a third party asset manager with the R.E. Group's involvement. The R.E. Group's functions include the identification and analysis of real estate investments. The R.E. Group is comprised of six investment professionals, four attorneys and administrative personnel.

3. GM requests an exemption to allow the Plans to engage in real estate transactions which may otherwise be prohibited under the Act, as described herein. GM represents that all prospective transactions will be effected on behalf of the Plans by GMIMCo and will not involve parties in interest who have fiduciary authority over the particular investments of the Plans. GM represents that due to its size and complexity, the normal operation of the Plans with respect to their real estate investments may involve party in interest transactions. The Department recognizes this situation and, to date, has proposed and granted various individual exemptions on behalf of large plans for real estate transactions involving parties in interest who maintain no authority over the investments involved. GM is requesting similar exemptive relief.

4. GM represents that the Plans' investments in real estate are made in various forms. Such forms involve real estate partnerships, joint ventures, leases, and mortgages. As a result of such real property investment arrangements, prohibited transactions by and between a Plan and party in interest lenders, lessees, joint venturers, partnership partners, and service providers may occur. Such parties would maintain no authority with respect to the Plan assets involved in such transactions.

5. GM represents that the Plans' investments in real estate take on various forms, including limited partnerships, joint ventures, leases, mortgages, sale-leasebacks, and convertible mortgage arrangements. With respect to each investment structure, the projects in question are typically office buildings, shopping centers, hotels and other commercial or multi-family residential projects. GM represents that the owners/operators/developers with whom the Plan invests are carefully chosen and are experienced in the evaluation, ownership, management, financing and, in the case of new projects, development of real estate. Parties in interest with respect to the Plans which may become involved in these various types of real estate transactions include bank lenders, lessees, joint venturers, and partnership partners. The proposed exemption would not include transactions involving any parties in interest with any authority with respect to the Plans' investment in the subject transaction.

6. The applicant states that it is possible that the investment by the Plans in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions as described in the Act.

7. GM represents that regardless of the structure involved, each potential real estate investment on behalf of the Plans receives thorough and careful analysis by GMIMCo and by its professional staff. The investment process operates as follows: potential real estate investments are generally brought to the attention of one or more members of GMIMCo's professional staff by real estate professionals, brokers, or advisers. A staff of real estate professionals under the direction of GMIMCo's managing director then inspects and appraises prospective properties, considers existing and prospective tenants, and evaluates numerous other financial and non-financial aspects such as size, location, actual and potential use, financing, taxes, insurance, title requirements and compliance with zoning and other applicable laws. Sophisticated computer models are utilized as a tool to assist the real estate professionals and to evaluate risk and reward potential.

Upon completion of this analysis, the potential real estate investment is either rejected or approved by a manager. If the manager approves the proposed transaction, it is then presented to GMIMCo's Pension Investment Review Team (PIRT). Approval by the PIRT is final as to transactions involving $30 million or less. Transactions involving more than $30 million are referred for further consideration by the Chief Investment Funds Officer of GM, who retains the right to approve or veto such transaction. Transactions involving more than 1% of the assets of a Plan's trust are referred for further consideration to the IPC, which retains approval and veto authority with respect to such transactions. GMIMCo's investment professionals are aided in the review process by GMIMCo's in-house legal staff.

8. GM represents that by means of the arrangements described above, rigorous financial standards and procedures have been established to ensure sound real estate investments with appropriate rates of return. GM represents that any covered transactions will be on terms not less favorable to the Plans than those available between the Plan and unrelated parties. GM represents that given the size and scope of the Plans and their investment, and GM's relationship to numerous financial institutions, denial of the requested exemption would substantially inhibit the Plans from investing in many prime quality real estate projects of substantial size.

9. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) All investments will be subject to the discretion and control of GMIMCo and its professional staff, which have extensive experience in real property investments and which will conduct complete analyses with respect to potential Plan investments; (b) The Plans will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Plans' operation;

(c) All transactions will involve parties who are independent from GM and who have no discretion, authority or control with particular transactions; and (d) All transactions will be conducted on an arm's-length basis on terms not less favorable to the Plan than those available in arm's-length transactions with unrelated parties.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ventura County National Bancorp 401(k) and Employee Stock Ownership Plan (the Plan) Located in Oxnard, California

[Application No. D–10024]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply for the period from May 12, 1995 until June 21, 1995 (the Offering Period), to: (1) The receipt of certain stock rights (the Rights) by the Plan, which is sponsored by Ventura County National Bancorp (Ventura) and its affiliates, pursuant to a stock rights offering (the Rights Offering) by Ventura to shareholders of record of Ventura's common stock (the Employer Stock) as of May 10, 1995; (2) the holding of the Rights by the Plan during the Offering Period; and (3) the exercise of the Rights by the Plan, provided the following conditions were met:

(a) The Plan's acquisition and holding of the Rights resulted from an independent act of Ventura as a corporate entity, and all holders of the Employer Stock were treated in a like manner, including the Plan;

(b) With respect to the ''401(k) portion'' of the Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and

(c) With respect to the ''ESOP portion'' of the Plan, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the Plan should exercise or sell the Rights acquired through the Rights Offering.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective for the period from May 12, 1995 until June 21, 1995.

Summary of Facts and Representations

1. Ventura is a registered bank holding company conducting business in Southern California through its wholly-owned subsidiaries, Ventura County National Bank (VCNB) and Frontier Bank (Frontier; together, the Banks). The principal executive offices of Ventura are located at 500 Esplanade Drive, Oxnard, California.

2. The Employer Stock is registered under Section 12 of the Securities Exchange Act of 1934. The Employer Stock is publicly traded on the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ). The applicant states that the Employer Stock is issued by Ventura, an employer of employees covered by the Plan, and further represents that such stock is a ''qualifying employer security'' under section 407(d)(5) of the Act and section 4975(e)(8) of the Code.[13]

3. The applicant represents that due to declining earnings beginning in 1991, the Banks entered into Formal Agreements with the Office of the Comptroller of the Currency (OCC) in 1992 and 1993 which imposed higher minimum regulatory capital requirements than had previously applied to the Banks. The deadline for reaching this goal was June 30, 1995.

The applicant represents further that new management personnel brought in by Ventura's Board of Directors in September 1993 instituted a plan to restore core profitability to the Banks. Ventura states that these efforts have been largely successful. However, as of May 1995, VCNB had not yet reached the capital ratio required under the Formal Agreement. Therefore, Ventura initiated the Rights Offering as a means to raise capital necessary for VCNB to attain the requisite capital ratio levels and reimburse interest in accordance with the Formal Agreements.

4. The Plan comprises an employee stock ownership plan (the ''ESOP portion'') with a cash or deferred arrangement (the ''401(k) portion''). The trustee of the Plan is Dai-Ichi Kangyo Bank of California (the Trustee). The Trustee is independent of, and does not have any other business relationship with, Ventura and its subsidiaries. The Trustee has investment authority over Plan assets other than participants' individually directed 401(k) accounts in the Plan.

The Plan is an individual account plan as described in section 3(34) of the Act. Participants' individual accounts are divided into subaccounts, which include the following: (i) The Deferred Income Account, which contains a participant's salary deferrals under the 401(k) portion of the Plan; (ii) the Employer Contribution Account, which contains discretionary employer matching contributions that are allocated to the participant's account; (iii) the Employer Stock Account, which contains shares of employer securities allocated to the participant under the ESOP portion of the Plan; and (iv) the Rollover Account, containing distributions from other qualified retirement plans.

As of May 10, 1995, the Plan had 134 participants and total assets of approximately $1,182,254. On such date, the Plan was the record holder of 415,854 shares of the Employer Stock, of which 236,860 shares were allocated to participants' individual accounts, and 178,994 unallocated shares were held in a suspense account under the Plan as collateral for a loan to the Plan.[14]

Investment of Plan assets is different under the 401(k) and ESOP portions of the Plan. The 401(k) portion of the Plan permits each Plan participant to direct the investment of his or her Deferred Income Account, containing participants' salary deferrals, and Employer Contribution Account, which contains discretionary employer matching contributions, by choosing among the different investment funds available under the Section 401(k) portion of the Plan. Participants may also invest a portion of these accounts in shares of the Employer Stock. Participants who have elected to invest a portion of their Deferred Income Account or Employer Contribution Account in shares of the Employer

[13] In the case of an employee benefit plan that is an ''eligible individual account plan'' (as defined under section 407(d)(3) of the Act), section 407(d)(5) of the Act states, in pertinent part, that the term ''qualifying employer security'' means an employer security which is stock. However, the Department is providing no opinion in this proposed exemption as to whether the Employer Stock is a ''qualifying employer security'' under section 407(d)(5) of the Act.

[14] In this regard, the applicant states that there is a loan outstanding between Ventura and the Plan which was made by Ventura to enable the ESOP portion of the Plan to acquire Employer Stock from Ventura (the ESOP Loan). Ventura represents that the ESOP Loan met all of the requirements for a statutory exemption under section 408(b)(3) of the Act. However, the Department is providing no opinion in this proposed exemption as to whether the ESOP Loan met the conditions necessary for exemptive relief under section 408(b)(3) of the Act.

Stock are referred to herein as ''Invested Participants''.

With respect to the ESOP portion of the Plan, the Trustee exercises exclusive investment authority over Plan assets, subject to the requirement that Plan assets be primarily invested in the Employer Stock. In this regard, the applicant states that the Trustee must take into consideration its fiduciary duties to act prudently with respect to Plan investments and to invest Plan assets in the best interests of Plan participants and their beneficiaries.

5. Effective May 12, 1995, Ventura instituted a Rights Offering in connection with the Employer Stock. The Rights Offering called for the issuance to all holders of the Employer Stock as of the close of business on May 10, 1995 (the Record Date) transferable subscription rights (i.e. the Rights) in the ratio of one Right for each 3.17 shares of the Employer Stock held. No fractional rights were issued. The number of Rights issued to each shareholder was rounded up to the nearest whole Right.

Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one share of the Employer Stock at $2.25 per share (the Exercise Price).[15] Each Right also conferred upon its holder a second privilege (the Oversubscription Privilege) allowing each Right holder exercising the Basic Privilege in full to subscribe for an additional number of shares of the Employer Stock (Excess Shares), also at the Exercise Price. Excess Shares were subject to certain availability, proration and reduction restrictions imposed by Ventura. The applicant states that where an insufficient number of Excess Shares was available to satisfy fully all exercises of the Oversubscription Privilege, the available Excess Shares were prorated among shareholders who exercised their Oversubscription Privilege based upon the respective number of shares of the Employer Stock owned as of the Record Date.

The Basic Privilege was freely transferable. The Oversubscription Privilege was not transferable. The Rights were traded on NASDAQ under the symbol ''VCNBR'' through the close of trading on June 20, 1995, the date prior to the expiration of the Rights Offering on June 21, 1995. The proceeds of any Rights that were sold were credited to the accounts of the Invested Participants according to the investments and percentages which had been specified in such accounts.

6. The applicant states that all Invested Participants received by mail: (i) a copy of the Prospectus published by Ventura; (ii) a letter from the Trustee describing the procedures for participant directions with respect to the Rights Offering; and (iii) a direction form (Direction Form). The Direction Forms enabled the Invested Participants to direct the Trustee either to (i) exercise the Rights allocable to their accounts, or (ii) sell such Rights on the open market. The Direction Forms also permitted Invested Participants to elect not to participate in the Rights Offering.

The date that notification of the Rights Offering was mailed to Invested Participants was May 17, 1995 (the Notification Date), which was the same date that such information was received by the other shareholders of record. In addition, Direction Forms necessary to participate in the Rights Offering were provided to Invested Participants on May 18, 1995. A postage paid envelope addressed to the Trustee was provided with each Direction Form. The applicant states that an informational meeting about the Rights Offering was held for employees on May 22, 1995.

Invested Participants had to return the Direction Forms to the Trustee within fourteen (14) days after the Notification Date (i.e. May 31, 1995) because the Trustee needed approximately twenty-one (21) days to process such forms (as noted in Paragraph 8 below). In order for the Rights to be exercised, the Subscription Agent had to receive the Direction Form, together with payment for the shares which were to be purchased, by 5:00 p.m., Pacific Time, on June 21, 1995 (the Expiration Time). Rights not exercised prior to the Expiration Time became worthless.

7. The applicant represents that the Rights Offering was an independent act of Ventura as a corporate entity, under which all holders of the Employer Stock, including the Plan, were treated in a like manner. With respect to the 401(k) portion of the Plan, the Rights were acquired, held and controlled by Invested Participants' individual Plan accounts pursuant to Plan provisions for individually-directed investment of such accounts. With respect to the ESOP portion of the Plan, the Trustee made all decisions regarding whether to exercise or sell Rights allocated to shares of the Employer Stock held in the Plan.

8. For each Invested Participant who directed the Trustee to exercise Rights attributable to his or her Deferred Income or Employer Contribution Accounts in the 401(k) portion of the Plan, the funds which were needed to pay the exercise price were obtained by selling specific investments in the Invested Participant's accounts. The order of withdrawal was made at the direction of the Invested Participant or, if no direction was given, specific investments were sold pro-rata from the funds in the Invested Participant's accounts.

The Plan provided that amounts sold from the investment funds prior to the last day of the Rights Offering were deposited by the Trustee in a special short-term investment account pending the Trustee's payment to the Subscription Agent of the exercise price for the subscribed shares of the Employer Stock. Rights were exercisable by an Invested Participant only to the extent of funds available in his or her accounts in the Plan. If amounts in an Invested Participant's accounts were insufficient to pay the exercise price for all shares of the Employer Stock subscribed for, the Plan provided that the Trustee would sell any Rights not exercised. The proceeds of any Rights that were sold and any income from the special short-term investment account were credited to the accounts of the Invested Participants. In the case of such sale proceeds, credits were made to the accounts of the Invested Participants whose allocable Rights were sold. In the case of such income, credits were made to the accounts of the Invested Participants whose redemption proceeds were deposited in the special short-term investment account. In either case, the credits were made to each account according to the investments and percentages that were currently specified for such account.

The Direction Forms containing the Invested Participants' instructions for the Rights Offering had to be returned to the Trustee within twenty-one (21) working days before the date of the Expiration Time (the Filing Date),[16] in order to give the Trustee sufficient time to perform the administrative procedures required to review participant Direction Forms and implement directions, including the liquidation of other Plan investments. With respect to any Invested Participant who failed to submit a Direction Form to the Trustee by the Filing Date, or submitted an invalid Direction Form, the Plan provided that the Trustee had to sell the Rights on the open market.

[15] The price per share of the Employer Stock, as quoted on NASDAQ, was $2.37 as of the end of the day on May 11, 1995, and was approximately the same price per share at the end of the Offering Period on June 21, 1995.

[16] The Filing Date was June 1, 1995. The Filing Date was supposed to be fourteen (14) days after the Notification Date (i.e. May 17, 1995, as noted in Paragraph 6), but was extended one day because May 31st was the Memorial Day holiday. Thus, Invested Participants had approximately two weeks following notification to provide their instructions to the Trustee.

These possible consequences were disclosed in the information sent to shareholders of the Employer Stock prior to the Rights Offering.

In the event that the market price for the Employer Stock, including the effect of any applicable brokerage commissions and other expenses, at the time the Trustee submitted the Rights for exercise, was less than the exercise price under the Offering, the Plan provided that the Trustee would not automatically attempt to exercise such Rights. In such situations, an Invested Participant was permitted to direct the Trustee to either: (i) use the available funds to purchase shares of the Employer Stock on the open market; or (ii) reinvest the available funds pursuant to the investment elections and percentages specified for the Invested Participant's accounts. In addition, the Trustee could, at the direction of the Invested Participant, either: (i) allow the Rights to expire, or (ii) attempt to sell the Rights on the open market. If the latter option was chosen, the Trustee was required, as directed by the Invested Participant, to either: (i) apply the available funds toward the purchase of shares of the Employer Stock on the open market, or (ii) reinvest the available funds pursuant to the investment elections and percentages specified for the Investment Participant's accounts.

9. With respect to the ESOP portion of the Plan, the Trustee had exclusive authority to exercise or sell the Rights allocable to shares of the Employer Stock held in the ESOP portion of the Plan. The Trustee represents that it's decision to exercise or sell the Rights was made in accordance with the fiduciary duty to act prudently with respect to Plan investments and to invest Plan assets in the best interests of the Plan's participants and beneficiaries.

In this regard, the Trustee decided to sell the Rights allocated to the ESOP portion of the Plan on the open market. The applicant states that the Trustee did not solicit the views of participants with respect to this decision because investment decisions are not generally passed-through under the ESOP portion of the Plan. The proceeds of the sale of the Rights were allocated to each participant's ESOP Employer Stock Account in the Plan in the same ratio as that particular Employer Stock Account bore to all other Employer Stock Accounts in the Plan on the record date.

Prior to making the decision on behalf of the ESOP portion of the Plan to sell the Rights, the Trustee consulted with a financial consulting firm, the Financial Valuation Group (FVG), whose consultants were acquainted with ESOPs and regional banks such as Ventura. The Trustee considered, with the assistance of FVG, a variety of factors that it deemed relevant to whether the Plan should exercise or sell the Rights. These factors included: (a) any transaction and financing costs which may be involved in exercising the Rights; (b) future per share value expectations of market analysts who follow the Employer Stock; (c) the recent trading history of shares of the Employer Stock, and the Rights, and how that trading compared to the trading of similar offerings of comparable financial institutions; (d) the price/earnings ratio of the Employer Stock; (e) a comparison of the Employer Stock's price/earnings ratio and pro forma book value to that of other financial institutions and the relation of such values to the respective market values of those institutions; (f) the current market price of the Employer Stock; and (g) the market price of the Rights.

The Trustee represents that it also considered the investment objectives of the participants in the ESOP portion of the Plan, the risks of each available alternative for the Rights, and the financial resources of the ESOP portion of the Plan. After considering all these factors, the Trustee determined that the sale of the Rights was appropriate for the ESOP portion of the Plan and in the best interests of the affected Plan participants.

10. The Trustee received a total of 131,185 Rights, of which 74,718 represented Rights attributable to allocated shares of Employer Stock in the Plan and 56,467 represented Rights attributable to unallocated shares. The Rights, as listed on NASDAQ, were initially valued at $.156 per Right on May 24, 1995.[17] The Rights were valued at $.125 per Right at the close of the Offering Period. The approximate volume of trading in the Rights during the Rights Offering was as follows: (i) 32,127 Rights were traded between May 10 and May 31, 1995, and (ii) 816,417 Rights were traded between June 1 and June 21, 1995.

All of the Rights received by the Trustee in connection with the Plan's ownership of the Employer Stock in the ESOP portion of the Plan, as well as the Rights received for the 401(k) portion of the Plan which Invested Participants elected to sell rather than exercise (as discussed further below), were sold by the Trustee on the open market. The Rights were sold in two separate transactions on June 13 and June 14, 1995 for $.093 per Right, which was the market price for the Rights on the date of the transactions as quoted on NASDAQ. The Trustee states that the sale of the Rights was executed by an unrelated party.

With respect to the 401(k) portion of the Plan, the applicant states that there were 134 Invested Participants who collectively received a total of 6,989 Rights as a result of the Rights Offering. As noted above in Paragraph 8, Invested Participants who elected to sell their Rights could make such an election up until the Filing Date (i.e. June 1, 1995). For those Invested Participants who elected to sell their Rights, the Trustee sold such Rights (along with the other Rights received by the ESOP portion of the Plan) as part of the two separate transactions on June 13 and 14, 1995. The Rights were sold for $.093 per Right, which was the market price on such dates. In this regard, the Trustee believed that it would be more efficient and fair to all affected Invested Participants in the Plan for the Rights to be sold at about the same time, rather than gradually as the Direction Forms were received. The proceeds from all such sales were allocated to the Plan accounts of those Invested Participants who elected to sell their Rights, in direct proportion to the number of Rights they elected to sell. The applicant states that of the 6,989 Rights received by the Plan on behalf of Invested Participants, a total of 1,024 Rights (with rounding) were exercised, a total of 470 Oversubscription Privileges were exercised, a total of 5,901 Rights were sold, and a total of 64 Rights were allowed to expire.

11. The total number of shares of Employer Stock outstanding prior to the Rights Offering was 6,333,835, of which approximately 415,854 shares, or 6.56 percent, were held by the Plan. The total number of shares of the Employer Stock outstanding after the Rights Offering was 9,226,723, an increase of 2,888,888 shares.[18] Of these additional shares, approximately 1,685,652 were sold to shareholders upon exercise of the Rights, or to investors who purchased the Rights on the open market, and the other 1,203,236 shares were sold to outside investors pursuant to certain standby purchase agreements. The applicant represents that following the Rights Offering, VCNB attained the

[17] In this regard, the applicant states that the Rights were not traded in sufficient volume prior to May 24, 1995 to be listed on NASDAQ.

[18] The applicant notes that the number used to show the increase due to the Rights Offering does not include an additional 4,000 shares which were added to the post-Rights Offering total following the exercise of a stock option by a former employee of VCNB.

capital ratio required under the OCC Formal Agreements.

12. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act because, among other things: (a) the Plan's acquisition of the Rights resulted from an independent act of Ventura, an employer of employees covered by the Plan; (b) with respect to all aspects of the Offering, all holders of the Employer Stock were treated in the same manner, including the Plan; (c) individual participants whose Deferred Income and Employer Contribution Accounts under the 401(k) portion of the Plan held interests in the Employer Stock were responsible for directing the Trustee to exercise or sell Rights under the Rights Offering; and (d) with respect to the ESOP portion of the Plan, investment decisions regarding whether to sell or exercise the Rights received by the Plan were made by a qualified, independent fiduciary acting for the Plan (i.e. the Trustee).

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to all Plan participants within fifteen (15) days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Life Insurance Corporation Retirement Savings Plan (The Plan) Located in Dallas, Texas

[Application No. D–10048]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408 (a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of 16 residential mortgage loans (the Loans) by the Life Insurance Company of the Southwest Holding Corporation Retirement Savings Plan (the Plan) to the Life Insurance Company of the Southwest (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans, or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

Summary of the Facts and Representations

1. The Plan, in effect since June 16, 1988, is a profit sharing plan with a 401(k) feature providing for participant directed accounts. The Plan covered 122 employees as of January 1, 1993. As of December 31, 1993, the Plan had $3,945,285 in total assets. The Employer is a privately held Texas Corporation. The Trustee is the Texas Commerce Trust Company, N.A.

2. It is represented that during the 1980's, the Plan Trustees purchased the Loans for the Plan as a part of the Plan's General Investment Fund. It is represented that during the mid 1980's the percentage of Plan assets invested in mortgage loans (calculated based on the outstanding loan balance of the mortgage loan portfolio (Loan Portfolio)) approached 35%. Most of the Loans were purchased at various times from Couch Mortgage, a mortgage banking firm in Houston, Texas. Couch Mortgage is independent of the Plan and Employer. All Loans purchased by the Plan were originated between August 17, 1973 and July 17, 1990, with various original durations and all were secured by first lien positions on residential real properties located in Greater Houston. All the Loans were purchased for their remaining principal balance at the time of the purchase from Couch Mortgage. Eleven of the 16 Loans have fixed rates that range from 10.00% to 16.50%. The remaining five Loans have variable rates that currently range between 7.560% and 10.625%. The borrowers were all independent of the Plan and the Employer.

The Loans which are the subject of this application represent 100% of the Loan Portfolio held by the Plan. As of June 2, 1995, the percentage of the fair market value of the Plan assets invested in the Loans was 8.53%. The Loans are residential real estate mortgage loans and one land only loan.[19]

3. Coopers & Lybrand L.L.P. (Coopers & Lybrand), an independent third party appraiser estimated the fair market value for each of the 16 Loans held in the Loan Portfolio, and the outstanding principal balance, as of March 31, 1995. The methodology used to determine the fair market value of the Loans is more fully discussed in paragraph number 6.

4. The Employer proposes to purchase each of the Loans held in the Loan Portfolio from the Plan for cash. It is represented that the Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (a) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans, or (b) the fair market value of each of the Loans. It is represented that the Employer will compare the principal balance plus accrued but unpaid interest on the loans with the fair market value for each of the Loans. If this amount is higher than the fair market value on the date of the sale, the Employer will pay the higher amount. In the event that the fair market value of each of the Loans is higher than the principal balance plus accrued but unpaid interest, the Employer will pay the fair market value on the date of the sale. In this regard, as of March 31, 1995, seven of the 16 Loans had a fair market value which was less than the outstanding principal balance of the Loan, and nine of the Loans had a fair market value which was greater than the outstanding principal balance of such Loans. Based on calculations as of March 31, 1995, it is estimated that the total amount the Plan will receive as a result of the sale will be approximately $275,939.08.

5. The applicant represents that since 1988 the Plan has sought a buyer for the total Loan Portfolio. Offers received have been deeply discounted from the par value. Potential purchasers considered the package expensive to administer due to the average size of the outstanding loan balance, lack of uniformity in the loan terms (i.e. interest rate, maturity date), and lack of

[19] The Department notes that the decisions of the fiduciaries on behalf of the Plan, in connection with the acquisition and holding of the Loans are governed by the fiduciary responsibility requirements of part 4, Subpart B, of Title I. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, Subpart B, of Title I have been violated regarding the Plan's investment in and subsequent holding of the Loans, and no exemption from such provisions is proposed herein.

original background information from the original loan underwriting.

6. The applicant submitted an appraisal of the fair market value of the Loans (the Appraisal) prepared on March 31, 1995, by Coopers & Lybrand. Coopers & Lybrand is a member of Coopers & Lybrand International, incorporated in Switzerland. It is represented that Coopers & Lybrand has no relationship to the Employer or the Plans and less than 1% of its annual income comes from business derived from the Employer and its affiliates. The value of each of the Loans was appraised using an Income Approach, specifically, the Discounted Free Cash Flow Method. Employing this method, the net cash flow from each of the Loans was forecast over the remaining life of each Loan and discounted to the present value. Monthly principal and interest payments received from each of the Loans were considered to be the Loan's cash flow. For the purpose of determining this cash flow, the following assumptions were made: the next set of payments was assumed to occur on the date of the Appraisal, with the remaining payments made monthly thereafter; rates on the five variable rate loans were assumed constant at their current levels; and payments were assumed to occur on their monthly due date, with no prepayments or late payments. The net cash flow from each of the Loans was then discounted to present value on a monthly basis.

The Market Approach was not utilized, as Coopers & Lybrand was unable to locate institutions who would be desirous of a portfolio with similar characteristics to the Plan's Loan Portfolio. In order to determine the market's interest in this type of loan portfolio, Coopers & Lybrand analyzed an attempt made by the Plan to market the Loan Portfolio. Specifically, Coopers & Lybrand noted correspondence from the Vice President of Institutional Sales for Meridian Capital Markets, the firm which attempted to sell the Loan Portfolio for the Plan. Meridian concluded that the Loans lacked marketability due to various reasons including the Loan Portfolio's small size, varying maturities, cost of servicing, location of the collateral, and the non-uniform nature of the Loans.

Based on the valuation analysis, and the facts and circumstances as of the valuation date, the aggregate fair market value and aggregate outstanding principal balance of the 16 Loans held by the Plan, as of March 31, 1995 was estimated to be $266,483.41 and $267,915.37, respectively.

7. The best offer for purchase of these assets is from the Employer. In this regard, if the Plan had sold the 16 Loans at the aggregate outstanding principal on March 31, 1995, it would have received $267,915.37, based on the Appraisal. If the Plan had sold the 16 Loans at the aggregate fair market value on March 31, 1995, it would have received $266,483.41, based on the Appraisal. However, treating each note as an individual asset and requiring the Employer to pay on a Loan by Loan basis the greater of the fair market value or outstanding principal balance on each Loan, then, as of March 31, 1995, the Plan would have received an additional $8,023.71 when compared to the aggregate principal balance and $267,915.37. When compared to the aggregate fair market value of $266,483,41 the Plan will receive an additional $9,455.67.

8. The Plan's Advisory Committee, which consists entirely of employees and officers of the Employer, desires to offer participants a new selection of nationally known investment funds and other features such as daily valuation and 24-hour a day access to fund balances. However, the Plan cannot do so while the Loans constitute a portion of the General Investment Fund. The General Investment Fund and the other investment options available to participants are presently managed by the Trustees. The applicant represents that of the investment advisors interviewed by the Advisory Committee, no firm would manage the Loan Portfolio without charging the Plan a fee for such services. No investment advisor interviewed could manage the Loans and offer daily valuation, 24-hour access to fund balances, or daily investment changes to the Participants. The Plan as drafted currently would permit valuations as frequently as daily, but because of the existence of the Loans, no nationally known investment advisor of which the Committee is aware, is willing to offer daily valued funds for participant direction. Therefore, the current Trustee-managed funds are valued on a quarterly basis, and permit participant-directed trades only on a quarterly basis. The applicant represents that daily valuations allows the participants to make daily changes to their investment decisions and better react to violative market conditions.

9. The applicant represents that the proposed transaction is in the interest of and protective of the Plan. The applicant represents that by granting the Plan this exemption, the Plan would be receiving at least par value for the Loans which it has not been able to obtain on the open market. The administrative burdens in record keeping for the Plan would be reduced. Plan participants could be offered faster service regarding account balances and options for changing investment choices if they were participating in a Plan whose assets were wholly managed and directed by the Trustee.

10. The applicant maintains that the proposed sale is administratively feasible as the transaction will be a one-time cash sale. The transaction is protective and in the interest of the Plan because the Plan will pay no fees in connection with the sale and the Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans; or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal.

11. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Employer will pay on a Loan by Loan basis on the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans; or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Fidelitone, Inc. Employees' Profit Sharing and Savings Plan & Trust (the Plan) Located in Wauconda, Illinois

[Application No. D–10077]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain securities to Fidelitone, Inc. (Fidelitone), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the sale is a one-time

transaction for cash; (2) the Plan pays no commissions nor any other expenses relating to the sale; and (3) the purchase price is the greater of: (a) the fair market value of the securities as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the securities, less cash dividends received.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Fidelitone. As of March 31, 1995, the Plan had approximately 185 participants and total assets of approximately $2.3 million. The trustee of the Plan is Ronald Comm, Chief Financial Officer of Fidelitone. Fidelitone, an Illinois corporation, is a distributor of electronic repair parts and accessories and is located in Wauconda, Illinois.

2. Among the assets of the Plan are shares in two real estate investment trusts, the Krupp Government Income Trust (Krupp I) and the Krupp Government Income Trust II (Krupp II), both of which invest primarily in insured mortgage obligations. On November 14, 1990, the Plan invested in 5000 Krupp I shares at a cost of $20/share, a total of $100,000. On April 2, 1992, the Plan invested in 4500 Krupp II shares at $20/share, a total of $90,000. The Krupp funds are both close-ended trusts having a fixed number of outstanding shares and no unissued shares. They were both set up to last approximately 10 to 12 years and consequently have seven to eight years remaining. Barring any defaults in the portfolios, the Krupp Co. reports that all remaining capital will be paid to shareholders.

The Krupp Trusts have returned both income and principal to the Plan. A portion of the dividends was used to acquire additional Krupp shares through the dividend reinvestment plan. From November 1990 to November 1993, the Plan purchased 1421.91 Krupp I shares at an average price of $19.11 per share. From April 1992 through November 1993, the Plan purchased 576.34 Krupp II shares at an average price of $19.30 per share. From February 14, 1994 through October 1995, rather than reinvesting the dividends, the Plan has received cash in the aggregate amount of $25,677.28. Specifically, the cumulative cash dividends with respect to the Krupp I shares have been $14,588.24, while the cumulative cash dividends with respect to the Krupp II shares have been $11,089.04

3. The applicant obtained an independent appraisal of the Krupp investments from Mark S. Loftus, First Vice President, Investments, at Dean Witter Reynolds' Rolling Meadows, Illinois office. The letter from Mr. Loftus notes that neither Krupp fund trades on any public exchange.[20] However, each fund's own dividend reinvestment plan buys back shares quarterly using a sealed bid auction method. As of June 1, 1995, the dividend reinvestment plan was repurchasing Krupp I shares at $14.40 per share, and Krupp II shares at $14.90 per share. Mr. Loftus stated that the Krupp Co. also annually computes a net asset value for ERISA purposes by marking securities to comparable Treasury market securities. As of December 31, 1994, Krupp I shares had a net asset value of $15.10 per share, while Krupp II shares had a net asset value of $15.32 per share. Besides the dividend reinvestment plan, Mr. Loftus notes the existence of a few third party companies not affiliated with Dean Witter Reynolds, Inc. nor with the Krupp Co. who attempt to match buyers and sellers on a secondary basis. Prices obtained on such third party transactions are often at substantial discounts to par value and net asset value prices.

The applicant represents that the Plan trustee and Fidelitone have attempted to sell the Krupp shares at the cost paid by the Plan. Mr. Loftus, in his summary of the Plan's transaction history, indicates that Fidelitone attempted on two different occasions in 1994 to sell the Krupp shares using the sealed bid auction method but was unsuccessful because average buy back prices had declined.

4. Because the Plan has been modified to permit the participants to direct the investment of their respective individual accounts among six mutual funds, all Plan assets have been liquidated, with the exception of the Krupp shares. Fidelitone now proposes to purchase all the Krupp shares in the Plan, including those purchased with reinvested dividends, for the greater of: (a) the aggregate fair market value of the Krupp shares as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the Krupp shares, less cash dividends received. Because the aggregate fair market value of the Krupp shares is less than the Plan's initial capital investment, Fidelitone will purchase them from the Plan for the latter amount. Accordingly, Fidelitone will pay the Plan a total purchase price of $245,289.72. The purchase price was calculated by taking the Plan's initial capital investment in the Krupp shares (i.e., $190,000) and (i) adding to that amount an assumed 10% annual return for each of the years since the Plan's initial investment in the shares through October 14, 1995 (i.e., $80,967), and (ii) subtracting from that amount the aggregate cash dividends received (i.e., $25,677.28). The sale will be a one-time transaction for cash, and the Plan will pay no commissions nor any other expenses relating to the sale.

The applicant represents that the proposed transaction is in the interests of the Plan because if the Plan is forced to attempt a sale of the Krupp shares on the open market, the Plan will receive substantially less than the amount the applicant is willing to pay. In addition, the sale will enable the Plan to divest itself of illiquid assets that are difficult to value and give participants the opportunity to direct the investment of the total value of their accounts, including that portion attributable to the Krupp shares.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale will be a one-time transaction for cash; (2) the Plan will pay no commissions nor any other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; and (4) the purchase price will be the greater of: (a) the fair market value of the Krupp shares as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the Krupp shares, less cash dividends received.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall

[20] The Department expresses no opinion herein on whether the acquisition and holding of the Krupp shares by the Plan violated any of the provisions of Part 4 of Title I in the Act.

include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Intrenet Employee Retirement Savings Plan (the Plan) Located in Milford, OH

[Application No. D–10095]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain units of limited partnership interests (the Units) to Intrenet Inc. (Intrenet), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan suffers no loss, taking into account all cash distributions received as a result of owning the Units; (c) the Plan pays no commissions nor any other expenses relating to the sale; and (d) the purchase price is the greater of $48,850 or the fair market value of the Units as of the date of the sale as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan with approximately 1,821 participants and beneficiaries and total assets of approximately $2,224,567 as of December 31, 1994. The trustee of the Plan is the SBS Trust Company. Intrenet, the Plan sponsor, is a holding company for six truckload carrier subsidiaries providing general and specialized carrier services throughout the United States.

2. Among the assets of the Plan are investments in two limited partnerships, the ML Venture Partners II, L.P. (the Venture Fund) and the ML LEE Acquisition Fund, L.P. (the Acquisition Fund). In April 1987, the Plan purchased 50 Units of the Venture Fund at a cost of $1000 per Unit. In October 1989, the Plan purchased 40 Units of the Acquisition Fund at a cost of $1000 per Unit. The Venture Fund invests primarily in securities of new and developing companies. The Acquisition Fund invests primarily in subordinated debt and preferred stock securities issued in connection with friendly leveraged acquisitions, recapitalizations, and other leveraged financing. The Units are not tradable on any public securities market.[21]

The Units have returned both income and principal to the Plan in the form of cash distributions. With respect to the Venture Fund, the Plan has received cumulative cash distributions of $790 per Unit ($39,500/50 Units), as of October 1995. With respect to the Acquisition Fund, the Plan has received cumulative cash distributions of $950.31 per Unit ($38,012.40/40 Units), as of August 14, 1995.

3. An estimate of the value of the Units is provided to Merrill Lynch by an independent valuation service on an annual basis. The most recent statement, dated May 31, 1995, provided to the Plan by Merrill Lynch, reports a value of $561 per Unit of the Venture Fund ($28,050/50 Units), and $520 per Unit of the Acquisition Fund ($20,800/40 Units), a total of $48,850 for all the Units. The Merrill Lynch statement indicates that these investments are generally illiquid and that investors may not be able to sell them nor realize the amounts shown above upon a sale or liquidation. Thus although there is no readily available market for the Units, the valuation methodology used by the independent valuation service determines the most probable price as of a specified date that the Plan could expect to receive if it sold the Units in an arm's length transaction in a competitive market.

4. In mid-1994, the Plan liquidated all of its assets, with the exception of the Units, and permitted the participants to direct the investment of their respective individual accounts among six mutual funds. In order to enable participants to direct the investment of the total value of their accounts, including that portion attributable to the Units, and to facilitate any required distributions, Intrenet proposes to purchase the Units from the Plan for the greater of $48,850 or the fair market value of the Units as of the date of the sale, as reported in the then most recent Merrill Lynch statement. Taking into account an assumed purchase price of $48,850, the original costs of the Units, and all cash distributions received, the Plan will receive the following rates of return on its original investment in the Units. The applicant represents that the Plan will receive a simple average annual return of 4.13% with respect to the Venture Fund for the period from April 1987 to October 1995, and of 7.84% with respect to the Acquisition Fund for the period from October 1989 to October 1995. The sale will be a one-time transaction for cash, and the Plan will pay no commissions nor any other expenses relating to the sale.

The applicant represents that the proposed transaction is in the interests of the Plan because if the Units are sold to an unrelated third party, the Plan will receive substantially less than the appraised value of the Units, due to their lack of marketability. In addition, the sale will enable the Plan to divest itself of illiquid assets and facilitate any required distributions. Finally, the sale will enhance the diversification of the assets of the Plan by providing participants the opportunity to reinvest the value attributable to the Units in their accounts.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Plan will pay no commissions nor any other expenses relating to the sale; (c) the price paid by the applicant will be the greater of $48,850 or the fair market value of the Units as of the date of the sale as determined by a qualified, independent appraiser; and (d) the sale will enhance the liquidity and diversification of the assets of the Plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register and inform interested persons of the right to comment and/or to request a hearing. Comments with respect to the notice of the proposed exemption are due within 40 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[21] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the Provisions of Part 4 of Title I in the Act.

ContiFinancial Services Corporation (ContiFinancial) Located in New York, New York

[Application No. D–10102]

Proposed Exemption

Section I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[22]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or assets contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[23] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.B.(1) or (2).

c. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[24] Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II. General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in

[22] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[23] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[24] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (the SEC) under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision of Subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Subsection II.A.(6) above.

Section III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which ContiFinancial or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in Section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in Section III.U);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this Section B.(1); [25]

(2) Property which had secured any of the obligations described in Subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in Section B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) ContiFinancial;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ContiFinancial; or

(3) Any member of an underwriting syndicate or selling group of which ContiFinancial or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services assets contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services assets contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

[25] The Department wishes to take the opportunity to clarify its view that the definition of Trust contained in Section III.B.(1) (a) through (e) includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

Summary of Facts and Representations

1. ContiFinancial is an investment banking firm that specializes in asset securitization, asset-backed financing and the placement of asset-backed securities. The firm serves major regional banking and thrift institutions and national and regionally-based consumer and commercial finance companies. ContiFinancial provides a range of services in all aspects of structuring securitization transactions, as well as arranging for interim lending facilities and credit enhancement alternatives for issuers of asset-backed securities. It is a broker-dealer registered with the National Association of Securities Dealers. ContiFinancial is a wholly owned subsidiary of ContiFinancial Corporation, which is, in turn, owned in excess of 80 percent by Continental Grain Company and the remaining ownership of which will be offered to the public pursuant to a Registration Statement filed with the SEC on October 11, 1995. As of June 30, 1995, the total assets of ContiFinancial Corporation were $482,007,000.[26]

2. ContiFinancial seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following

[26] As described herein, the term ''ContiFinancial'' refers to ContiFinancial Services Corporation and its affiliates unless the context otherwise requires.

categories of trusts: [27] (1) single and multi-family residential or commercial mortgage investment trusts; [28] (2) motor vehicle receivables pool investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[29]

3. Residential and commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground lease pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgage.[30]

Trust Structure

4. Each trust is established under a pooling and servicing agreement or equivalent agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables or certificates which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. Typically, prior to the closing date, the sponsor conveys to the trust legal title to all such assets. In some cases, legal title to some or all of such assets remains with the originator until the closing date. On or prior to the closing date, the sponsor and/or the originator conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. ContiFinancial, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates to be underwritten by ContiFinancial will generally be made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis. ContiFinancial may also act as the manager or co-manager of an underwriting syndicate or selling group with respect to the certificates.

Certificateholders will be entitled to receive periodic installments of principal and/or interest, or other payments due on the trust assets.

5. Some of the certificates will be multi-class certificates. ContiFinancial requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[31]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying trust assets are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying trust assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on a pro rata basis.[32]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of trust assets by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations included in trusts which are to be treated as REMICs, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or

[27] A given trust may include receivables of the type described below in one or more of the categories of trusts discussed herein.

[28] The Department notes that Prohibited Transaction Exemption (PTE) 83–1 (48 FR 895, January 7, 1983) a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-l are met. ContiFinancial requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, ContiFinancial has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[29] Guaranteed governmental mortgage pool certificates are mortgage- backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[30] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

[31] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[32] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a *pro rata* basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor (or sell it directly to a trust).

Originators of receivables included in the trusts will be entities that originate receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust sponsor (other than a sponsor which is also the servicer) are typically limited to acquiring the assets to be included in the trust, establishing the trust, designating the trustee, and assigning the assets to the trust.

9. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such, is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to ContiFinancial, the trust sponsor or the servicer. ContiFinancial represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, the sponsor, or out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the trust assets on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be ''subserviced'' by their respective originators and for a single entity to ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of certificates. Public offerings of certificates are generally made on a firm commitment basis or agency basis.

It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of assets to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to ContiFinancial. However, affiliates of ContiFinancial may originate or service assets included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the assets from various originators or other secondary market participants pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or another secondary market participant pursuant to a purchase or sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables, itself.

As compensation for the assets transferred to the trust, the party (or parties) which conveys legal title to the trust (i.e., the sponsor and/or the originator) receives cash, or certificates representing the entire beneficial interest in the trust. If such party receives certificates from the trust, such party sells some or all of these certificates for cash to investors or securities underwriters. In some transactions, such party or an affiliate may retain a portion of the certificates for its own account.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on assets included in the trust minus a specified servicing fee.[33] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the assets in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases, a portion of the payments on assets in the trust may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the assets between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer, typically, will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or out of the payments received on the assets in the trust.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession of assets in the trust, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

[33] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

15. Payments on assets in the trust may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on an asset and the certificate payment. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on trust assets are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what the underwriter receives for the certificates and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the assets in a trust is reduced by payment, the cost of administering the trust generally increases in proportion to the unpaid balance of the assets in the trust, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The purchase price of the receivables is specified in the pooling and servicing agreement and will be at least equal to either: (a) the unpaid principal balance on the receivables plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (b) the greater of (i) the amount in (a), or (ii) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the servicer, or an affiliate of the servicer, may provide credit support to the trust (i.e., act as an insurer). Typically in these cases, the servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. In some transactions, the servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a servicer typically can recover advances either from the provider of credit support or from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights pursuant to the pooling and servicing agreement. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on assets held by the trust to the extent not covered by credit support. However, where the servicer provides credit support to the trust, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on assets are passed through to investors. These protective safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the servicer to follow its normal servicing guidelines and will set forth the servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the assets included in the trust (monthly, quarterly, or semi-annually as set forth in the pooling and servicing agreement), the servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the servicer is required to deliver to the trustee annually a certificate of an executive officer of the servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed at least annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the master servicer's

reports conform to the servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect. The protection provided by a floor dollar amount to the credit support applies particularly where the servicer and the insurer are affiliated or are the same entity. (An entity should not be considered an insurer solely because it holds subordinated certificates.)

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the assets contained in the trust, including the types of assets, the diversification of the assets, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through certificates to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificate holders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted assets.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. At times, ContiFinancial will facilitate sales by investors who purchase certificates if ContiFinancial has acted as agent or principal in the original private placement of the certificates and if such investors request ContiFinancial's assistance. Other underwriters have made, and ContiFinancial anticipates that such underwriters will continue to make, a secondary market in publicly-offered certificates sponsored by ContiFinancial.

Summary

25. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute assets contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which ContiFinancial seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their

review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Other underwriters have made, and the applicant anticipates that such underwriters will continue to make a secondary market in the publicly-offered certificates sponsored by the applicant.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (a) The proposed exemption provides individual exemptive relief rather than class relief; (b) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (c) Instead of requiring a system for insuring the pooled assets, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (d) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[34]

III. Limited Section 406(b) and Section 407(a) Relief for Sales.

ContiFinancial represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[35] In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[36] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, ContiFinancial represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. ContiFinancial represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, ContiFinancial represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited section 406(b) and section 407(a) relief as specified in the proposed exemption.

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[34] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[35] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which ContiFinancial or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[36] The applicant represents that where a trust sponsor is an affiliate of ContiFinancial, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if ContiFinancial is not a fiduciary with respect to plan assets to be invested in certificates.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located In Pittsburgh, PA

[Application No. D–10113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest (the Interest) in Consolidated Capital Institutional Properties Two Limited Partnership (CCIP/2) to LEGENT Corporation (LEGENT), a party in interest with respect to the Plan.

This proposed transaction is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the CCIP/2 Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the CCIP/2 Interest.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by LEGENT, a publicly-held Pennsylvania corporation engaged in supplying systems management solutions to large users of computer technology. As of September 30, 1994, the Plan had net assets available for benefits that totaled $55,577,555. As of June 30, 1995, the Plan had 2,400 participants.

Prior to September 1, 1993, Mellon Bank (Mellon Bank) served as the Plan trustee. Effective September 1, 1993, Fidelity Investments became the trustee of all of the Plan's assets with the exception of certain limited partnership interests in BPT Union City Associates, Inc. and CCIP/2. Although Mellon Bank continues to serve as Plan trustee with respect to the CCIP/2 Interest,[37] since 1989 the Plan has permitted each participant to direct the investments held in his or her individual account among several funds selected by LEGENT.

2. On July 1, 1977, Morino Inc. (Morino), a Delaware corporation engaged in supplying systems management solutions to users of computer technology, adopted the Morino Associates, Inc. Money Purchase Pension Plan (the Morino Pension Plan) and the Morino Associates, Inc. Profit Sharing Plan (the Morino Profit Sharing Plan; collectively, the Morino Plans). On October 1, 1989, Morino merged with Duquesne Systems, Inc. (Duquesne) and formed LEGENT. Effective October 1, 1989, the Morino Pension Plan merged into the Duquesne Systems, Inc. Pension Plan and the Morino Profit Sharing Plan merged into the Duquesne Systems, Inc. Profit Sharing Plan. The resulting merged plans were amended and restated, effective October 1, 1989, as the LEGENT Corporation Pension Plan and the LEGENT Corporation Savings Plan, respectively. Subsequently, on October 1, 1992, the LEGENT Corporation Savings Plan was amended and restated as the LEGENT Retirement Security Plan (i.e., the Plan) to reflect the merging of the LEGENT Corporation Pension Plan and the Goal Systems International, Inc. Profit Sharing Plan into the LEGENT Corporation Savings Plan due to the merger of Goal Systems International Inc. into LEGENT.

3. As noted above, currently among the assets of the Plan is a 0.02 percent interest in CCIP/2, a South Carolina limited partnership whose underlying assets generate income from leasing space in office buildings primarily in Southfield, Michigan. The CCIP/2 Interest has no maturity date. To the extent known, LEGENT has never invested in CCIP/2. In addition, none of the general partners of CCIP/2 or investors in CCIP/2 are parties in interest with respect to the Plan or its predecessors.

The Morino Pension Plan acquired the CCIP/2 Interest from unrelated parties on March 21, 1984 for a total purchase price of $15,400 (or $110 per unit for 140 units). The acquisition of the CCIP/2 Interest was made at the direction of Morino. Although the Morino Pension Plan (and subsequently the Plan) received income totaling $154 from CCIP/2, no further income payments were made to the Plan after 1991. In addition, the Plan never paid any holding costs in connection with its ownership of the CCIP/2 Interest.

4. When Morino merged with Duquesne, the existing Plan accounts invested in the CCIP/2 Interest were not initially frozen. Because the former Morino Plans did not offer individual participant investment elections, the Plan has held the CCIP/2 Interest as a general asset with a portion of such interest allocated to all participants in the Morino Pension Plan. As these participants terminated their employment with Duquesne, their allocable portion of the CCIP/2 Interest was purchased by the Plan using cash generated from such interest. The remaining portions of the participant accounts that were invested in the CCIP/2 Interest were frozen when Mellon Bank determined that the CCIP/2 Interest had no value and there was insufficient cash to purchase any additional portions from terminating employees. Accordingly, LEGENT froze the remaining accounts invested in the CCIP/2 Interest. As of January 13, 1995, the CCIP/2 Interest was allocated to the accounts of 86 former Morino employees.

5. LEGENT represents that the CCIP/2 Interest is a highly illiquid investment for which there is a very limited secondary market.[38] Mellon Bank represents, in a letter dated November 29, 1993, that it made every effort to sell the CCIP/2 Interest to unrelated parties. However, due to the insufficient secondary market, no purchaser has been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the CCIP/2 Interest from the Plan.

6. Mellon Bank proposes to sell the CCIP/2 Interest to LEGENT for not less than the greater of (a) the fair market value of the CCIP/2 Interest as

[37] On September 13, 1995, the Department issued Prohibited Transaction Exemption 95–84 at 60 FR 47612. This exemption permitted the cash sale by the Plan of the BPT Interest to LEGENT.

[38] The Department expresses no opinion, in this proposed exemption, on whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring the CCIP/2 Interest.

determined by a qualified, independent appraiser; or (b) the total acquisition cost and opportunity costs attributable to the CCIP/2 Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commission or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interest of the Plan and its participants and beneficiaries.

7. CCIP/2 and its underlying assets were valued by Mr. Brad Davidson, President of Partnership Valuations, Inc. of Annapolis, Maryland. A qualified, independent appraiser, Mr. Davidson values non-traded securities for banks and brokerage firms. As of December 31, 1994, Mr. Davidson determined that the fair market value of each unit in CCIP/2 was worth $45. He also concluded that a 29 percent discount factor was appropriate to his appraisal of CCIP/2 due to its lack of marketability. Therefore, based upon Mr. Davidson's valuation of CCIP/2, the fair market value of the CCIP/2 Interest held by the Plan is $6,300 ($45 x 140 units).

8. Because the fair market value of the CCIP/2 Interest is less than its acquisition cost, LEGENT will purchase the CCIP/2 Interest for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the CCIP/2 Interest, it will pay $3,059 to make up for the Plan's lost opportunity costs.[39] Accordingly, LEGENT will purchase the CCIP/2 Interest from the Plan for an aggregate purchase price of $18,459.[40]

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) all terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price which is not less than the greater of (i) the fair market value of the CCIP/2 Interest as determined by a qualified, independent appraiser or (ii) the total acquisition cost plus opportunity costs that are attributable to the CCIP/2 Interest; and (e) Mellon Bank will determine that the sale is an appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of proposed exemption in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of November, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–28910 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–29–P

[39] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the CCIP/2 Interest for the Plan Years beginning October 1, 1991 since CCIP/2 paid income to the Plan through the Plan Year ending September 30, 1994. Using this method of calculation, LEGENT represents that the CCIP/2 Interest would have earned aggregate opportunity costs of $3,059.

[40] The applicant represents that the amount by which the purchase price for the CCIP/2 Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP–CD 90–92]

Distribution of 1990, 1991 and 1992 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Copyright Office of the Library of Congress is announcing initiation of the 180 day arbitration period for the distribution of 1990–92 cable compulsory license royalties.

EFFECTIVE DATE: December 4, 1995.

ADDRESSES: All hearings and meetings for the 1990–92 cable distribution

proceeding shall take place in the James Madison Memorial Building, Room 414, First and Independence Avenue, SE., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 251.72 of 37 CFR provides:

> If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the Federal Register a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

The notice published today fulfills the requirements of § 251.72 for the distribution of cable compulsory license royalties for the years 1990–92.

On December 15, 1994, the Copyright Office published a notice in the Federal Register requesting comment as to the existence of controversies to the distribution of the 1990 cable royalty fund, 59 FR 64714 (December 15, 1994). In response to this notice, copyright owners identified the existence of controversies for distribution of the 1990 fund, as well as the 1991 and 1992 funds. The copyright owners requested that the Office consolidate the 1990–92 funds into a single distribution proceeding.

On March 21, 1995, the Office published a notice consolidating the 1990–1992 cable royalty funds into a single distribution proceeding, and announced the precontroversy discovery schedule, 60 FR 14971 (March 21, 1995). The Office also announced in that notice that controversies to the 1990–92 cable royalty funds would be declared, and arbitration initiated, on November 17, 1995, 60 FR at 14975.

In order to prepare for the commencement of proceedings, and to afford the cable royalty claimants the full use of the prescribed 180 days for arbitration, the Copyright Office has completed the selection of the arbitrators in accordance with 17 U.S.C. 802. The arbitrators for the 1990–92 cable distribution proceeding are:

The Honorable Mel R. Jiganti, Chairperson
The Honorable John B. Farmakides
The Honorable Ronald P. Wertheim

These arbitrators have signed their agreements to serve in the proceeding and have, pursuant to agreement by the cable claimants, begun background work in preparation for the commencement of the proceeding.

II. Joint Motion to Defer Commencement

On November 8, 1995, the parties to the proceeding filed a joint motion requesting a delay in the initiation of proceedings to December 29, 1995. They cited as their reasons: the time needed to produce the volume of discovery documents their motions to compel have generated; the time needed to evaluate the data contained in those discovery documents; the time needed to amend their direct cases in response to the granting of JSC's motion to add an additional issue to the proceeding; the potential for additional motions to be filed if discovery documents are not furnished as ordered; the difficulty of scheduling witnesses during the holidays and the loss of working days due to the holidays; the concern that the 180 day period will not be sufficient unless actual testimony begins on the heels of the initiation of the proceeding after all preliminary matters have been resolved; and a desire to have the mechanics of paying the arbitrators worked out before the initiation of proceedings.

The Copyright Office partially granted the joint motion to allow a delay to December 4, 1995, of the initiation of the 1990–92 cable royalty distribution proceeding in an Order dated November 13, 1995. *See* Order in Docket No. 94–3 CARP–CD 90–92 (November 13, 1995). In issuing its ruling, the Office noted in the Order that it engaged the services of the arbitrators on the basis of a starting date the parties themselves agreed to last spring and that any extension of the starting date would require amending the arbitrator's contracts and consideration of their loss of time to do other work. The Office therefore concluded that the six week delay requested by the parties would work a hardship on it and the arbitrators and decided that a December 4 commencement date was more appropriate. *Id.*

III. Initiation of Proceeding

Pursuant to § 251.72 of the CARP rules, the Copyright Office of the Library of Congress is formally announcing the existence of Phase I controversies to the distribution of cable compulsory license royalties for 1990, 1991 and 1992, and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the distribution of those funds. The arbitration proceeding commences on December 4, 1995, and runs for a period of 180 days, by which time the arbitrators shall make their report to the Librarian of Congress by June 1, 1996 in accordance with § 251.53 of the rules.

A meeting between the copyright claimants participating in the distribution proceeding and the arbitrators shall take place at 10 a.m. on Monday, December 4, 1995, at the above described address to discuss the hearing schedule, arbitrator billing and payment, and any other necessary procedural matters. The meeting is open to the public. Copies of the hearing schedule, once finalized, will be available at the Copyright Office upon request.

Dated: November 21, 1995.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–29044 Filed 11–27–95; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–104]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting Cancellation.

Federal Register Citation of Previous Announcement: 60FR55869, Notice Number 95–097, November 3, 1995.

Previously Announced Dates of Meeting: December 5, 1995, December 6, 1995, and December 7, 1995. Meeting has been canceled.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

Dated: November 20, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–28937 Filed 11–27–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–105)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC), Task Force on University Strategy; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Aeronautics Advisory Committee Task Force on University Strategy.

DATES: December 14, 1995, 8:30 a.m. to 5 p.m.; and December 15, 1995, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Isaiah Blankson, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 202/358–4610.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Overview
—Objectives and Expectations of Task Force
—Task Force Activities for USAF (DOD)
—Task Force Caucus/Assignments
—Planning of Working Group Task Activities
—University Strategy
—Spring Workshop Strategy

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 20, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–28936 Filed 11–27–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Literature Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 6–7, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 6 and from 9:00 a.m. to 5:00 p.m. on December 7. This meeting will be held in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meting will be open to the public from 3:30 p.m. to 5:00 p.m. on December 7, for a policy discussion and guidelines review.

The remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on December 6 and from 9:00 a.m. to 3:30 p.m. on December 7, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28944 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section A) to the National Council on the Arts will be held on December 11–14, 1995, from 9 a.m. to 6 p.m. on December 11–13 and from 9 a.m. to 5:30 p.m. on December 14. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on December 11, for opening remarks and panel instructions and on December 14 from 4:30 p.m. to 5:30 p.m. for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 6 p.m. on December 11; from 9 a.m. to 6 p.m. on December 12–13; and from 9 a.m. to 4:30 p.m. on December 14 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5 United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussion at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506 or call 202/682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28943 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Teleconferences

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that teleconferences of the Music Advisory Panel (Jazz Services and Services to Composers Sections) to the National Council on the Arts will occur on December 5–6, 1995. The Jazz Services Teleconference will occur from 3:00 p.m. to 6:00 p.m. on December 5

and the Services to Composers Teleconference will occur from 3:00 p.m. to 6:00 p.m. on December 6. These teleconferences will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28945 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Opera-Musical Theater Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a teleconference of the Opera-Musical Theater Advisory Panel (Services to the Field Section) to the National Council on the Arts will meet on December 14, 1995 from 12:00 p.m. to 5:00 p.m. The teleconference will occur at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995 this session will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28941 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Partnership Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel (State and Regional Section) to the National Council on the Arts will be held on January 9, 1996, from 8:30 to 5:00 p.m. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TYY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28942 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

Partnership Teleconferences; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that teleconferences of the Partnership Advisory Panel (State and Regional Section) to the National Council on the Arts will be held on December 20–21, 1995 and on January 3–4, 1996. The teleconference will occur from 3:30 p.m. to 6:30 p.m. on December 20 and from 9 a.m. to 12 p.m. on December 21. On January 3, the teleconference will occur from 3 p.m. to 6 p.m. and on January 4, from 9 a.m. to 12 p.m. This teleconference will be held at the Navy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

These meetings are for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28938 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies A Section) to the National Council on the Arts will be held on December 4–7, 1995. The panel will meet from 9 a.m. to 6 p.m. on December 4–6 and from 9 a.m. to 7 p.m. on December 7. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 11:15 a.m. on December 4, for welcome and orientation and from 5 p.m. to 7 p.m. on December 7, for a policy discussion.

The remaining portions of this meeting from 11:15 a.m. to 6:00 p.m. on December 4; from 9 a.m. to 6 p.m. on December 5–6; and from 9 a.m. to 5 p.m. on December 7, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection

(c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28939 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Theater Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies B Section) to the National Council on the Arts will be held on December 12–15, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 12–14 and from 9:00 a.m. to 7:00 p.m. on December 15. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 11:15 a.m. on December 12, for welcome and orientation and from 5:00 p.m. to 7:00 p.m. on December 15, for a policy discussion.

The remaining portions of this meeting from 11:15 a.m. to 6:00 p.m. on December 12; from 9:00 a.m. to 6:00 p.m. on December 13–14 and from 9:00 a.m. to 5:00 p.m. on December 15, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: November 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28940 Filed 11–27–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: December 18 and 19, 1995 8:00 A.M.–5:00 P.M.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: G. Siegfried Kutter, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1820.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate proposals in the Planetary Astronomy Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28955 Filed 11–27–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Computer & Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer Computation & Research (1192).

Date and Time: December 18, 1995, 8:30 a.m. to 5:00 p.m.

Place: Rooms 310, 320, 340, 360, 365, 370, 380, 390, 1120, and 1150.

Type of Meeting: Closed.

Contact Person(s): Caroline Wardle, Deputy Division Director, CISE/CDA, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1910.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Career Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28952 Filed 11–27–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Computer & Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer & Computation & Research (1192).

Date and Time: December 18, 1995, 8:30 a.m. to 5:00 p.m.

Place: Rooms 310 and 320.

Type of Meeting: Closed.

Contact Person(s): Caroline Wardle, Deputy Division Director, CISE/CDA, Room 1145, National Science Foundation, 4201 Wilson

Boulevard, Arlington, VA 22230. Telephone: (703) 306–1910.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR Phase II Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28953 Filed 11–27–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: Wednesday, December 13 thru Saturday, December 16, 1995.

Place: Fermilab High Rise, Batavia, IL 60510.

Type of Meeting: Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, Division of Physics, Rm 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1894.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Elementary Particle Physics Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28954 Filed 11–27–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; Point Beach Nuclear Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain technical requirements of Appendix E to 10 CFR Part 50 for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin (Facility Operating License Nos. DPR–24 and DPR–27, respectively, issued to Wisconsin Electric Power Company, the licensee).

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2., for annually exercising the onsite Emergency Plan at the Point Beach Nuclear Plant in the year 1995.

The proposed action is in accordance with the licensee's application for exemption dated October 6, 1995, as supplemented November 3, 1995.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to begin loading dry cask storage containers in December 1995 in order to minimize the time that Point Beach will not have the capacity for a full-core offload. The licensee has stated that emergency response personnel who would be involved in the emergency exercise will be involved in oversight of the process for loading the dry cask storage containers. Therefore, the licensee anticipates the 1995 emergency exercise to have a negative impact on the oversight of the storage of spent fuel in the independent spent fuel storage installation at the Point Beach plant.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the one-time action is acceptable because the licensee has demonstrated excellent performance in the emergency preparedness area during the last two Systematic Assessment of Licensee Performance (SALP) periods and has performed an emergency drill in August 1995 involving major elements of the Point Beach Emergency Plan with no significant deficiencies.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Point Beach.

Agencies and Persons Consulted

In accordance with its stated policy, on November 3, 1995, the staff consulted with the Wisconsin State official, Ms. Sarah Jenkins, of the Public Service Commission of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 6, 1995, as supplemented by letter dated November 3, 1995, which are available for public inspection at the

Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 17th day of November 1995.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28979 Filed 11–27–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 and 50–304]

In the Matter of: Commonwealth Edison Company (Zion Nuclear Power Station, Unit Nos. 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Unit Nos. 1 and 2, at a steady-state reactor power level not in excess of 3250 megawatts thermal. The facilities are pressurized water reactors located at the licensee's site in Lake County, Illinois. The licenses provide, among other things, that the Zion Nuclear Power Station is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Sections III.B and III.D.2.(a) of 10 CFR Part 50, Appendix J, Option A, require that Type B local leakage rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. In addition, Sections III.C and III.D.3 of 10 CFR Part 50, Appendix J, Option A, require that Type C local leakage rate periodic tests shall be performed during each reactor shutdown for refueling, but in no case at intervals greater than 2 years. These requirements are reflected in the Zion Technical Specifications (TS) as requirements to perform Type B and C containment leakage rate testing in accordance with 10 CFR Part 50, Appendix J and approved exemptions.

III.

The licensee has determined that certain containment isolation pathways have not been locally leakage rate tested (Type B and C tests) as required by 10 CFR Part 50, Appendix J, Option A. There were 23 untested pathways in Unit 1 and 18 in Unit 2. In a letter dated August 16, 1995, the licensee requested relief from the requirement to perform the Type B and C containment leakage rate tests of certain penetrations and valves in these pathways in accordance with the requirements of Sections III.B, III.C and III.D of 10 CFR Part 50, Appendix J, Option A. Continued operation of the Zion units was authorized by a Notice of Enforcement Discretion (NOED) orally granted on August 15, 1995, until such time as the staff acted on the exemption requests. The NOED was granted in writing on August 16, 1995.

If the exemptions the licensee requested in its letter dated August 16, 1995, are granted, the tests, except those for which permanent exemptions were requested, would be performed: (1) during the fall 1995 Unit 1 refueling outage, or (2) during power operation on Unit 2 prior to September 15, 1995, or (3) during the Unit 2 refueling outage in the fall of 1996.

Attachment 1A of the licensee's letter contained one-time schedular exemption requests and justifications for pathways that can be tested at power. Although the tests can be performed with the units at power, time was needed to properly develop and perform the necessary test procedures. Accordingly, the licensee requested that the Type B and C testing of the pathways associated with Zion, Unit 2, be deferred, with final test completion of the affected pathways (as listed in Attachment 1A) prior to September 15, 1995. The tests have been completed on Unit 2. In addition, the licensee requested that the affected penetrations associated with Zion, Unit 1, be deferred until the completion of its current refueling outage, which began on September 9, 1995.

Attachment 1B of the licensee's letter also contains one-time schedular exemption requests and justifications for pathways that can only be tested with the unit shutdown. The tests of the penetrations listed in Attachment 1B would be performed during the next cold shutdown of sufficient duration. In all cases, the testing would be performed prior to the end of the next refueling outage on each unit. The refueling outage is currently in progress for Unit 1 and is planned for the fall of 1996 for Unit 2.

Attachment 2 of the licensee's letter contains permanent exemption requests and justifications for pathways that cannot satisfy the requirements of 10 CFR Part 50, Appendix J, Option A, due to system/penetration design; that is, a test is not feasible, without making physical plant modifications.

Pathways Listed in Licensee's Attachment 1A

Attachment 1A of the licensee's letter requested temporary, schedular exemptions for components in the following containment penetrations:

Units 1 and 2:

P–14, Valve 1(2) RC8045, Nitrogen to the Pressurizer Relief Tank.

Unit 2 only:

P–30, Valve 2AOV–DT9159A, Reactor Coolant Drain Tank to Gas Analyzer.

For Unit 2, the required tests were completed prior to September 15, 1995.

For Unit 1, the required tests will be performed before startup from the current refueling outage. The Zion TSs do not require compliance with containment leakage rate limits during refueling outages, because there is little risk of an accident occurring which would release significant amounts of radioactivity. Therefore, the staff finds acceptable the schedular exemption request to delay the local leakage rate testing of valve 1 RC8045 until no later than startup from the current Unit 1 refueling outage.

Pathways Listed in Licensee's Attachment 1B

Attachment 1B of the licensee's letter requested temporary, schedular exemptions for components in the following containment penetrations:

Units 1 and 2:

P–60, Valve 1(2)AOV–RV0005, Containment Vent Isolation

P–70, Valve 1(2)SF8767, Refuel Cavity to Purification Pump

P–80, ECCS Relief Valve Header to Pressurizer Relief Tank

P–99, Valve 1(2)SF8787, Purification Pump to Refuel Cavity

Unit 1 only:

P–30, Valve 1AOV–DT9159A, Reactor Coolant Drain Tank to Gas Analyzer

For Unit 1, the required tests will be performed before startup from the current refueling outage. The Zion TSs do not require compliance with containment leakage rate limits during refueling outages, because there is little risk of an accident occurring which would release significant amounts of radioactivity. Therefore, the staff finds acceptable the schedular exemption request to delay the local leakage rate testing of the Unit 1 components listed above until startup from the current Unit 1 refueling outage.

For Unit 2, the leakage pathways do not consist of through-valve leakage paths, but rather leakage paths out of

containment isolation valves or barriers through or past valve packing, diaphragms, flanges, or other resilient seals. The potential leakage paths are small or restrictive and are at mechanical joints of flange and compression fittings, through valve packing, or through cracks or tears in valve diaphragms. Although none of the penetrations in question were tested in accordance with the requirements, most of them were tested during the most recent Type A containment leakage rate test or by process flow, with either no or minimal leakage. For those penetrations that were not tested, the leakage path for a significant leak to occur requires a sequence of events for which the probability of occurrence during the limited time period of the exemption is low enough to provide reasonable assurance of no significant increase in risk to the health and safety of the public. In addition, seismic qualification of some of the systems, missile protection, and the isolation valve seal water system all provide additional assurance that the risk of a significant leak is minimal. For these reasons, the staff finds that the requested schedular exemption is justified and that it is acceptable to delay the local leakage rate testing of the Unit 2 components listed above until the next cold shutdown of sufficient duration for testing, but no later than startup from the next Unit 2 refueling outage, currently scheduled for September 1996.

Pathways Listed in Licensee's Attachment 2

Attachment 2 of the licensee's letter requested permanent exemptions for components in the following containment penetrations:

Units 1 and 2:
- P–14, Valve 1(2) FCV–SA01A, Service Air Supply to Containment
- P–19, Valve 1(2) MOV–CC9413A, Component Cooling Water Supply to the Reactor Coolant Pumps
- P–34, Valve 1(2) DW0030, Demineralized Flushing Water to Containment
- P–43, Valve 1(2) LCV–DT1003, Reactor Coolant Drain Tank Pump Discharge
- P–75, Valves 1(2) VC8402A, 1920HCV–VC182, 1(2) VC8402B, 1(2) VC8403, Chemical and Volume Control to Regenerative Heat Exchanger
- P–76, Valve 1(2) VC8480A, Reactor Coolant Loop Fill Header
- P–77, Valves 1(2) PP0101, 1(2) PP0102, 1(2) PP0103, 1(2) PP0104, Penetration Pressurization to Containment Valve Stations
- P–88, Valve 1(2) FCV–RV112, Containment Hot Water Supply
- P–102, Valve 1(2) AOV–RC8029, Primary Water to the Pressurizer Relief Tank

Unit 1 only:
- P–16, Compression Fittings on Five Reactor Vessel Leak Detection System Lines

To provide time for additional staff review before granting permanent exemptions, the staff will consider only schedular exemptions for these components. Final staff action on these exemption requests will be taken by December 31, 1995.

The leakage pathways listed above do not consist of through-valve leakage paths, but rather leakage paths out of containment isolation valves or barriers through or past valve packing, diaphragms, flanges, or other resilient seals, except for Penetration P–77, which is reviewed separately below. The potential leakage paths are small or restrictive and are at mechanical joints of flange and compression fittings, through valve packing, or through cracks or tears in valve diaphragms. Although none of the penetrations in question were tested in accordance with the requirements, most of them were tested during the most recent Type A containment leakage rate test or by process flow, with either no or minimal leakage. For those penetrations that were not tested, the leakage path for a significant leak to occur requires a sequence of events for which the probability of occurrence during the limited time period of the schedular exemption is low enough to provide reasonable assurance of no significant increase in risk to health and safety of the public. In addition, seismic qualification of some of the systems, missile protection, and the isolation valve seal water system all provide additional assurance that the risk of a significant leak is minimal. For these reasons, the staff finds that a schedular exemption is justified and that it is acceptable to delay the local leakage rate testing of the components listed above (except Penetration P–77) until final staff action on these exemptions, which will be taken prior to December 31, 1995.

Penetration P–77

Manual containment isolation valves 1(2) PP0101, 1(2) PP0102, 1(2) PP0103, 1(2) PP0104, are in four lines that are part of the Penetration Pressurization (PP) system. There is one valve in each line and it is open during power operation. The piping associated with the PP system is seismically supported and missile protected. The valves' primary post-accident design function is to remain open so that the PP system can continue to pressurize containment penetrations, such as electrical penetrations, preventing containment leakage out through those penetrations. These valves have not been locally leakage rate (Type C) tested for through-valve leakage. Local leakage rate testing is conducted with the valves open, with the packing of the four valves part of the test boundary. The leakage rate from this test is added into the sum of all local leakage rate tests for comparison to the 0.6 La acceptance criterion. This test was completed with satisfactory results during refueling outage Z1R13 which ended March 1994 for Unit 1 and during refueling outage Z2R13 which ended April 1995 for Unit 2. The portion of the PP system that includes these valves is continuously monitored for leakage, with a high flow condition annunciated in the control room. Additionally, these valves are tested for seat leakage during the Type A (integrated leak rate) test.

The post-accident design function of the PP system is to pressurize components to a pressure greater than Pa, the calculated peak accident pressure of the containment atmosphere during a design-basis accident, thereby preventing containment out-leakage. The licensee asserts that Penetration P–77 and its associated valves are provided with a suitable alternative to Type C testing due to the leak detection and mitigation capability of the system. The PP system features which provide that capability are summarized as follows:

(1) Supply characteristics:

(a) Normal supply: 100 psig air receivers
—passive components
—pressurized greater than or equal to 1.10 Pa (Pa=47 psig)

(b) Backup supplies—high degree of redundancy
—three PP air compressors: safety-related, seismic, auto start feature, powered from ESF buses
—passive supply from high pressure Nitrogen bottles: safety-related, seismic
—non-safety-related Instrument Air system;

(2) Leak Detection Capabilities: continuously monitored, main control board alarms on low pressure and on high flow;

(3) Piping system characteristics: seismically designed, missile protected;

(4) Operational readiness—TSs maintain:

(a) Required pressure and flow

(b) Availability of supplies (air compressors and Nitrogen) and emergency power supplies

(c) Periodic testing requirements for compressors.

This system is required to be operable during Operational Modes 1–4 per the TSs. In addition, the PP system seal pressure is designed to continuously maintain a nominal pressure of 1.04 Pa during post-accident conditions. Since this penetration and associated valves are maintained at a pressure greater than or equal to post-loss-of-coolant accident containment pressure, containment leakage is unlikely through this penetration.

Based on the above, the staff finds that a schedular exemption is justified and that it is acceptable to delay the local leakage rate testing of the four subject valves in Penetration P–77 until final staff action is taken on these requests. Final staff action will be taken by December 31, 1995.

In addition, the Commission will not grant an exemption unless at least one of the special circumstances, as defined in 10 CFR 50.12(a)(2), are present. One of the special circumstances is that: the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulations. The licensee presented the following discussion to show that the requested exemptions provide only temporary relief and that the licensee made good faith efforts to comply.

The Requested Exemptions Proved Only Temporary Relief and the License Made Good Faith Efforts to Comply

As discussed above, the exemption request is for short duration relative to the discovery of the aforementioned issues (30 days for Unit 2; completion of the upcoming refueling outage for Unit 1). All pathways that can be safely tested during reactor power operation for Unit 2 will be tested within 30 days. Such pathways for Unit 1 will be deferred until entry into Hot Shutdown at the completion of the upcoming outage (outage begins September 7, 1995). For pathways that cannot be tested during power operation, testing described in Attachment 1B will be performed during the next opportunity of sufficient duration when Unit 1 and Unit 2 are in Mode 5. The pathways selected for testing will be based upon the expected duration of the shutdown and the time required to prepare the pathways for testing. Pathways not tested during a Cold Shutdown will be tested during subsequent cold shutdowns that may occur prior to the upcoming refueling outages. In all cases, tests will be completed by the end of Unit 1 outage scheduled to commence September 7, 1995 and for Unit 2 prior to the completion of the September 1996 refueling outage. This meets an additional criterion for a special circumstance per item (v) of 10 CFR 50.12(a)(2)(v), i.e., ''The exemption would provide only temporary relief from the applicable regulation and licensee or applicant has made good faith efforts to comply with the regulation.'' ComEd believes that testing to be performed prior to September 15, 1995 for Unit 2 and during the upcoming refueling outage for Unit 1 demonstrates a good faith effort.

The exemption request is for a short duration relative to the discovery of the above issues. On Unit 2, the pathways that could be safely tested during power operation were tested prior to September 15, 1995. On Unit 1, this exemption allows the deferment of the testing of these pathways until Unit 1 enters hot shutdown during the current refueling outage. For pathways that can not be tested during power operation, the testing described in Attachment 1B will be performed on Unit 1 prior to the end of its current refueling outage and on Unit 2, prior to the completion of the refueling outage currently scheduled to commence in September 1996. The staff has decided that a good faith effort on the part of the licensee to comply with the regulations has been demonstrated by the testing that has already been completed on Unit 2, the testing that will be completed on Unit 1 prior to startup from its current refueling outage, and the schedule for completion of the remainder of the testing.

IV.

Sections III.B and III.D.2.(a) of 10 CFR Part 50, Appendix J, Option A, require that Type B local leakage rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. In addition, Sections III.C and III.D.3 of 10 CFR Part 50, Appendix J, Option A, require that Type C local leakage rate periodic tests shall be performed during reactor shutdown for refueling, but in no case at intervals greater than 2 years.

The licensee proposes an exemption to these sections which would provide relief from the requirement to perform the Type B and C containment leakage rate tests of certain penetrations and valves in accordance with the requirements of Sections III.B, III.C, and III.D of 10 CFR Part 50, Appendix J, Option A.

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed above, that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief and the licensee made good faith efforts to comply.

Based on its review of the licensee's justifications, the staff finds the licensee's requests for schedular exemptions for Type B and C tests of 10 CFR Part 50, Appendix J, Option A, that can be performed while at power (Attachment 1A to the licensee's letter) and those that must be performed while shutdown (Attachment 1B to the licensee's letter) to be acceptable. The staff has reviewed the licensee's requests for permanent exemptions for components in certain penetrations. To provide additional time for staff review before granting permanent exemptions, the staff will at this time grant only schedular exemptions until final staff action is taken on these requests for these components. Final staff action on these exemption requests will be taken prior to December 31, 1995.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these exemptions will not have a significant impact on the human environment (60 FR 45499).

This exemption is effective upon issuance and shall expire upon completion of the Unit 2 refueling outage, currently scheduled to commence in September 1996.

Dated at Rockville, Maryland, this 20th day of November 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28978 Filed 11–27–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 61 issued to Connecticut Yankee Atomic Power Company (the licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would be a one-time exception to the technical specifcation 3.9.12, ''Fuel Building Storage Air Cleanup System,'' to allow the fuel storage building air cleanup system to be inoperable during intervals in which new fuel rack modules will be moved into and old fuel modules will

be moved out of the fuel storage building (FSB).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, CYAPCO has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirements of technical specification 3/4.9.7 will be maintained at all times. Any heavy load (rack or rig) with a potential to drop on a rack will have no less than a 3 feet lateral free zone clearance from active fuel. Safe load paths will be developed for moving the rack modules in the FSB. The old or new rack modules will not be carried over any region of the pool containing fuel. In addition, there will be no fuel movement in the spent fuel pool when the modules are being relocated with the hatch open. Therefore, there is no possibility of a drop of a fuel assembly which would necessitate the use of the FSB air cleanup system when the hatch is open. There is no impact to the probability or consequences of any previously evaluated accidents due to this proposed modification.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no potential for a new or different kind of accident from any previously analyzed. All failure modes that can cause an accident have been identified and evaluated. When the movements of a rack module are completed, and the roof hatch is closed, operation of the FSB air cleanup system will be verified. The system will be aligned and operated to verify the system maintains the spent fuel pool storage area at a negative pressure greater than 0 inch water gage differential, relative to the outside atmosphere as requirement [SIC] by the technical specifications. CYAPCO will assure that the plant is maintained in a safe condition by limiting rack movement with the yard crane only in the cask pit area; no rack movement will be allowed over stored fuel; any heavy loads will have no less than 3 feet lateral free zone clearance from active fuel and; no fuel assemblies will be moved while the roof hatch is open. Verification of system operation combined with the use of the safe load paths ensure that there is no potential for a new or unanalyzed accident.

3. Involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety. The function of the FSB air cleanup system is to ensure that all radioactive material released from an irradiated fuel assembly will be filtered through the HEPA filters and charcoal adsorber prior to discharge to the atmosphere. The FSB air cleanup system shall be operable during operations involving the movement of fuel within the FSB or crane operation with loads over the storage pool. This requirement is to reduce radioactive iodine release in the event of a crane handling event involving spent fuel. Due to the safe load paths which will be utilized in the movements of the rack modules and the precluding of fuel movement with the hatch open, there is no postulated accident that can cause a fuel failure. The operation of the yard crane inside the SFB is physically limited to traverse between the crane bay and the spent fuel pool cask area due to the size of the roof hatch opening. All phases of the reracking activity will be conducted in accordance with procedures reviewed and approved by CYAPCO. Therefore, this change does not involve a significant reduction to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 14, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 22nd day of November 1995.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28976 Filed 11–27–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35 and NPF-52 issued to Duke Power Company, et al. (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would change the Updated Final Safety Analysis Report. The Catawba Updated Final Safety Analysis Report (UFSAR), Section 5.2.5, and the Safety Evaluation Report (SER) (NUREG-0954), related to the application for an operating license for Catawba Nuclear Station, Units 1 and 2, Section 5.2.5, ''Detection of Leakage Through Reactor Coolant Pressure Boundary,'' includes a review of the various Catawba reactor coolant leakage detection systems. The operability requirements for the Reactor Coolant Leakage Detection Systems are in Technical Specification 3.4.6.1 that requires that the following combination of systems be operable: (1) the Containment Atmosphere Gaseous Radioactivity Monitoring System (EMF39(L)), (2) the Containment Floor and Equipment Sump Level and Flow Monitoring Subsystems, and (3) either the Containment Atmosphere Particulate Radioactivity Monitoring System (EMF38(L)) or the Containment Ventilation Unit Condensate Drain Tank (VUCDT) Level Monitoring Subsystem.

The FSAR and SER state that EMF38(L) is seismic Category I. A licensee engineering review has determined that documentation does not exist to show that EMF38(L) is designed to withstand a Safe Shutdown Earthquake (SSE). The licensee's review relative to the necessity of seismic qualification for these monitors and analysis, performed pursuant to 10 CFR

50.59, form the basis for a licensee proposal to delete the seismic qualification requirement from the UFSAR. The licensee requests that the NRC approve this change to the UFSAR through an amendment to the operating licenses.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards considerations, in that operation of the facility in accordance with the proposed amendment would not:

1. [I]nvolve a significant increase in the probability or consequences of an accident previously evaluated; or

EMF38(L) is not used directly for any phase of power generation or conversion or transmission, normal decay heat removal, fuel handling, or the processing of radioactive fluids. As such, it is not an ''accident initiator''. No ''accident initiator'' is affected by the change to the UFSAR. Thus, the probability of accidents evaluated in Sections 6, 9.1, and 15 of the FSAR is not affected by the change. It is determined that sufficient ability to determine conditions inside containment remain available for any earthquake up to and including the SSE. Furthermore, should it be determined that either EMF38(L) or EMF39(L) are not capable of fulfilling its intended function following any earthquake, including those smaller than the OBE [Operating Basis Earthquake], the associated unit will be taken to Cold Shutdown, a mode for which neither the Emergency Core Cooling System nor the containment safeguards are required. Finally, no equipment provided to mitigate any accident is affected adversely... by the change. For these reasons, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR [safety analysis report].

2. [C]reate the possibility of a new or different type of accident from any accident previously evaluated; or

As stated above, no equipment used in direct support of power generation or conversion or transmission, normal decay heat removal, fuel handling, or the processing of radioactive fluids is affected with the update. No new failure modes are identified with the change. The upper bound to an undetected leak in the Reactor Coolant System is a Loss of Coolant Accident [LOCA]. As noted above, no equipment provided to mitigate a LOCA is affected by the change. For these reasons, the change will not create a new or different type of accident from any accident previously evaluated.

3. [I]nvolve a significant reduction in a margin of safety.

It has been determined that sufficient means remain at the disposal to the operators to assess conditions within the containment following any earthquake up to and including the SSE. In particular, the ability to determine leakage with the sensitivity comparable to that of EMF38(L) can be established. This meets the intent of the latter part of Regulatory Position of RG [Regulatory Guide] 1.45. In addition, should it be determined that either EMF38(L) or EMF39(L) is not functional following any earthquake, the associated unit(s) will be brought to Cold Shutdown even if it (they) have remained on line following that earthquake. This brings the unit(s) to a mode in which TS 3.4.6.1 does not apply. It ensures that at least the minimum required Reactor Coolant System leakage detection systems will be functional before power operations are continued following a postulated earthquake smaller than the OBE (cf. Reference 3). It ensures protection of the reactor coolant pressure boundary, one of the fission product barriers. No other fission product barrier is affected by the change. Therefore, the margin of safety is not reduced.

Therefore, based on the information contained in this submittal, it is determined that no significant hazard is associated with the proposed change to the UFSAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 5, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this day of 20th day of November 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation .

[FR Doc. 95–28977 Filed 11–27–95; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Manifest Analysis and Certification (MAC)

AGENCY: Postal Service.

ACTION: Notice of establishment of program.

SUMMARY: This notice adopts the proposed standards for the Manifest Analysis and Certification (MAC) program as published in the Federal Register on September 14, 1995 (60 FR 47765–47768). This new, voluntary program allows software developers to receive testing and certification by the Postal Service for mail manifesting software sold to mailers.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166, or Tom Amonette, (317) 464–6599.

SUPPLEMENTARY INFORMATION: On September 14, 1995, the Postal Service published in the Federal Register proposed standards for the Manifest Analysis and Certification (MAC) program (60 FR 47765–47768). MAC was proposed as a voluntary program in which the Postal Service would, upon request, provide testing for certain categories of mail manifesting software developed by vendors for sale to mailers to support single-piece rated domestic and international mailings.

The program tests the ability of software to calculate accurately the payment of postage and fees for mailpieces listed on documentation (the manifest) generated by the software. This program will assure mailers using a MAC-certified manifesting software product, if used properly, that the product will have the capability of performing its intended function according to the current mailing standards of the Postal Service.

Evaluation of Comments Received

The deadline for submitting comments on the proposed program was

October 16, 1995. All comments received or mailed by that date were considered.

No comments were received suggesting changes in the program. All comments received were favorable. This positive response may be attributed to the fact that, from the inception of the proposed program, the Postal Service worked closely with vendors and mailers to ensure that the program met their needs as well as current mailing standards of the Postal Service. Because of this initial work, issues and concerns were resolved prior to the public presentation of the program.

On the basis of the comments received, the Postal Service has decided to adopt the MAC program as proposed. The Postal Service has determined that for 1995, the initial MAC cycle will begin immediately and close on January 31, 1996, with all testing and retesting to be concluded by that closing date.

The MAC program will be implemented as described in the Federal Register notice published on September 14, 1995 (60 FR 47765–47768). To obtain detailed information about participation in MAC, manifesting software developers may request the MAC Technical Guide from the Postal Service National Customer Support Center by calling 1–800–331–5746, extension 4651. Participants may use the MAC order form included in that guide to order the appropriate MAC tests.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–29019 Filed 11–27–95; 8:45 am]

BILLING CODE 7710–12–P

Privacy Act of 1974; System of Records; Correction

AGENCY: Postal Service.

ACTION: Correction.

SUMMARY: This document corrects the notice of the addition of a new routine use to Privacy Act system of records USPS 080.010, Inspection Requirements—Investigative File System, that was published in the Federal Register on Tuesday, November 14, 1995 (60 FR 57254–57255). The published notice did not contain the requirement that the Chief Postal Inspector, or delegate, must approve disclosures of information on electronic bulletin boards to ensure compliance with the Privacy Act.

On page 57255 in the second column, new routine use number 12 should be changed to read as follows:

''12. A record from this system may be disclosed on an electronic bulletin board to organizations or individuals in the public or private sectors that share in the bulletin board, provided that the disclosure is approved by the Chief Postal Inspector, or delegate, because it is deemed necessary: (1) To elicit information or cooperation from these organizations or individuals for use by the Postal Inspection Service in the performance of an authorized activity; or (2) to alert these organizations or individuals of possible criminal activity for which the Postal Inspection Service has authority to investigate and about which it has obtained credible information.''

Dated: November 21, 1995.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–29018 Filed 11–27–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36497; File No. SR–DTC–95–22]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding Arrangement Between the Depository Trust Company and the Chicago Stock Exchange, Incorporated Relating to a Decision by the Chicago Stock Exchange, Incorporated to Withdraw from the Clearance and Settlement, Securities Depository, and Branch Receive Businesses

November 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 13, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No SR–DTC–95–22) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Chicago Stock Exchange, Incorporated (''CHX'') to withdraw from the clearance and settlement, securities depository, and branch receive businesses. Parties to the proposed arrangements are DTC, CHX, Midwest Securities Trust Company (''MSTC''), the National Securities Clearing Corporation (''NSCC''), the Midwest Clearing Corporation (''MCC'') and Securities Trust Company of New Jersey (''STC/NJ'').[2]

The proposed arrangements as they relate to DTC would provide for the following:

(1) DTC would offer sole MSTC participants an opportunity to become DTC participants if they meet DTC's qualifications.

(2) DTC and MSTC would cooperate to assure the orderly transfer of securities from the custody of MSTC to the custody of DTC for (i) sole MSTC participants and (ii) dual DTC/MSTC participants which authorize such transfer.

(3) DTC would acquire certain assets and assume certain lease and other contractual obligations of STC/NJ.

(4) DTC would assume certain lease obligations of CHX.

(5) DTC would make certain payments to CHX, MSTC, and STC/NJ.

(6) In general, for a period of ten years CHX, MSTC, and STC/NJ would not engage in the businesses from which they have decided to withdraw (*i.e.*, the securities depository and branch receive businesses). However, CHX and its subsidiaries would be free to provide specified securities depository-related services and products to CHX members and certain third-parties.

The proposed rule change seeks to make conforming changes in DTC procedures to, among other things, (i) eliminate the service of providing fourth-party deliveries between participants of the Philadelphia Depository Trust Company (''Philadep'') and participants of MSTC through the facilities of DTC and (ii) allocate the DTC general refund to sole DTC participants to the extent necessary to equalize the benefit of the arrangements between sole DTC participants and dual DTC/MSTC participants which will realize significant cost savings as a result of the proposed arrangements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has announced that it plans to close its clearance and settlement and securities depository businesses in order to focus its resources on the operations of the exchange. CHX has determined to take that action now to support the securities industry's efforts to eliminate redundant infrastructure. The proposed arrangements have been designed to permit CHX to achieve this objective while affording qualified sole MSTC participants an opportunity to become DTC participants and transfer their securities to DTC. DTC's primary purpose for entering into the proposed arrangements at this time is to facilitate the industry's planned conversion to same-day funds settlement.[4] Additionally, DTC has stated that the proposal will result in substantial savings for DTC participants and the securities industry as a whole.

Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.[5] Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, DTC and NSCC have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. DTC's and NSCC's efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York, and their plans have been monitored by the staffs of these regulatory bodies.[6] Under the conversion plan, all issues currently settling in DTC's next-day funds settlement system will be transferred to DTC's same-day funds settlement system on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996.

Where there are interface between securities depositories, same-day funds settlement exposes each depository to certain risks, such as the failure of another depository to settle its net payment obligation because of a failure by one of the participants of such other depository to settle with it or because such other depository is experiencing a major systems problem. These risks cannot be entirely avoided with existing and available risk management controls. CHX's withdrawal from the securities depository business will eliminate the exposure of DTC and its participants to the payment system risks associated with the DTC-MSTC interface. Also, the interests of MSTC participants can be provided for in an orderly manner that will help assure successful integration in the process of converting to same-day funds settlement.

The proposed arrangements should result in substantial savings for DTC participants and the securities industry. In connection with this proposal, former sole MSTC participants may become DTC participants if they qualify under DTC's participant standards. An increase in the number of DTC participants will result in higher DTC transaction volumes thereby reducing the per-unit service costs that must be recovered through DTC participant service fees.

Moreover, interdepository interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both DTC and MSTC in operating an interface would be eliminated.

In addition to the DTC costs savings that would be passed through to all DTC participants, dual DTC/MSTC participants would achieve special savings by discontinuing their payment of MSTC fees for largely redundant custody-related processing. DTC has a policy of refunding to its participants each year all revenues in excess of current and anticipated needs. In order to equalize the payback on DTC's investment in the arrangements as between dual DTC/MSTC participants and sole DTC participants, which would not obtain the special savings, DTC proposes to ''ear-mark'' a portion of its general refund for 1995 and to the extent necessary for 1996 and subsequent years for allocation to sole DTC participants only.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the industry's conversion of same-day funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. The proposal also will provide qualified sole MSTC participants with access to DTC's facilities and will be implemented consistently with the safeguarding of securities and funds in DTC's custody and control.

In addition, the proposed allocation of DTC's general refund will, consistent with the requirements of the Act, assure that DTC's costs associated with the proposed arrangements are equitably allocated among sole DTC participants and dual DTC/MSTC participants based upon DTC's estimate of the savings that each of these groups will obtain as a result of the proposed arrangements.

Because CHX no longer will be operating a securities depository, certain changes will be required in DTC procedures, principally the elimination of fourth-party deliveries between MSTC participants and Philadep participants through the interfaces that DTC has maintained with MSTC and Philadep.[7]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed arrangements will have an impact on or impose a burden on competition. Securities depositories registered under section 17A of the Exchange Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The term ''same-day funds'' refers to payment in funds that are immediately available and generally are transferred by electronic means.

[5] The term ''next-day funds'' refers to payment by means of certified checks that are for value on the following day.

[6] In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it believes that the overall conversion to a same-day settlement system will help reduce systemic risk by eliminating overnight credit risk. The same-day funds settlement system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets. Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

[7] MSTC and Philadep never established their own interface.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal from maintaining depository facilities will reduce costs to DTC participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposal from DTC Participants or others have not been solicited or received. The proposed arrangements are, however, consistent with recommendations made to the Boards of DTC and NSCC by the Vision 2000 Committee (''Committee''), a committee of industry representatives of the two Boards. The Committee's Report dated September 1994 states:

> The industry owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways.* * * We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–22 and should be submitted by December 19, 1995.

For the Commission by the Division of market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28935 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36496; File No. SR–NASD–95–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Amending the Buy-in Procedures in Section 59 of the Uniform Practice Code to Clarify the Appropriate Delivery Deadlines for Buy-in Notices

November 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD is herewith filing a proposed rule change to amend Section 59 of the Uniform Practice Code (''UPC'' or ''Code'') to revise the buy-in procedures to clarify the appropriate delivery deadlines for buy-in notices. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Uniform Practice Code

Close-Out Procedure

''Buying-in''

Sec. 59.

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

Notice of ''buy-in''

(a)(1) Written notice of ''buy-in'' shall be delivered to the seller at his office not later than 12 noon, his time, two business days preceding the executing of the proposed ''buy-in.''

(2) For purposes of this rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

Information contained in ''buy-in'' notice

(b)(1) Every notice of ''buy-in'' shall state the date of the contract to be closed, the quantity and contract price of the securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 a.m. local time in the community where the buyer maintains his office, the security may be ''bought-in'' on the date specified for the account of the seller. If the originator of a ''buy-in'' in a depository eligible security is a participant in a registered securities

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[8] 17 CFR 200.30–3(a)(12) (1994).

[1] The proposal was originally filed with the Commission on October 26, 1995. The NASD subsequently submitted Amendment No. 1 to the filing. This document provides notice of the filing as amended. Letter from Elliot Curzon, Assistant General Counsel, NASD, to Karl J. Varner, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated November 15, 1995.

depository, the *specified delivery time may not be prior to 3:30 p.m. Eastern Time and the* ''buy-in'' may not be executed prior to [2:30] *3:00* p.m., Eastern Time. Each ''buy-in'' notice shall also state the name and telephone number of the individual authorized to pursue further discussions concerning the buy-in.

(2) Notice may be redelivered immediately to another broker/dealer from whom the securities involved are due in the form of a re-transmitted notice (''re-transmit''). *Ar*[R]e-transmitted notice of buy-in must be delivered to subsequent broker/dealers not later than *12 noon, recipient's local time, on the* [one] business day preceding the time and date of execution of the proposed buy-in, *and the time specified for delivery may not be prior to the time specified in the original notice.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under Section 59 of the Code, when the seller has not completed a contract of sale of securities by delivering the securities called for in the contract on settlement day, the buyer may close the contract by purchasing the subject securities in the open market (''buying-in''). When securities are bought in to complete a contract, the seller in liable for any difference between the contract price and the buy-in price.

Pursuant to subsection 59(a) of the Code, a buy-in is initiated by the buyer delivering a notice of buy-in to the seller at his office not later than 12 noon, the seller's time, two business days preceding the execution of the proposed buy-in. Subsection 59(b) provides that the notice must include the terms of the contract to be closed and must state that unless delivery is effected at or before a certain specified time not earlier than 11:30 A.M., the buyer's local time, the security may be bought in for the account of the seller (meaning the seller assumes the liability for the market price of the security bought in). Subsection 59(b) also provides that if the originator of the buy-in notice is a participant in a registered securities depository, and the security to be bought in is a depository eligible security, the buy-in may not be executed before 2:30 P.M. Eastern Time.

The NASD has identified an inconsistency in subsection 59(b) in that the provisions permit a buy-in notice to specify a delivery deadline no earlier than 11:39 A.M., local time, yet the buy-in may not be executed before 2:30 P.M., Eastern Time. If the seller obtained securities and tendered them for delivery after the notice deadline but before the buy-in was executed, the provisions of the rule and the notice could permit the buyer to refuse delivery and subject the seller to the risk of an execution at a price higher than the original contract price.

In order to resolve this anomaly, the NASD is proposing to amend subsection 59(b) of the UPC to modify the delivery times permitted to be specified in the buy-in notice. With respect to buy-in notices for depository eligible securities where the originator is a depository participant, the NASD is proposing to amend subsection 59(b) to provide that the notice may not specify a delivery time earlier than 3:00 P.M. Eastern Time.[2] By limiting this restriction to depository eligible securities and depository participants, the rule retains the current provision permitting broker-to-broker buy-ins specifying an earlier delivery time (no earlier than 11:30 A.M. local time).

In addition, the NASD is proposing to amend subsection 59(b)(2), which permits the recipient of a buy-in notice to re-transmit the notice to another broker/dealer from whom the subject securities are due. The proposed amendment to subsection 59(b)(2) provides that a re-transmitted buy-in notice must be delivered to the recipient not later than 12 noon, seller's local time, on the business day preceding the buy-in date and that the specified delivery time in the re-transmitted notice must not be earlier than the time specified in the original notice. This amendment clarifies the existing language and will ensure that the recipient of the retransmitted notice has at least one full business day's notice.[3]

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that the proposed rules will facilitate the functioning of the clearance and settlement system by eliminating an inconsistencyin the buy-in process and refining the provisions of the Code relating to buy-ins to recognize new developments in the clearance and settlement system.

(B) Self-Regulatory Organization's Statement on Burden on Completion

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received, from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if if finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

[2] The NASD notes that with the advent of same day funds settlement (SDFS) in early 1996 and the new settlement time frames associated with the Depository Trust Company's SDFS System, the appropriate buy-in execution time in Section 59(b) should not be prior to 3:00 P.M. Eastern Time.

[3] The NASD notes that because subsection 59(b)(1) permits the buy-in notice to specify a delivery deadline of 11:30 A.M. local time for broker-to-broker buy-ins in non-depository eligible securities, it is possible that a buy-in notice retransmitted at 12 noon the previous business day would afford the recipient 23½ hours to deliver. Nevertheless, the proposed amendment is an improvement to the current rule language which arguably permits retransmittal to occur at the end of the previous business day, affording the recipient as little as 18½ hours notice.

[4] 15 U.S.C. § 78*o*–3.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–95–50 and should be submitted by December 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28932 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36495; File No. SR-NSCC–95–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Enabling Members Settling Mutual Fund Transactions in Same Day Funds to Settle Through a Settling Bank

November 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 3, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. On November 14, 1995, NSCC amended the filing to make technical changes.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes modifying its rules to establish a new membership category for settling banks that will enable members settling mutual fund transactions in same day funds to settle their obligations through a settling bank.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's rules to enable members settling mutual fund transactions in same day funds to settle their obligations through a settling bank. The proposed rules will establish a new membership category for settling banks. Any bank that wants to become a settling bank will be required to meet the operational and financial requirements established by NSCC. To qualify as a settling bank, each bank must have short-term obligation ratings of at least A–2 by Standard and Poor's Corp. or P–2 by Moody's Investors Services Inc. Banks that do not meet this standard will be considered on an exception basis. Each bank that qualifies as a settling bank will be required to enter into a separate agreement with each member on whose behalf it will perform settlement functions.

The proposed rules provide that settling banks will have the opportunity to refuse to settle for one or more members by notifying NSCC within the time established by NSCC. The proposed rules also specify that settling banks will be required to wire funds by the deadline imposed by NSCC or be subject to a penalty fee. In addition, settling banks that fail to pay on settlement day will be required to cover NSCC's interest costs due as a result of their failure to settle in a timely manner. NSCC's proposed rule change also makes conforming changes to relevant sections of NSCC's rules.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C.

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Karen L. Saperstein, Vice President/Director of Legal & Deputy General Counsel, NSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (November 13, 1995).

[3] The text of the proposed rule change is attached as Exhibit A to File No. SR-NSCC–95–13 and is available for review in the Public Reference Section of the Commission.

[4] The Commission has modified the text of the summaries prepared by NSCC.

20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–95–13 and should be submitted by December 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28934 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21523; 811–4761]

Flagship Pennsylvania Triple Tax Exempt Fund; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Flagship Pennsylvania Triple Tax Exempt Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on September 25, 1995, and amended on November 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service, hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One Dayton Centre, One South Main Street, Dayton, Ohio 45402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney at (202) 942–0574, or Alison E. Bauer, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[5] 17 CFR 200.30–3(a)(12) (1994).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Represention

1. Applicant is an open-end investment company organized as an unincorporated Pennsylvania common law trust. On July 23, 1986, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 on Form N–1A. Applicant's registration statement was declared effective on September 10, 1986 and applicant's initial public offering commenced promptly thereafter.

2. On December 9, 1994, applicant's trustees, including the independent trustees, unanimously approved an asset purchase agreement (the ''Agreement'') under which applicant's assets and liabilities would be sold to Flagship Tax Exempt Funds Trust (the ''Trust''), a registered open-end investment company with the same investment adviser as the applicant.

3. Applicant has existed separately from the Trust solely because of Pennsylvania tax law. Because of changes in Pennsylvania tax law, it was no longer necessary for applicant to continue to operate separately. Accordingly, and in compliance with rule 17a–8 under the Act, the applicant's Board of Trustees determined that the Agreement and merger into the Trust was in the best interests of the applicant and that the interest of the existing shareholders would not be diluted as a result of the transaction. In addition, the Board determined that permitting applicant's business to continue as a series of the Trust should result in cost savings and more efficient operations.

4. Proxy statements were filed with the SEC and distributed to applicant's shareholders on or about march 6, 1995. At the shareholder's meeting held on April 21, 1995, applicant's shareholders approved the sale of assets of the Trust.

5. On May 31, 1995, applicant's net assets were transferred to the Trust in exchange for a number of shares of Flagship Pennsylvania Triple Tax Exempt Fund, a series of the Trust (''new Pennsylvania fund''), at the same net asset value and for the same number of shares as applicant's shares of beneficial interest outstanding on such date. Each shareholder of applicant became an owner of new Pennsylvania fund shares equal in number and aggregate net asset value to shares held immediately prior to the transaction. No fees or brokerage commissions were paid.

6. The expenses incurred in connection with the sale of assets were primarily legal and accounting fees, and printing and mailing costs associated with the distribution of the proxy statement. These costs were all borne by applicant.

7. As of the filing date of this application, applicant had no assets and no debts or liabilities. Applicant has no shareholders, and is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. On May 31, 1995, applicant dissolved pursuant to the requirements of Pennsylvania law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28928 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IA–1537; 803–096]

Foster Industries, Inc.; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (the ''Advisers Act'').

APPLICANT: Foster Industries, Inc.

RELEVANT ADVISERS ACT SECTIONS: Sections 206A and 205(a)(1).

SUMMARY OF APPLICATION: Applicant is a corporation engaged solely in the business of investing for the benefit of fifteen natural persons, ten trusts, and five custodianships. All such natural persons, and the beneficiaries of the trusts and custodianships, are related to one family. Applicant requests an order to permit registered investment advisers to charge it performance-based advisory fees.

FILING DATE: The application was filed on February 27, 1995 and amended on June 23, 1995, September 19, 1995. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 681 Andersen Drive, Pittsburgh, PA 15220.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Pennsylvania corporation formed as an operating company in 1918 by four brothers of the Foster Family.[1] In 1977, the Foster Family business was sold and the proceeds of sale were retained by applicant and have been managed since that time by applicant on a collective basis for the benefit of applicant's shareholders. Since 1977, applicant has been engaged solely in the business of investing such funds under management as a private investment fund exempt from registration as an investment company pursuant to section 3(c)(1) of the Investment Company Act of 1940. Applicant requests an order under section 206A of the Advisers Act that would permit registered investment advisers to charge it performance-based advisory fees.

2. Applicant is essentially a Foster Family investment vehicle which, as of December 31, 1994, had total assets of approximately $62.1 million. Applicant has one class of stock outstanding held by thirty shareholders of record, fifteen of which are individual Foster Family members, ten of which are irrevocable trusts established for the benefit of one or more Foster Family members (the ''Trusts''), and five of which are custodianships established under the Pennsylvania Uniform Gifts to Minors Act for the benefit of five Foster Family members who are currently minors (the ''Custodianships''). The assets to be delivered out of the Trusts and Custodianships to each beneficiary will be so delivered, in the case of the Trusts, when all of such beneficiary's ancestors have passed away, and, in the case of the Custodianships, when the beneficiaries reach the age of majority.

3. All investment decisions are made for applicant by its board of directors, which consists of nine members, seven of whom are Foster Family members. Applicant's president and his staff prepare and present an analysis of each prospective investment to the investment committee (the ''Investment Committee'') and the board of directors. The Investment Committee recommends investment proposals favorably reviewed by it to the board of directors for approval.

4. None of the president, the other officers or directors receive any compensation determined on the basis of a share of capital gains upon, or capital appreciation of, all or any portion of the invested assets of applicant. However, applicant may in the future adopt an incentive compensation plan for its officers that may provide for compensation based on profitability. Neither the president, nor any other officer who is not also a Foster Family member, is the legal or beneficial owner of any shares of applicant's stock. Each officer and director is and will continue to be wholly unaffiliated with any registered investment adviser providing services to applicant.

5. Applicant contemplates entering into performance fee agreements from time to time with registered investment advisers. Under investment guidelines to be adopted by the board of directors in connection with such performance fee agreements, not more than 5% of applicant's assets will be invested at any one time under any single performance fee agreement, and not more than 25% of applicant's assets will be invested under all performance fee agreements at any one time. In addition, the investment guidelines will require that all performance fee agreements must meet the requirements of sections (c), (d), and (e) of rule 205–3.

6. Of applicant's thirty shareholders, twelve of the fifteen individual shareholders and four of the ten Trusts (the ''Qualified Shareholders'') qualify under the client eligibility requirements of rule 205–3(b) under the Advisers Act. The remaining three individuals, six trusts, and five Custodianships (the ''Unqualified Shareholders'') do not individually satisfy the net worth requirement of rule 205–3(b).[2] The Qualified Shareholder hold in the aggregate 91.63% of applicant's shares, and the Unqualified Shareholders hold the remaining 8.37%. Except for the presence of the Unqualified Shareholders, the requirements of rule 205–3(b) are satisfied with respect to applicant and its shareholders in all respects.

7. Applicant is party to a shareholders' agreement which requires it to purchase any of its shares tendered for redemption at a price which generally reflects the fair market value of its investments, less certain reserves, and subject to its right to distribute to a redeeming shareholder in partial satisfaction of such obligation such shareholder's *pro rata* portion of certain illiquid investments. Applicant represents that no shareholder will transfer any shares of applicant other than to applicant or to either one or more Foster Family members or to one or more trusts or custodianships established solely for the benefit of Foster Family members where each such trust or custodianship is either a Qualified Shareholder or has at least one Qualified Shareholder Foster Family member as a trustee or custodian, as applicable.

8. Applicant desires that the requested exemptive order be applicable not only with respect to the current Unqualified Shareholders but also with respect to any future Unqualified Shareholder who is either an individual Foster Family member or a trust or custodianship where such trust or custodianship has at least one Qualified Shareholder Foster Family member as a trustee or custodian, as the case may be, and one or more Foster Family members as its sole beneficiaries. All such Foster Family members, trusts, and custodianships will comply with the representations set forth in this application.

Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered investment adviser from receiving compensation on the basis of a share of capital gains in or capital appreciation of a client's account. Section 206A of the Advisers Act provides that the SEC may exempt any person or transaction

[1] ''Foster Family'' means (i) all lineal or adopted descendants of the four founding Foster brothers, (ii) all spouses of such descendants, and (iii) all in-laws of any founding Foster brother.

[2] As applicant contemplates entering into several performance fee agreements with different registered investment advisers, it is unlikely that Unqualified Shareholders will satisfy the alternative requirement of rule 205–3(b) of having $500,000 under the management of each applicant's registered investment adviser.

from any provision of the Advisers Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

2. Notwithstanding the general restrictions of section 205(a)(1), an investment adviser required to register under the Advisers Act may enter into a performance-based compensation agreement if such contract meets the requirements of rule 205–3 and if each advisory client meets certain net worth and sophistication requirements set forth in the rule. With specific reference to a private investment company such as applicant, section (b)(2) of rule 205–3 provides that each shareholder must either have at least $500,000 under management of the investment adviser or have a net worth at the time the performance-based compensation agreement is entered into of more than $1,000,000.

3. The client eligibility requirements of rule 205–3 reflect the SEC's recognition that such requirements were a means of determining client capacity to understand and bear the risks associated with performance fee contracts. Applicants state that the considerable investment expertise and experience of the persons comprising its board of directors, Investment Committee and senior management group will enable applicant to more than adequately understand and assess the method of compensation and attendant risks with respect to any proposed performance-based compensation agreement.

4. Applicant believes that there is a strong commonality of interest between the members of the board of directors and Investment Committee and both the legal and beneficial owners of Unqualified Shareholder stock. There is a close family relationship between the beneficial owners of Qualified Shareholder stock and both the legal and beneficial owners of Unqualified Shareholder stock. By reason of the ownership of a majority of applicant's stock by the Qualified Shareholders and their ability to elect the board of directors (which, in turn, appoints members to the Investment Committee), the analysis of the merits and risks of entering into any performance fee agreement will be made for the benefit and protection of the Unqualified Shareholders my individual Qualified Shareholders who are close family members of the Unqualified Shareholders (or of the ultimate beneficial owners thereof, in the case of trusts and custodianships), and by other directors elected by the Qualified Shareholders. Further, the Qualified Shareholders making the investment decisions for applicant have substantial assets invested in applicant and are, therefore, subject to the same risks as the Unqualified Shareholders. Thus, applicant believes that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28933 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21525; 812–9694]

Pitcairn Group L.P.; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Pitcairn Group, L.P.

RELEVANT ACT SECTION: Order requested under section 6(c) for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant is a privately-held investment company substantially owned and controlled by one family and certain persons and entities affiliated with, or otherwise related to, members of that family. Applicant seeks an exemption from all provisions of the Act.

FILING DATES: The application was filed on July 28, 1995, and amended on October 10, 1995 and November 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicant, Suite 3000, One Pitcairn Place, 165 Township Line Road, Jenkintown, Pennsylvania 19046.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0565, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware limited partnership that elected to be regulated as a business development company under section 54 of the Act, was organized in 1986 as a vehicle for private investments for the Pitcairn family. Applicant was capitalized with assets derived from the liquidation of the Pitcairn Company, a Delaware corporation formed in 1923 by members of the Pitcairn family (the ''Family'') to hold and manage the estate of John Pitcairn, one of the founders of Pittsburgh Plate Glass Company. Limited partnership interests (''Units'') in applicant were distributed to the former shareholders of the Pitcairn Company.

2. Over 97% of the Units are held by or for the benefit of Family members, related trusts, and Family-Related Organizations (as defined below).[1] Approximately 22.7% of the Units are owned directly by individual Family members and 69.4% are held in various irrevocable trusts crated between the years 1923 and 1979 primarily by John Pitcairn's three sons and their spouses for the benefit of their descendants. In addition, 5.6% of the Units are owned directly by eight religious organizations, academic institutions of foundations created or affiliated with and supported by the Family (the ''Family-Related Organizations'').[2] None of the individuals, trust, or Family-Related

[1] The Units are registered under section 12 of the Securities Exchange Act of 1934 (the ''1934 Act''), although there are fewer than 300 holders of record, so Pitcairn Group can maintain its election to be treated as a business development company under section 54 of the Act. If the SEC grants the relief requested by this application, applicant intends to deregister the Units under section 12(g)(4) of the 1934 Act.

[2] All of the Family-Related Organizations that own Units were shareholders of the Pitcairn Company and had received that stock as the result of gifts from Family members over many years.

Organizations currently owns in excess of 10% of the Units.[3]

3. Applicant has three general partners. Two of these are individual members of the Family, who have served since inception. The third general partner is Pitcairn Company (''Pitco''), applicant's managing general partner since April 17, 1990.

4. Pitco, a Pennsylvania corporation wholly-owned by applicant, is a registered investment adviser and serves as investment adviser to applicant. Pitco (directly, and through its wholly-owned subsidiary Pitcairn Trust Company) provides advisory, management, supervisory, and administrative services to applicant (subject to the supervision of the individual general partners of applicant). Applicant has no employees of its own.

5. Pitcairn Trust Company (''Trustco'') is a state chartered trust company. Trustco primarily serves as co-trustee of personal trusts created by and for the benefit of members of the Family. Trustco maintains a staff of professional investment managers to oversee direct investments by trust accounts. Trustco provides income tax planning and administration, financial planning, trust and estate administration, asset allocation, investment advice, and miscellaneous financial services to Family members.

6. There are currently nine members of the board of directors of Pitco: six are Family members who beneficially own limited partnership interests in applicant; one is the President of Pitco (who, as a non-Family director, is elected annually by the Board of Directors); and the remaining two are non-Family. There are currently nine members of the board of directors of Trustco: six are Family members; two are non-Family senior officers of Trustco; and one is a retired, non-Family former senior officer of a subsidiary of The Pitcairn Company.

7. Representation of the boards of Pitco and Trustco historically has been drawn from all three lines of descendants of John Pitcairn, ensuring that the views of each line are heard and that the Family's collective interests are served. In 1990, the Family adopted a Family Governance Structure Charter (the ''Charter'') that defines the role of Family leaders, as directors of Pitco, in establishing policies and overall direction for the Family entities and communicating information directly to Family members.[4]

8. Applicant's Units have never been offered or sold to the public. During the past nine years (except for the redemption of Unites by applicant and transfers in connection therewith), Units have been transferred solely to Family members and/or related trusts. Since 1986, there have been only eight sales between Unit holders. There is no trading market for the Units.

9. In May, 1995, applicant made a private offering of additional Units to replace capital used to redeem approximately 39% of the outstanding limited partnership interests of a portion of the Family that no longer wished to be clients or owners of applicant and its related entities.[5] Applicant raised approximately $5.3 million from existing Family members and from trusts that benefit descendants of John Pitcairn.

10. The ownership of Units is likely to remain entirely within the Family for three reasons. First, the terms of governing trust instruments are exclusively for the benefit of present and/or future generations of Family members (subject to the rule against perpetuities). Second, the Units are not freely transferable. Limited partners only can sell or otherwise dispose of their Units or portion thereof pursuant to the terms of the partnership agreement. Third, the admission of new (substitute) limited partners requires the consent of Pitco as the managing general partner, regardless of whether the transfer results from a voluntary transfer or assignment, from death, or by operation of law. Inasmuch as Pitco effectively is controlled by the Family, the Family controls, and will continue to control, access to membership in applicant.

11. To ensure that Units will remain Family-controlled and privately-owned, a majority in interest of applicant's limited partners have approved an amendment to the partnership agreement to provide for a future restriction on the transferability of Units. The amendment provides that the consent of Pitco, as managing general partner, must be withheld for any transfer or assignment of Units to other than Family members, trusts for their benefit, their estates, any entity wholly-owned by one or more of them, or to any partner of record as of October 13, 1995 (the ''Permitted Transferees'') unless (i) Pitco in its sole and absolute discretion, grants its consent and (ii) the proposed transfer or assignment does not result in greater than 10% of the Units being owned directly or indirectly by or for the benefit of persons who are not Permitted Transferees. The amendment was approved at a meeting held on November 10, 1995 (the ''Partnership Meeting'').[6] Applicant believes that this amendment will be effective in maintaining its essentially private nature.

12. At the Partnership Meeting, a majority in interest of applicant's limited partners approved the withdrawal of applicant's election to be treated as a business development company. If the SEC grants the relief requested by this application, applicant will withdraw its election to be regulated as a business development company under the Act.

Applicant's Legal Analysis

1. Prior to 1986, applicant relied on section 3(c)(1) of the Act for an exemption from registration under the Act. Section 3(c)(1) excepts from the definition of ''investment company'' any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities. With the increase in Family members so that applicant's beneficial owners exceeded 100, however, applicant could no longer rely on the exemption and elected business development company status under the Act.

2. A business development company is a closed-end investment company whose principal activity is investing in and providing managerial assistance to small, growing businesses. As a business development company, applicant must invest 70 percent of its assets primarily in ''eligible portfolio companies'' as defined in section 2(a)(46) of the Act.

3. Applicant has found that continued compliance with the obligations imposed on business development companies is burdensome. In addition

[3] Applicants believe that the actual number of individual beneficial owners (excluding Family-Related Organizations) who have an economic interest in Units, either directly or as an income beneficiary of trusts, could be deemed to be 148.

[4] The Charter sets forth the process for selecting the candidates for the board of directors of Pitco. A nominating committee proposes candidates for election to Pitco's board of directors. Any other Family member may run for a board position after receiving the endorsement of three Family members. A straw vote of Unit holders is taken and the results, which are only advisory, are relayed to applicant's general partners. Applicant's general partners then elect the Family member directors of Pitco. Non-Family directors of Pitco are selected annually by applicant's individual general partners, after considering the views of the Family directors. The directors of Pitco, in turn, elect the directors of Trustco.

[5] *See* Investment Company Act Release Nos. 20982 (March 31, 1995) (notice) and 21031 (April 26, 1995) (order).

[6] The effectiveness of the amendment is dependent upon the SEC granting the relief requested by this application.

to the time and costs associated with 1934 Act reporting obligations necessitated by applicant's status as a business development company, the investment limitations in section 55 of the Act make it difficult to achieve adequate diversification of investments by applicant in privately held companies or partnerships.

4. Applicant asserts that section 3(c)(1) evidences the intention of Congress to exclude ''private'' investment companies from the purview of the Act. Under section 6(c) of the Act the SEC may exempt private investment companies that have more than 100 beneficial owners.[7] Applicant contends that its request for a conditional order under section 6(c) is consistent with relief granted to other private investment companies substantially owned and controlled by a single family.[8] Applicant asserts that it is a private investment vehicle not intended to be within the scope of the Act and that the protections of the Act are not necessary for investors in family-sponsored enterprises such as applicant.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant believes that the requested exemption meets these standards.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Applicant will continue to provide each investor annual financial statements audited by an accounting firm of recognized national standing.

2. Applicant, through its managing general partner, shall neither admit as a new investor, nor permit the assignment or transfer of any interest therein to any individual or entity, if such admission, assignment or transfer would cause applicant to fail to be 90% owned by or for the benefit of Family members, trusts for their benefit, their estates, any entity wholly-owned by them, and Family-Related Organizations.

3. Applicant shall not have as a general partner a person or entity other than Pitco, a Family member, an entity controlled directly or indirectly by Family members, or an affiliated person of applicant.

4. Applicant shall not knowingly make available to any broker or dealer registered under the 1934 Act any financial information concerning applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any Units.

5. Pursuant to section 54(c) of the Act, applicant will file a notification of withdrawal of election to be subject to sections 55 through 65 of the Act, as soon as practical (but in no event later than 120 days) after receiving the order requested by this application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28929 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[7] *See Maritime Corporation*. 9 SEC 906, 909 (1941).

[8] *See, e.g., Bessemer Securities Corporation*, Investment Company Act Release Nos. 18529 (Feb. 5, 1992) (notice) and 18594 (March 3, 1992) (order); *Richardson Corporation*, Investment Company Act Release Nos. 16566 (Sept. 22, 1988) (notice) and 16606 (Oct. 21, 1988) (order); and *5600, Inc.*, Investment Company Act Release Nos. 16004 (Sept. 25, 1987) (notice) and 16067 (Oct. 21, 1987) (Order).

[Release No. 35–26415; International Series Release No. 888]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 21, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should by filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–7883)

Northeast Utilities (''Nu''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), and 10 of the Act and rule 54 thereunder.

By order dated November 18, 1991 (HCAR No. 25411) (''Order''), the Commission approved the issuance and sale of up to 11 million NU common shares, $5.00 par value, to an employee stock ownership plan (''ESOP'') trust to be added to a NU system 401(k) plan (''Plan'').

In accordance with the terms of the Order, the Plan, and the ESOP trust agreement, the ESOP trustee votes allocated ESOP shares as directed by the employee participants who beneficially own the allocated shares, and abstains from voting allocated ESOP shares for which no direction from the beneficial owner is received. No change in the voting of allocated ESOP shares is contemplated.

However, under the Order the ESOP trustee votes the unallocated shares in the same proportion of yes and no votes and abstentions as it votes the allocated shares. This results in a large number of abstentions of unallocated ESOP shares. The nonvoted unallocated shares represented almost 3 percent of NU's shares outstanding at the time of its last annual meeting on May 23, 1995.

NU now proposes to amend the Plan and the ESOP trust agreement to modify the manner in which the ESOP trustee votes the unallocated shares held in the ESOP trust. Under the proposed change, allocated ESOP shares would still be voted in accordance with participant instructions, including abstaining from voting allocated ESOP shares for which no instructions are received. However, unallocated ESOP shares would be voted ''yes'' or ''no'' in the same proportions as allocated ESOP shares for which voting instructions are received.

In a ''no-action'' letter dated March 25, 1992, the Commission staff analyzed the trust holdings of NU common shares under the Plan, including the voting requirements for the ESOP shares, and concluded that it would not recommend any enforcement action under the Act that would result in the Plan or the bank trustee under the Plan being deemed to be a ''holding company,'' as defined in section 2(a)(7)(A) of the Act, or an ''affiliate,'' as defined in section 2(a)(11)(A) of the Act, on account of the

trustee's holding and voting the NU common shares under the Plan. NU believes that following the change in the voting of unallocated shares described above, the ESOP trustee should still not be deemed to ''own, control, or hold with power to vote'' the shares held in the ESOP trust, and that such shares should still not be counted in determining whether the Plan or the ESOP trustee is a ''holding company'' or ''affiliate'' of NU under the Act, because the ESOP trustee will still have no discretion as to how ESOP shares are voted.

NorAm Energy Corp. (70–8673)

NorAm Energy Corporation (''NorAm''), 1600 Smith, 11th floor, Houston, Texas, 77002, has filed an application under Section 3(b) of the Act for an order of exemption in connection with its contemplated acquisition, for an aggregate investment of up to $150 million over the next five-year period, of (i) An interest in concessions granted by the government of Colombia to establish natural gas distribution services to areas in Colombia, (ii) an interest in concessions granted by the government of Mexico to establish natural gas distribution services in Mexico, and (iii) a minority interest in one or more existing Mexican natural gas distribution businesses.

NorAm is engaged in the distribution and transmission of natural gas, with business and operations in Texas, Louisiana, Arkansas, Mississippi, Oklahoma, Missouri and Minnesota. NorAm is not a public utility holding company under the Act.

NorAm proposes to participate in the purchase of an interest in concessions granted by the government of Colombia. NorAm will acquire minority interests in each concession through ownership of a Colombian corporation (''Colombian Corporation'').

NorAm also proposes to participate in the purchase of an interest in concessions granted by the government of Mexico and the purchase of minority interests in one or more existing Mexican natural gas distribution businesses. NorAm will participate in such acquisitions through a memorandum of understanding entered into with Grupo Gutsa and TransCanada Pipelines for the creation of a subsidiary in Mexico (''Mexican Corporation''). NorAm's interests in the Colombian concessions and the Mexican concessions and businesses will in each instance not exceed 49%.

The concessions and existing Mexican gas distribution businesses would be gas utility companies under the Act. Thus NorAm, the Colombian Corporation and the Mexican Corporation would each be a holding company under the Act.

Section 3(b) of the Act authorizes the Commission to exempt any subsidiary company of a holding company from the Act if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public utility company operating in the United States.

NorAm states that neither the concessions nor the existing businesses will derive any income, directly or indirectly, from sources in the United States, and will operate, or have any subsidiary operating, as a public utility company in the United States. NorAm further states that the proposed acquisitions will not affect or impair utility functions or the financial condition of NorAm. Under these circumstances, NorAm states that it is not necessary in the public interest or for the protection of investors to subject the concessions or the existing businesses to any provisions of the Act.

Entergy Corporation, et al. (70–8681)

Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and its wholly-owned, nonutility subsidiary company, Entergy Enterprises, Inc. (''Enterprises''), Three Financial Centre, Little Rock, Arkansas 72211, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13 of the Act and rules 45 and 54 thereunder.

Entergy proposes to invest up to $30 million through September 30, 1997, in one or more new direct or indirect subsidiaries of Entergy and/or Enterprises (''New Subsidiaries''). The investments would be in the form of acquisitions of stock and/or debt securities, capital contributions, open account advances, guarantees of indebtedness or other extensions of credit, whether directly in the New Subsidiary or through one or more New Subsidiary intermediate holding companies. As a percentage of consolidated assets of the Entergy System ($22.5 billion at June 30, 1995), the proposed investments would amount, in the aggregate, to not more than 0.133%. Interest on the debt securities would be established at a rate not to exceed the prime rate in effect on the date of the issuance of the securities at a bank designated by Entergy, and the debt securities would have a maturity not later than December 31, 2005.

The New Subsidiaries either directly or indirectly would acquire interests in nonutility businesses including, among others, network-based businesses, telecommunications, energy and security management services businesses or environmental technology businesses. Network-based businesses or telecommunications would involve wired or wireless networks or systems, including, among others, cable or personal communications or other data communications services, which could be interactive and developed to permit utility applications, including remote meter reading and reporting of power outages. Such businesses could operate inside and outside the Entergy System's service territory, or both. The proceeds from the investments will not be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company.

The proposed investments would be made nonrecourse as to other Entergy System companies and assets, and be isolated in one or more New Subsidiaries. Enterprises would provide services to the New Subsidiaries of the types and at the prices specified pursuant to the Commission's order dated June 30, 1995 (HCAR No. 26322). To the extent that additional affiliate transactions between the New Subsidiaries and other Entergy System companies, except for the investments and the provision of services by Enterprises, become necessary, the applicants will seek any requisite regulatory approval at the time.

Cinergy Corp., et al. (70–8717)

Cinergy Corp., a registered holding company, and Cincinnati Gas & Electric Company (''CG&E''), its wholly-owned public-utility subsidiary company (collectively, ''Applicants''), both located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed a declaration under section 12(d) of the Act and rules 42, 44 and 54 thereunder. Applicants request authorization for CG&E to sell certain moveable property of its Woodsdale Generating Station, Units 1 and 7, including gas combustion turbines, transformers, boilers and water pumps (''Equipment''), to a non-affiliated third-party finance lessor which would concurrently lease back the Equipment to CG&E.[1]

Applicants expect the Equipment to be sold for an amount not to exceed $40

[1] Applicants are not seeking authorization from this Commission for the leaseback of the Equipment. CG&E has applied to the Public Utilities Commission of Ohio (''PUCO''), the state commission with jurisdiction over CG&E, for approval of the leaseback transaction. Upon receipt of a PUCO order approving the leaseback (a copy of which will be filed with this Commission by amendment to applicant's declaration), applicants will rely on the exemption provided by section 9(b)(1) of the Act.

million and not less than its net book value (estimated to be not less than $20 million), depending on its aggregate appraised value, as determined by an independent appraiser to be selected by the buyer. CG&E would use the net proceeds from the sale of the Equipment to redeem, prior to maturity, all or some of one or more series of its outstanding first mortgage bonds and repay short-term debt incurred in connection with such redemption.[2] The balance, if any, of such net proceeds would be used for other general corporate purposes. CG&E is currently considering the redemption, in whole or in part of its First Mortgage Bonds, 10.20% Series due December 1, 2020, which are callable December 1, 1995 at a redemption price of 107.44% plus accrued interest to the redemption date.[3]

Applicants state that the proposed redemption of high cost first mortgage bonds using the Equipment sale proceeds is expected to produce greater cost savings than might otherwise be achieved if CG&E were to issue and sell other securities to fund the redemption.

National Fuel Gas Company, et al. (70–8729)

National Fuel Gas Company (''National''), a registered holding company, 10 Lafayette Square, Buffalo, New York 14203, and its wholly-owned subsidiary companies: National Fuel Gas Distribution Corporation (''Distribution''), National Fuel Gas Supply Corporation (''Supply''), Seneca Resources Corporation (''Seneca''), Highland Land & Minerals, Inc. (''Highland''), Leidy Hub, Inc. (''Leidy''), Horizon Energy Development, Inc. (''Horizon''), Data-Track Account Services, Inc. (''Data-Track''), all located at 10 Lafayette Square, Buffalo, New York 14203, National Fuel Resources, Inc. (''NFR''), 478 Main Street, Buffalo, New York 14202 and Utility Constructors, Inc. (''UCI''), East Erie Extension, Linesville, Pennsylvania 16424 (collectively, ''Subsidiary Companies''), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12 (b) and 12(f) of the Act and rules 43, 45 and 54 thereunder.

By prior Commission order, National and its Subsidiary Companies were authorized to participate in the National system money pool (''Money Pool'') through December 31, 1995. National and its Subsidiary Companies now propose to continue to participate in, and incur short-term borrowings from the Money Pool, through December 31, 2000. Total outstanding short-term borrowings from the Money Pool by Distribution will not exceed a principal amount of $315 million. National will not borrow funds from any Subsidiary Company through the Money Pool.

In addition, in the event that intra-system sources of funds are insufficient to meet short-term needs of the Subsidiary Companies, National proposes, from time-to-time through December 31, 2000, to: (1) Issue and sell, up to $300 million aggregate principal amount at any one time outstanding of commercial paper (''Commercial Paper'') directly or through dealers and placement agents; and/or (2) issue an aggregate principal amount of up to $600 million of short-term unsecured notes (''Notes'') under credit facilities with banks and financial institutions. The aggregate principal amount of such Commercial Paper and Notes shall not exceed $600 million outstanding at any one time. The proceeds of such external borrowings by National shall be made available to its Subsidiary Companies through the Money Pool. In addition, National proposes that up to $75 million of its external borrowing be made available for its own corporate purposes.

If only surplus funds of National and its Subsidiary Companies make up the funds available in the Money Pool, the interest rate applicable and payable to or by the Subsidiary Companies for all loans of such surplus funds will be the rates for high grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal.

If external funds make up all of the funds available in the Money Pool, or when surplus funds from National and other participating Subsidiary Companies and external funds are concurrently borrowed through the Money Pool, the interest rate applicable to all such borrowings and payable by borrowing Subsidiary Companies will be equal to National's net cost for such external borrowings.

The borrowing arrangements with banks or financial institutions may require compensating balances and/or commitment fees or similar fees. National requests authority to incur, if necessary, commitment or similar fees not to exceed one-half (½) of one percent (1%) of average daily credit facilities available, and/or compensating balances not to exceed twenty percent (20%) of the credit facility established. National, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or fees.

National has, and from time to time through December 31, 2000, will continue to enter into interest rate and currency exchange agreements (''Swap Agreement(s)'') with one or more parties (''Counterparty''), covering a total principal amount of up to $300 million for terms of one month to five years. In no event will the effective fixed rate of interest paid by National inclusive of any fees, exceed by more than 2.0% per annum the yield, at the time of entering into any such Swap Agreement, on direct obligations of the U.S. Government with maturities comparable to that of the applicable Swap Agreement. From time to time, National may be obligated to pay arrangement fees and/or legal fees and other expenses in connection with these Swap Agreements. National requests authority to allocate all such fees and expenses together with the payments made to a Counterparty or received from a Counterparty among National and the Subsidiary Companies based upon their weighted average amount of borrowings outstanding during the period when such amounts are paid or received.

Consolidated Natural Gas Company (70–8739)

Consolidated Natural Gas Company (''Consolidated''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42 and 54 thereunder.

Consolidated seeks authorization to implement a stockholder rights plan (''Plan'') and to enter into a related Rights Agreement (''Agreement'') with Society National Bank, as agent. To implement the Plan, the board of directors of Consolidated would declare a dividend distribution of one right (''Right'') for each outstanding share of common stock, $2.75 par value, of Consolidated (''Common Stock'') to stockholders of record at the close of business on a specified record date. Each Right would entitle the holder to purchase from Consolidated one-half of a share of Common Stock at a price of $175 per share ($87.50 per half-share), subject to adjustment (''Purchase Price''). Initially, the Rights will be evidenced by the certificates for shares of Common Stock to which they relate, and will be transferable only with the Common Stock. Until a Right is exercised or exchanged for Common Stock, as described below, the holder, as

[2] If short-term debt is used to redeem bonds prior to receiving regulatory authority for the sale of the Equipment, CG&E will use net Equipment sale proceeds to repay all or a portion of such short-term debt.

[3] As of September 30, 1995, these bonds had an aggregate principal amount of $150 million outstanding.

such, will have no rights as a stockholder of Consolidated.

Upon the earlier to occur of (a) ten days after the date (''Shares Acquisition Date'') of the public announcement that a person or affiliated group (''Acquiring Person'') has acquired or obtained the right to acquire beneficial ownership of securities having 10% or more of the voting power of the outstanding voting securities of Consolidated, or (b) ten days after commencement of, or announcement of the intention of a person to make, a tender or exchange offer that would result in such person acquiring, or obtaining the right to acquire, beneficial ownership of securities having 10% or more of the voting power of the outstanding voting securities of Consolidated (such earlier date being the ''Distribution Date''), separate certificates evidencing the Rights will be mailed to holders of record of Common Stock as of the close of business on the Distribution Date.

The Rights will become exercisable after the Distribution Date on the following terms: (1) If a person becomes an Acquiring Person after the Distribution Date, each holder (other than an Acquiring Person) may exercise a Right and receive Common Stock (or, in certain cases, cash, property or other securities of Consolidated) having a value equal to two times the Purchase Price of the Right then in effect. Rights that are beneficially owned by an Acquiring Person will be null and void. (2) If, after the Shares Acquisition Date, Consolidated is acquired in a business combination transaction of 50% or more of its assets or earning power is sold or transferred, each holder of a Right will have the right to receive, upon exercise, common stock of the acquiring company having a value equal to two times the Purchase Price of the Right then in effect.

The Purchase Price is subject to adjustment to prevent dilution in certain situations involving stock dividends, splits, combinations or reclassification; grants of warrants to subscribe for or purchase Common Stock or convertible securities at less than market price; or distribution to holders of Common Stock of evidences of indebtedness or assets or of subscription rights or warrants. Adjustments will be required upon the earlier of three years from the date of the event giving rise to the adjustment or the time when cumulative adjustments require a 1% or more change in the Purchase Price.

Consolidated may redeem the Rights in whole, but not in part, prior to 5 p.m. on the tenth day after the Shares Acquisition Date (subject to extension by the board of directors of Consolidated for an additional 20 days), at a price of $0.01 per Right, payable in cash or stock. In addition, at any time after a person becomes an Acquiring Person, the board may exchange the Rights (other than Rights held by an Acquiring Person, which become void), in whole or in part, at an exchange ratio of one share of Common Stock (and/or other securities, cash or other assets having the same value as a share of Common Stock) per Right, subject to adjustment.

The Agreement may be amended by the board of directors of Consolidated without the consent of the holders of Rights prior to the Distribution Date. Therefore, the board may amend the Agreement in order to cure any ambiguity, defect or inconsistency or to make changes that do not adversely affect the interests of holders of Rights (other than any Acquiring Person), provided that no amendment may be made on and after the Distribution Date that changes the principal economic terms of the Rights.

Yankee Atomic Electric Company (70–8743)

Yankee Atomic Electric Company (''Yankee Atomic''), 580 Main Street, Bolton, Massachusetts 01740, a subsidiary of both New England Electric System and Northeast Utilities, both registered holding companies, has filed an application under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated March 11, 1994 (HCAR No. 26002), Yankee Atomic was authorized to borrow up to $10 million through December 31, 1995.

Yankee Atomic now proposes to borrow money from one or more banks up to a maximum aggregate amount outstanding at one time of $10 million, from January 1, 1996 through December 31, 1997.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29002 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21524; 812–9730]

State Street Research Tax-Exempt Fund, et al.; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: State Street Research Tax-Exempt Fund (the ''Acquiring Fund''), State Street Research California Tax-Free Fund (the ''California Fund''), State Street Research Florida Tax-Free Fund (the ''Florida Fund''), State Street Research Pennsylvania Tax-Free Fund (the ''Pennsylvania Fund'') (collectively, the California, Florida and Pennsylvania Funds are the ''Acquired Funds'' and the Acquiring and Acquired Funds are the ''Funds''), and State Street Research & Management Company (''State Street'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act to exempt applicants from the provisions of section 17(a). Applicants further request an order pursuant to rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit applicants to effectuate a reorganization between the Acquiring and Acquired Funds.

FILING DATES: The application was filed on August 21, 1995, and amended on November 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are series of State Street Research Tax-Exempt Trust (the

''Trust''), a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. Each Fund offers four classes of shares. The classes of shares of the Acquiring Fund have identical arrangements with respect to the imposition of initial and contingent deferred sales charges and distribution and service fees as the comparable classes of shares of each of the Acquired Funds. As of July 31, 1995, Metropolitan Life Insurance Company (''Met Life'') held with power to vote 10.8%, 43.9%, and 29.4% of the outstanding shares of the California, Florida, and Pennsylvania Funds, respectively.

2. State Street serves as each Fund's investment adviser and State Street Research Investment Services, Inc. (the ''Distributor'') serves as the distributor for each of the Funds. State Street and the Distributor are both indirect wholly-owned subsidiaries of Met Life.

3. The investment objective of the Acquiring Fund is to seek a high level of interest income exempt from federal income taxes. The Acquiring Fund invests primarily in investment grade tax-exempt debt obligations. The investment objective of the California, Florida, and Pennsylvania Funds is to seek a high level of interest income exempt from federal income taxes and income or property taxes of their eponymous states. The California, Florida, and Pennsylvania Funds invest primarily in investment grade securities issued by or on behalf of their eponymous states.

4. The board of trustees of the Trust has approved agreements and plans of reorganization and liquidation providing for the transfer of all of the assets of each of the Acquired Funds to the Acquiring Funds in exchange for Acquiring Fund shares. The reorganization is subject to the assumption by the Acquiring Fund of all of the liabilities of each of the Acquired Funds.

5. As a result of the reorganization, shareholders of each Acquired Fund will receive, in exchange for his or her shares of an Acquired Fund, shares of the corresponding class of the Acquiring Fund with an aggregate value equal to the value of such shareholder's shares of the Acquired Fund, calculated as of the close of business on the business day immediately prior to the closing for each Fund. Each Acquired Fund will liquidate and distribute shares of the Acquiring Fund to their respective shareholders at or as soon as practicable after the relevant closing.

6. At or prior to the relevant closing, each of the Acquired Funds shall declare a dividend or dividends which shall have the effect of distributing to the shareholders of each Acquired Fund all of the respective Fund's investment company taxable income for all taxable years ending on or prior to the respective closing (computed without regard to any deduction for dividends paid) and all of its net capital gain realized in all taxable years ending on or prior to the respective closing (after reduction for any capital loss carry-forward).

7. The board of trustees of the Acquired Funds, including the trustees who are not ''interested persons'' as such term is defined by the Act, have concluded that the reorganizations would be in the best interest of the Acquired and Acquiring Funds and that the interests of the existing shareholders of the respective Funds will not be diluted as a consequence thereof. In making this determination, the trustees considered a number of factors, including the smaller size and higher expenses of each of the Acquired Funds compared to the Acquiring Fund and, in each case, the efficiencies resulting from combining the operations of two separate funds with the same investment manager, the same multiple class structure, the same sales load structure, and similar investment objectives and policies.

8. The proposed reorganization is subject to approval by the holders of a majority (as defined in the Act) of the outstanding shares of each Acquired Fund. Approval will be solicited pursuant to a prospectus/proxy statement, which was sent to shareholders of each Acquired Fund on or about October 20, 1995. Each prospectus/proxy statement includes pertinent financial information and projected expense ratios of the combined funds based primarily upon the advisory agreement as it applies to the Acquiring Fund.

9. The expenses of each reorganization, whether or not each reorganization is consummated, will be apportioned between the Distributor and the Funds. Expenses will be allocated to the Acquiring and the applicable Acquired Fund in an appropriate manner on the basis of identifiable direct costs or otherwise on the basis of relative net assets. The Distributor will assume the liability for and pay one-half of each Fund's expenses incurred in connection with each reorganization.

10. The consummation of each reorganization is subject to certain conditions, including that the parties shall have received from the SEC the order requested herein, and the receipt of an opinion of tax counsel to the effect that upon consummation of each reorganization and the transfer of substantially all the assets of each Acquired Fund, no gain or loss will be recognized by the Acquired or Acquiring Funds or their shareholders as a result of the reorganization. Applicants will not make any material changes adversely affecting the rights of shareholders that affect the application without the prior approval of the SEC staff.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell or purchase securities to or from such registered company.

2. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include, in pertinent part, (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of such other person, (b) any person directly or indirectly controlling, controlled by, or under common control with such other person, and (c) if such other person is an investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Met Life indirectly owns 100% of the outstanding voting shares of State Street, the adviser to each Fund. Met Life also owns with power to vote more than 5% of the outstanding shares of each of the Acquiring Funds. Accordingly, the Acquiring Fund may be deemed an affiliated person of an affiliated person of each of the Acquired Funds, and vice versa, for reasons not based solely on their common adviser.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

5. Applicants believe that the reorganizations are consistent with the policies and purposes of the Act. In addition, applicants state that the exchange of assets will be based on each Fund's relative net asset values. Further, applicants state that the trustees, including the non-interested trustees, have concluded that any potential benefits to Met Life, State Street, the Distributor, and their affiliates as a result of the reorganizations are on balance outweighed by the potential benefits to each Fund and its shareholders. Although income from the Acquiring Fund will be subject to taxation at the state level, whereas income from each Acquired Fund is exempt from taxation in the eponymous state, the trustees have determined that the benefits of the reorganization substantially offset the loss of this tax benefit to the shareholders of each Acquired Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28930 Filed 11–27–95;8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–21526; File No. 812–7659]

Vanguard Variable Insurance Fund, et al.

November 20, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Vanguard Variable Insurance Fund (''Fund'') and The Vanguard Group, Inc. (''Vanguard'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e–2(b)(15) and 6e–3(T) (b) (15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of the Fund to be sold to and held by variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on December 20, 1990 and amended on July 23, 1991, August 11, 1995, November 1, 1995 and November 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 15, 1995, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: P.O. Box 2600, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Pennsylvania business trust registered under the 1940 Act as an open-end management investment company, currently consists of seven series, each with its own investment objective and policies. The Fund is a member of The Vanguard Group of Investment Companies (''The Vanguard Group''), a family of over 32 investment companies. The Fund and the other funds in The Vanguard Group obtain virtually all of their corporate management, administrative, shareholding accounting and distribution services at cost through their jointly owned subsidiary, The Vanguard Group, Inc. Vanguard Marketing Corporation (''VMC''), a broker-dealer subsidiary of The Vanguard Group, Inc., markets the shares of the investment companies in the Vanguard Group. An order granting the exemptive relief necessary to implement this arrangement (''Vanguard Order'') was issued by the Commission on February 25, 1981 (IC–11645) and amended on December 29, 1992 (IC–19184).

2. The Fund presently sells its shares only to separate accounts of Providian Life & Health Insurance Company (formerly, National Home Life Assurance Company) and First Providian Life & Health Insurance Company (formerly, National Home Life Assurance Company of New York) to fund variable annuity contracts. The annuity contracts are distributed without the imposition of a sales load. Vanguard, through VMC, is the sole distributor of the contracts and bears all expenses related to the distribution of such contracts. As a member of the Vanguard Group, the Fund contributes to the cost of VMC's distribution efforts in accordance with provisions of the Vanguard Order.

3. As a member of The Vanguard Group, the Fund contributes to distribution expenses of VMC under the Vanguard Modified Formula (''VMF'') on the same basis as the other funds in The Vanguard Group. The Fund currently accrues for such costs an amount of approximately .02% of assets annually to cover its share of the cost of distributing shares of the investment companies in The Vanguard Group. Applicants state that this amount is one tenth of the .20% limit contained in the Vanguard Order. Applicants represent that no part of this fee is paid to the Providian companies nor will they receive any other payments from either Vanguard or the Fund.

4. The Fund intends to sell its shares to separate accounts of Ameritas Life Insurance Corp. (''ALIC'') and separate accounts of other unaffiliated insurance companies (together with ALIC and Providian, ''Participating Insurance Companies'') to serve as the investment vehicle for variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, ''Variable Contracts'').

5. Although ALIC may offer variable annuity products in the future, it currently plans to offer and distribute, through Ameritas Investment Corp. its principal underwriter, variable life insurance contracts utilizing the Fund as their underlying funding vehicle. These variable life insurance contracts will not be subject to a sales load, contingent deferred sales charge, or a surrender charge. The contracts will be subject, however, to a 3.5% premium charge (guaranteed not to exceed 5%) to reimburse ALIC for premium taxes and the expense of deferring the tax deduction of policy acquisition costs (''DAC Tax''). According to the Applicants, ALIC has applied for a Commission order that would permit the imposition of the DAC Tax charge without treating such charge as sales load. Applicants represent that no part of the VMF fee paid by the Fund to Vanguard is paid to ALIC nor will ALIC receive any other payments from either Vanguard or the Fund.

6. Applicants propose to sell shares only to Participating Insurance Companies which offer their Variable Contracts utilizing the Fund as their underlying funding vehicle, without the imposition of a sales load, contingent deferred sales charge, or surrender charge. Applicants represent that, if such Participating Insurance Companies anticipate imposing a DAC Tax charge, they will have received the appropriate exemptive order from the Commission before imposing such charge. Applicants affirm that no portion of the Fund's contribution to Vanguard for distribution expenses will be paid to the Participating Insurance Companies, nor will such Participating Insurance Companies receive any other payments from either Vanguard or the Fund. Any participation agreement between the Fund and a Participating Insurance Company will include the requirements contained in this paragraph as conditions to such agreement.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company (''mixed funding''). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies (''shared funding''). Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extend necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) of the 1940 Act provides that it is unlawful for company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). However, Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation discussed above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company. Applicants assert that although costs would increase, no regulatory benefit would result from the application of Section 9(a) to the many employees of Participating Insurance Companies who are not involved in the management or administration of the separate account. Applicants submit that Section 9(a) would still apply to those persons who should remain disqualified under the 1940 Act.

4. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Section 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances when required to do so by a state insurance regulatory authority. Paragraph (b)(15) of both Rules 6e–2 and 63–3(T) provides that the insurance company may disregard voting instructions if its contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to certain other provisions in the Rules. However, a particular insurer's disregard of voting instructions could conflict with the majority of contractowner voting instructions. Applicants state that if a particular insurance company's disregard of voting instructions conflicted with a majority of the contractowner's voting instructions, or precluded a majority vote, the Fund may require the insurer to withdraw its separate account's investment in the Fund.

5. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in some or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of insurance regulators in other states in which Participating Insurance Companies may be domiciled. Applicants submit that this possibility is no different or no greater than that which exists where a single insurer and its affiliates offer their insurance products in several states. Applicants state that there is no reason why the Fund's investment policies would or should be materially different from what they would or should be if it funded only variable annuity contracts or only variable life insurance contracts. Further, there is no reason to believe that different features of various types of contracts will led to different investment policies for different types of variable contracts. Applicants represent that the Fund will not be managed to favor or disfavor any particular Participating Insurance Company or type of insurance product. Applicants submit that there is no significant legal impediment to permitting mixed and shared funding and they note that separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Finally, Applicants assert that mixed and shared funding will have no adverse federal income tax consequences.

6. Applicants argue that mixed and shared funding should benefit variable contractowners by: (1) Eliminating a significant portion of the costs of

establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract costs. Applicants assert that the Fund's series will not be managed to favor or disfavor any particular insurer or type of insurance contract.

7. Finally, Applicants state that, as a member of The Vanguard Group, the Fund receives the same benefits and advantages offered to the other funds in The Vanguard Group. As discussed in the application and the Vanguard Order, such benefits include the name recognition, growth of complex-wide assets, and reduced per share expenses resulting from Vanguard's complex-wide and individual fund marketing and advertising. Applicants submit that VMC incurs costs and obligations to make such benefits available and it would not be fair to the other funds in The Vanguard Group, or permissible under the Vanguard Order, to free the Fund of its share of such costs, since it participates in the benefits of such efforts.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Fund's Board of Trustees (''Board'') shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a) (19) of the 1940 Act, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee, then the operation of this condition shall be suspended (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any series are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or contractowners of different Participating Insurance Companies; or (vi) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating Insurance Companies and Vanguard will report any potential or existing conflicts to the Board. Participating Insurance Companies and Vanguard will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies under their agreements governing participation in the Fund and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which could include: (i) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium (including another series of the Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under agreements governing their participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do has been declined by a vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners for so long as the Commission continues to interpret the 1940 Act as requiring passthrough voting privileges for variable contractowners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their separate accounts in a manner consistent with the voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all present and future Participating Insurance Companies under their agreements governing participation in the Fund. Each Participating Insurance Company also will vote shares of the

Fund or series held in its separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received.

7. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that (1) Its shares are offered to insurance company separate accounts that fund both annuity and life insurance contracts, (2) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Fund might at some time be in conflict, and (3) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Fund and/or the Participating Insurance Companies shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not a trust of the type specified in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and/or Vanguard shall at least annually submit to the Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

12. The Fund will sell shares only to Participating Insurance Companies which offer their variable annuity and variable life products utilizing the Fund as their underlying funding vehicle, without the imposition of a sales load, contingent deferred sales charge, or surrender charge. If such Participating Insurance Companies anticipate imposing a premium charge to reimburse them for the cost of deferring the tax deduction of policy acquisition costs, they will have received an appropriate exemptive order from the Commission before imposing such charge. No portion of the Fund's contribution to Vanguard for distribution expenses will be paid to the Participating Insurance Companies, nor will such Companies receive any other payments from either Vanguard or the Fund. Any participation agreement between the Fund and a Participating Insurance Company will contain the above-mentioned requirements as conditions of such agreement.

Conclusion

For the reason and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28927 Filed 11–27–95; 8:45 am]

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[Rel. No. IC–21522; No. 812–9542]

Warburg, Pincus Trust; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANT: Warburg, Pincus Trust (''Trust'') and Warburg, Pincus Counsellors, Inc. (''Counsellors'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company or series thereof that is designed to fund insurance products and for which Counsellors, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Trust, ''Funds'') to be sold to and held by: (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside the separate account content.

FILING DATE: The application was filed on March 17, 1995, and amended on July 11, 1995 and November 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Warburg, Pincus Trust, 466 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special

Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a free from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts Business Trust. The Trust currently consists of two portfolios, the International Equity Portfolio and the Small Company Portfolio (collectively, ''Portfolios''). Additional portfolios may be offered in the future (''Future Portfolios''). Applicants incorporate by reference into the application the registration statement (File No. 33–58125) on Form N–1A of the Trust, which was declared effective on June 19, 1995.

2. Counsellors serves as investment adviser to the Portfolios and is a registered investment adviser under the Investment Advisers Act of 1940. Counsellors' wholly owned subsidiary, Counsellors Securities, Inc., serves as distributor for shares of the Portfolios. Counsellors is a wholly owned subsidiary of Warburg, Pincus Counsellors G.P., a New York general partnership and holding company. E.M. Warburg, Pincus & Co., Inc. controls Counsellors through its ownership of a class of voting preferred stock of Counsellors.

3. The Trust currently offers its shares to separate accounts, registered with the Commission under the 1940 Act as unit investment trusts, of life insurance company affiliates of Nationwide Insurance Companies (''Nationwide Companies''). The Trust serves as the investment vehicle for life and variable annuity contracts issued by Nationwide Companies. Shares of the Trust also are held by a separate account of Nationwide Companies, which is exempt from registration as an investment company under the 1940 Act pursuant to Section 3(c)(1) of the 1940 Act.

4. Applicants state that, upon the granting of the order requested in this application, the Trust intends to offer shares of its Portfolios and Future Portfolios to separate accounts [1] of the Nationwide Companies and of other unaffiliated insurance companies (collectively, ''Participating Insurance Companies''),[2] to serve as an investment vehicle for various types of insurance products. These insurance products may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts (collectively, ''Variable Contracts''). The Trust also intends to sell shares of the Portfolios and Future Portfolios directly to qualified pension and retirement plans (''Qualified Plans'') outside of the separate account context.

5. In connection with any Contract issued by a Participating Insurance Company, the application states that each such company will have the legal obligation of satisfying all applicable requirements under both state and federal law. Applicants further state that the role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants state that applicable tax law permits the Funds to increase their asset base through the sale of Fund shares to Qualified Plans without endangering the tax status of Variable Contracts issued by Participating Insurance Companies. The Qualified Plans may choose any of the Funds as the sole investment option under the Plan or as one of several investment options. Participants may be given an investment choice depending upon the Plan. Shares of any of the Funds sold to Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). To the extent permitted under applicable law, Counsellors may act as investment adviser to Qualified Plans that will purchase shares of the Funds. Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to participants in the Qualified Plans.

Applicants' Legal Analysis

Mixed and Shared Funding and Sales to Qualified Plans

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''Separate Account-UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2(b)(15) extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.''

2. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company.[3] Rule 6e–2(b)(15), therefore, precludes mixed and shared funding.

3. In connection with flexible premium variable life insurance contracts issued through a Separate Account-UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are

[1] These separate accounts may be registered as investment companies under the 1940 Act or exempt from registration under the 1940 Act pursuant to Section 3(c)(1) (collectively, ''Separate Accounts'').

[2] Each Participating Insurance Company will enter into a fund participation agreement (''Participating Agreement'') with the Trust on behalf of the Fund in which the Participating Insurance Company invests.

[3] Applicants note that amendments to Rule 6e–2 have been proposed by the Commission and, if adopted, would permit shares of one underlying fund to be sold to separate accounts of the insurer, or any affiliated life insurance company offering variable annuity contracts or scheduled premium or flexible premium variable life insurance. *See* Release No. IC–14421 (Mar. 15, 1985). The proposed amendments, however, would not permit shares of one underlying fund to be sold to separate accounts of unaffiliated companies.

available only where all the assets of the separate account consist of shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contacts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. . . . Rule 6e–3(T) thus permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions, but precludes shared funding.

4. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factor include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management; the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the Variable Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment advisor, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Variable Contracts which may, in turn, increase competition with respect to both the design and pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Applicants thus argue that Variable Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Qualified Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

5. Applicants state that, because relief under paragraph (b)(15) of Rules 6e–2 and 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Qualified Plans. Applicants assert that the relief granted by paragraph (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Qualified Plans because such sales may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies. Applicants further assert that they are not aware of any stated rationale for the exclusion of separate accounts and investment companies engaged in shared funding from the exemptive relief provided under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), or for the exclusion of separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under (b)(15) of Rules 6e–2 and 6e–3(T), or for the exclusion of separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because the Funds also may sell their respective shares only to qualified pension and retirement plans.

6. Applicants state that current tax law permits Funds to increase their asset base through the sale of Fund shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification requirements on the underlying assets of Variable Contracts invested in the Funds. The Code provides that such Variable Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified, as prescribed by Treasury Department regulations; to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies, subject to certain exceptions. Treas. Reg. § 1.817–5 (1989). For example, shares in an investment company may be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with the variable contracts. Treas. Reg. § 1.817–5(b)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder to the extent necessary to permit shares of the Funds to be offered and sold now and in the future to Separate Accounts of Participating Insurance Companies in Connection with both mixed and shared funding, and to be sold directly to Qualified Plans. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their schedule premium variable life insurance Separate Accounts and flexible premium variable life insurance Separate Accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such Separate Accounts) investing in any of the Funds.

Disqualification

9. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification specified in Sections 9(a)(1) or 9(a)(2).

10. Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

11. Applicants state that the partial relief from Section 9(a) found in subparagraph (b)(15) of Rules 6e–2 and 6e–3(T), in effect, limits the monitoring

necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or for the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Qualified Plans. Qualified Plans are not investment companies and are not, therefore, subject to Section 9(a).

Pass-Through Voting

12. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that the Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission interprets the 1940 Act to require such privileges, and that Participating Insurance Companies will vote all shares as to which no response from Variable Contract owners is timely received, as well as shares owned by them, in the same proportion as shares for which voting instructions are received.

13. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides partial exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding. Subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) provides that the insurance company may disregard voting instructions of its contract owners with respect to the subclassification or investment objectives of a fund or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority.

14. Subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e–3(T) provides that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment objectives, principal underwriter or investment advisor, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of each rule.

15. Applicants represent that the Funds' sale of shares to Qualified Plans does not affect the relief requested in this regard. As previously noted, shares of the Funds sold to Qualified Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of the named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA.

16. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Qualified Plans. Accordingly, Applicants assert that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investment in the Funds by Qualified Plans will not create any of the voting complications occasioned by mixed and shared funding because Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

17. Applicants state that some Qualified Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Qualified Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

18. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

19. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

20. Applicants also argue that affiliation does not eliminate the potential, if any, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Variable Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund.

No charge or penalty will be imposed as a result of such withdrawal.

21. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts or interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Variable Contract.

22. Applicants note that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

23. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Funds at their respective net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the Variable Contract.

24. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and owners of the Variable Contracts issued by the Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

25. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Variable Contract owners and to Qualified Plans. Applicants represent that a Fund will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share ownership in the respective Funds. A Participating Insurance Company will then solicit voting instruction in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–e(T).

26. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and Variable Contract owners under their respective Qualified Plans and Variable Contracts, Qualified Plans and Separate Account have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants state that there are no conflicts between Variable Contract owners and participants under Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basis premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies can not simply redeem their separate accounts out of one fund and invest those assets in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of (or participants in) Qualified Plans can redeem shares of the Funds held by them and reinvest in another Fund without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Variable Contract owners and the interest of the Qualified Plans conflict, the issues can be almost immediately resolved in that trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

28. Applicants have concluded that the addition of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants assert further that, even if a material irreconcilable conflict involving Qualified Plans arose, the trustees of (or participants in) the Qualified Plans, unlike the Separate Accounts, can redeem their shares and make alternative investments. Applicants thus submit that allowing Qualified Plans to invest directly in shares of the Funds should not increase the opportunity for conflicts of interest.

29. Further, Applicants state that, regardless of the types of Fund shareholders, Counsellors is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Counsellors works with a pool of money without consideration for the identity of shareholders, and, thus, manage the Funds in the same manner as any other mutual fund.

30. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans, such as the Qualified Plans. Applicants note further that there is ample precedent for extending exemptive relief to members of a class or classes or persons, not currently identified, that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the 1940 Act's provisions including class exemption in the context of mixed and shared funding.

Applicants' Conditions

The Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors (each a ''Board'') of each Fund shall consist of persons who are not ''interested persons'' of the

Funds, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director or Trustee, then the operation of this condition shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the appropriate Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Funds for the existence of any material irreconcilable conflict among the interests of the Variable Contract owners of all the Separate Accounts and of participants of Qualified Plans investing in the respective Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by the owners of variable annuity and variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard voting instructions of Variable Contract owners.

3. Participating Insurance Companies, Counsellors (or any other investment manager of a Fund), and any Qualified Plan that executes a Participation Agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, ''Participants'') shall report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each insurance company Participant to inform the Board whenever it has determined to disregard contract holders' voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants under their Participation Agreements and such Agreements, in the case of insurance company Participants, shall provide that these responsibilities will be carried out with a view only to the interests of the Variable Contract owners.

4. If it is determined by a majority of the Board of a Fund, or by a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from a Fund or its portfolio and reinvesting such assets in a different investment medium (including another portfolio of the relevant Fund, if any), or, in the case of insurance company participants, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, life insurance contract owners, or variable contract owners of one or more Participants) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurance company Participant's decision to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, such Participant may be required, at the election of the relevant Fund, to withdraw its Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination that an irreconcilable material conflict exists, and to bear the cost of such remedial action, shall be a contractual obligation of all Participants under their Participation Agreements, and this responsibility, in the case of insurance company Participants shall be carried out with a view only to the interests of the Variable Contract owners.

For the purposes of this Condition ''4.,'' a majority of disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Fund or Counselors (or any other investment advisor to the Funds) be required to establish a new funding medium for any Variable Contract. Further, no insurance company President shall be required by this Condition ''4.'' to establish a new funding medium for any Variable Contract if an offer to do so has been declined by a vote of a majority of Variable Contract owners materially affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

6. Insurance company Participants will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participants, where applicable, will vote shares of the Fund held in its Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Also, each insurance company Participant will vote shares of a Fund held in its Separate Accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Insurance company Participants will be responsible for assuring that each of their Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other Separate Accounts will be a contractual obligation on all Participants under their Participation Agreements.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participants that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund

shall disclose in its prospectus that: (a) its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, as well as to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Funds and the interests of Qualified Plans investing in the Funds to conflict; and (c) each Fund's Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Funds). In particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Funds shall be one of the trusts described in Section 16(c) of the 1940 Act, as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3(T) is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of a Board shall be a contractual obligation of all Participants under their Participation Agreement.

12. None of the Funds will accept a purchase order from a Qualified Plan shareholder if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a Fund unless such Qualified Plan executes a fund participation agreement with the applicable Fund. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2 and 6e–3(T) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28931 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2292]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

Due to a lapse of appropriations for the Department of State and the Office of the Historian, the meeting of the Advisory Committee on Historical Diplomatic Documentation scheduled for November 16 and 17, 1995, was postponed. Every available measure was used in the short time available to publicly announce the postponement. The Advisory Committee has been rescheduled for Monday, December 11, 1995 in Conference Room 1105 and Tuesday, December 12, 1995, in Conference Room 1205.

On Tuesday, December 12, 1995, from 9 a.m. until 12 noon, the Committee's session will be open to the public. The Committee will meet in closed sessions Monday, December 11, 1995, from 1:30 p.m. until 5 p.m., and from 1:30 p.m. on Tuesday, December 12, 1995, until adjournment at 5 p.m. These two sessions will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoff@ix.netcom.com).

Dated: November 20, 1995.

William Z. Slany,

Executive Secretary.

[FR Doc. 95–28917 Filed 11–27–95; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed information collection.

SUMMARY: This notice is concerning an information collection request transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for emergency processing in accordance with 5 CFR Part 1320.13 and the requirements of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35). Emergency processing has been requested since allowing for the normal review period would adversely affect the public interest.

DATES: November 21, 1995.

ADDRESSES: Written comments on the information collection request should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request submitted to OMB may be obtained from Susan Pickrel, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, as amended, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under the Act. OMB reviews and approves agency submissions in accordance with criteria set forth in the Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years. Under emergency clearance procedures, OMB will assign a control number to the collection for a maximum of 90 days.

Item(s) Submitted to OMB for Review

The following information collection request was submitted to OMB on November 21, 1995:

OMB No: 2133-New

Administration: Maritime Administration

Title: Applications and Amendments for Participation under Section 651, Subtitle B, Merchant Marine Act, 1936, as amended

Need for Information: There are two maritime security bills (S. 1139 and H.R. 1350) under consideration in the Congress to revise Title VI of the Merchant Marine Act, 1936, as amended. The Senate bill will require MARAD to accept applications for enrollment in a Maritime Security Fleet no later than 30 days after the date of enactment, which is anticipated to take place by the end of the year.

Proposed Use of Information: Receipt of an application will indicate intent on the part of a carrier to enter its vessel(s) in the Maritime Security Program. MARAD will analyze the information according to the prescribed priorities and vessels will be selected to participate in the program. The information collection is intended for initial application for participation in the Maritime Security Program, and subsequent amendments for additional vessels, changes to existing vessels or status of the applicant.

Frequency: One-time (application); amendments as required

Burden Estimate: 80 hours

Respondents: Carriers

Form(s): Application

Average Burden Hours Per Response: 10 hours (application); 30 minutes (amendment)

Issued in Washington, D.C. on November 21, 1995.

James A. Harrell,

Acting Manager, IRM Strategies Division.

[FR Doc. 95–29040 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ending November 17, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–816.
Date filed: November 13, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/P 1703 dated November 3, 1995
Mid Atlantic-Africa Expedited Reso 0021
Intended effective date: expedited January 1, 1996

Docket Number: OST–95–817.
Date filed: November 13, 1995.
Parties: Members of the International Air Transport Association.
Subject:
Comp Telex Reso 024f/033f
Fare/Rate changes—Pakistan
R–1—024f
R–2—0033f
Intended effective date: November 15, 1995

Docket Number: OST–95–833.
Date filed: November 14, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Reso/P 0647 dated October 24, 1995
R–1—R–2
TC3 Reso/P 0649 dated October 24, 1995
R–3—R–8
TC3 Reso/P 0650 dated October 24, 1995
R–9—R–17
TC3 Reso/P 0652 dated October 24, 1995
R–18—R–22
TC3 Reso/P 0654 dated October 24, 1995
R–23—R–30
TC3 Reso/P 0656 dated October 24, 1995
R–31—R–38
TC3 Reso/P 0657 dated October 24, 1995
R–39—R–43
TC3 Reso/P 0659 dated October 24, 1995
R–44—R–55
TC3 Reso/P 0660 dated October 24, 1995
R–56—R–69
TC3 Reso/P 0661 dated October 24, 1995
R–70—R–92
TC3 Reso/P 0663 dated October 24, 1995
R–93—R–98
TC3 Reso/P 0664 dated October 24, 1995
R–99—R–108
TC3 Reso/P 0665 dated October 24, 1995
R–109—R–120
TC3 Reso/P 0666 dated October 24, 1995
R–121—R–147
TC3 Reso/P 0667 dated November 7, 1995
Corrections
TC3 Reso/P 0669 dated November 7, 1995
Intended effective date: April 1, 1996

Docket Number: OST–95–834.
Date filed: November 14, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Reso/P 0648 dated October 24, 1995
R–1
TC3 Reso/P 0651 dated October 24, 1995
R–2- R–9
TC3 Reso/P 0653 dated October 24, 1995
R–10 - R–14
TC3 Reso/P 0655 dated October 24, 1995
R–15 - R–18
TC3 Reso/P 0658 dated October 24, 1995
R–19 - R–22
TC3 Reso/P 0662 dated October 24, 1995
R–23 - R–38
TC3 Meet/P 0059 dated November 10, 1995
Minutes
TC3 Fares 0403 dated November 3, 1995
Tables
TC3 Fares 0404 dated November 3, 1995
Intended effective date: April 1, 1996

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–28980 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 17, 1995

The following Applications for Certificates of Public Convenience and

Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–822.

Date filed: November 13, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 1995.

Description: Application of Allegheny Airlines, Inc. d/b/a USAir Express, Inc. pursuant to 49 U.S.C. Section 41101 and 41108, and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in scheduled and charter foreign air transportation of persons, property and mail between points in the United States and points in Canada.

Docket Number: OST–95–827,

Date filed: November 13, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 1995.

Description: Application of United Air Lines, Inc., pursuant 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for authority to offer scheduled foreign air transportation of persons, property and mail between the following U.S.-Canada city-pairs: 1) Chicago, Illinois-Montreal, Quebec; (2) Los Angeles, California-Montreal, Quebec; (3) Miami, Florida-Montreal, Quebec; and (4) Los Angeles, California-Florida-Montreal, Quebec; and (4) Los Angeles, California-Toronto, Ontario, Canada.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–28981 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

[Docket No. OST–95–859]

Grade Crossing Safety Task Force

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: The Department of Transportation (USDOT) seeks to broaden the knowledge of the safety implications of the decisionmaking and coordination processes associated with the planning, design, construction, maintenance, operation, and inspection of highway-rail grade crossings. To do this, the Department has formed a USDOT Grade Crossing Safety Task Force. In addition, the Department intends to:

—Form a ''Blue Ribbon'' Working Group to support the task Force,

—Hold public meetings to provide input to the Task Force, and

—Prepare and publish a report documenting the findings of the Task Force.

DATES: Comments must be received on or before January 15, 1996, to be fully considered by the Department's Grade Crossing Safety Task Force.

ADDRESSES: Three copies of comments for the public docket on the Grade Crossing Safety task Force should be sent to: Office of the Secretary, Documentary Services Division, C–55, Attn: Grade Crossing Safety Task Force Public Docket No. OST–95–859, Room PL 401, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Transportation Secretary Federico Peña recently announced that he has directed the formation of a Grade Crossing Safety task Force within the DOT to conduct a comprehensive national review of safety measures relating to highway-rail grade crossing planning, design, construction, maintenance, operation, and inspection.

Secretary Peña took this action in the aftermath of the tragic accident in Illinois involving a commuter train and school bus at a railroad crossing last October 25. The Secretary ordered the Department of Transportation to build upon its June 1994 Rail-Highway Crossing Safety Action Plan by forming a Task Force to conduct a comprehensive national review of the design, construction, and operation of highway-rail grade crossings.

The Secretary has directed the Task Force to report back to him by March 1, 1996, with its evaluation of the decisionmaking process related to the Nation's grade crossings, as well as recommendations for improvement. The Task Force will work with State, local, and private sector transportation officials to review existing standards and will develop a summary of national needs focusing on coordinated decisionmaking, inspection, and approval processes for highway-rail grade crossings.

The Task Force includes representatives from four agencies within the U.S. Department of Transportation: The Federal Railroad Administration, the Federal Highway Administration, the National Highway Traffic Safety Administration and the Federal Transit Administration. The Task Force is headed by Michael P. Huerta, Associate Deputy Transportation Secretary and Director of the Office of Intermodalism.

In addition to the Task Force activities, both the Federal Railroad Administration and the Federal Highway Administration will work with the States as they respond to the National Transportation Safety Board's recommendation that States conduct an assessment of physical characteristics and traffic associated with crossings having interconnected highway and rail signals, and their systems design.

To support the Task Force, the Department will also form a ''Blue Ribbon'' Working Group of approximately 20 people who can provide specialized information that will assist the Task Force in its work. This Working Group will reflect the diverse public and private sector entities involved in the processes which create or alter infrastructure at or near highway-rail grade crossings in order to create an expanded knowledge base for the Task Force. The participants for the Working Group will be selected on December 4 and the first meeting of the Working Group is currently scheduled for December 14.

To provide additional input to the Task Force during its work, the Department intends to hold three public meetings in the coming weeks. The prospective sites of these public meetings are Raleigh, NC, Chicago, IL, and Los Angeles, CA. The dates, times, and specific locations of these public meetings have not been determined, but will be announced in future press releases and/or Federal Register notices. Persons desiring more details on these meetings also can receive direct notification by addressing their requests to the individual identified at the end of this Federal Register notice under the section below entitled **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Questions on the Grade Crossing Safety Task Force and its public meetings can also be directed to the Secretary of Transportation's Office of Intermodalism which has been designated as the lead for the Grade Crossing Safety Task Force. Questions can be mailed, faxed, or transmitted on the Internet to: Ms. Susan Ducan, Office of Intermodalism, Room 10126, 400 Seventh Street, S.W., Washington, D.C. 20590, Ph: (202) 366–8015, Fax: (202) 366–8999, Internet: http://www.dot.gov/dotinfo/gen/xingtf.

Comments by all parties on these highway-rail crossing issues are welcome.

To give the public a better sense of the scope of this USDOT initiative, the Grade Crossing Safety Task Force Charter is presented in the paragraphs below.

Charter of the Grade Crossing Safety Task Force

Mission and Purpose: The Department recognizes its role to ensure safe transportation and to develop a ''seamless'' national intermodal transportation system. In June 1994, Secretary of Transportation Federico Peña released a DOT Rail-Highway Crossing Safety Action Plan that presented a multi-faceted, multi-modal approach for improving safety at our Nation's highway-rail crossings. The 55 individual proposals taken together represent a comprehensive Departmental effort that has elevated highway-rail crossing safety across the Modal Administrations to deal with this important issue.

The Department's Grade Crossing Safety Task Force, designed to complement the ongoing work of the Action Plan and to further the Department's goals, will address issues beyond the scope of the Action Plan. Through the Grade Crossing Safety Task Force, the Department will investigate and assess the decisionmaking and coordination processes, and safety aspects pertaining to the planning, design, construction, maintenance, operation, and inspection of highway-rail grade crossings. Following this assessment, the Task Force will develop recommendations and submit them to the Secretary.

Participants: From the Department of Transportation, the Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA) will be members of the Task Force. The Associate Deputy Secretary of Transportation will serve as its Chairman. Each member agency will select one representative and one alternate to serve as delegates to the Task Force on grade crossing issues. The National Transportation Safety Board (NTSB), an independent Federal agency, also will participate as a Task Force member. Representative will attend regular meetings and participate in necessary assignments. A ''Blue Ribbon'' Working Group consisting of people with expertise in the use or design of railroad grade crossings will be established to assist the Task Force by providing additional information.

Key Issues: The accidents and deaths at highway-rail grade crossings continue to be a problem nationwide. The Rail-Highway Crossing Safety Action Plan addresses some aspects of these issues, however, questions remain concerning the level of planning coordination and review of safety considerations associated with grade crossings. The Task Force will examine these questions as they relate to five potential problem areas:

1. Interconnected (Pre-empted) signals. Highway traffic signals along roadways in close proximity to rail crossings which are triggered by oncoming trains.
2. Storage. The roadway space allotted for vehicles stopped between a road intersection and nearby railroad tracks.
3. High-profile crossings. Junctions at which railroad tracks are elevated above the crossing roadway surface, thus requiring vehicular traffic to pass over a ''hump'' and exposing the vehicles to the risk of getting ''hung-up'' on the tracks.
4. Light rail transit crossings. This most prevalent type of newly constructed highway-rail grade crossing also lacks standards for crossing design, warning devices, and traffic control measures.
5. Inclusion of grade crossing information in the permit process for slow, low, and other special vehicles including oversized and overweight vehicles whose route crosses a railroad right-of-way.

The NTSB recently issued a Class I Urgent Recommendation requesting the States to identify all highway/railroad grade crossings where control of a highway traffic signal is preempted by train movements and to take corrective action where sufficient time is not provided to clear vehicles stopped on the tracks before the train arrives at the crossing. As a result, an inventory of highway-rail crossings which have interconnected signals will be compiled by the FRA using input from the NTSB, the States and the railroads.

Technology shows promise for enhancing safety in these areas. However, technology alone will not solve the problem. Therefore, the focus of the Task Force will not be on the various technologies which could serve as solutions to prevent accidents at the highway-rail crossings. Rather, the Task Force will concentrate on the decisionmaking processes which result in the construction and maintenance of the grade crossing infrastructure. In order to accomplish this, the Task Force will specifically address the following:

1. Federal, State, local, and industry standards, criteria and guidelines governing the planning, design, construction, maintenance, operation and use of highway-rail grade crossings and the effectiveness of these regulations and standards.
2. Planning, design, construction, maintenance, operation, and inspection decisionmaking processes for grade crossings.
3. The construction and reconstruction/alteration approval and periodic review processes, including coordination among the various levels of government and with the private sector.
4. The decisionmaking and procedural processes for defining acceptable crossing design and warning device design.

Task Force Activities: The Task Force will hold regularly scheduled meetings. In order to keep a timely work flow and to meet any schedules and deadlines, ad hoc meetings may be called to address issued and problems that need immediate discussion and resolution.

To determine where decisionmaking and coordination can be improved, the Task Force will review technical reports on planning, engineering, operations, maintenance, and inspection practices associated with highway-rail crossings. The objective of this Task Force effort is not to summarize the considerable body of literature that already exists on highway-rail crossing safety, but to identify gaps that might exist in standard-setting, system engineering and multidisciplinary reviews. The Task Force may create subgroups of Federal employees which would be asked to draft issue-specific working papers that can serve as the basis for the final report to the Secretary on March 1, 1996.

The Task Force will be involved in outreach to the transportation community through:

1. Publication of this Federal Register notice which outlines the Task Force activities and seeks written public comments and suggestions.
2. Creation of a dedicated FAX number and Internet address to allow the general public to submit comments to the task force.
3. Holding public meetings with State transportation officials, local community representatives, and others (such as the general public, industry groups, and safety organizations) to gain stake-holder input on grade crossing issues. Three public outreach meetings will be scheduled nationwide at locations representative of the potential problem areas listed above.
4. Create a ''Blue Ribbon'' Working Group comprised of diverse public and private sector entities that has relevant experience and expertise to provide specialized information that will assist the Task Force in its efforts to investigate and improve the safety of highway-rail grade crossings.

Final Product and Timeframe: The Task Force will submit a report to the Secretary that gives an overview of the

highway-rail grade crossing issues and problems along with any recommendations on how to solve any construction decision-making and safety problems that may be identified. The report must be submitted by March 1, 1996.

Issued this 22nd day of November, 1995, in Washington, D.C.

Michael P. Huerta,

Associate Deputy Secretary and Director, Office of Intermodalism.

[FR Doc. 95–29132 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–62–P–M

Coast Guard

[CGD 95–085]

Chemical Transportation Advisory Committee (CTAC), CTAC Subcommittee on Hazardous Substances Response Plan (HSRP); Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: CTAC and its HSRP Subcommittee will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. The meetings are open to the public.

DATES: The CTAC meeting will be held on Thursday, January 11, 1996, from 9;30 a.m. to 3:00 p.m. The HSRP Subcommittee meeting will be held on Wednesday, January 10, 1996, from 10 a.m. to 4 p.m. Persons wishing to make oral presentations should notify the Executive Director, listed below under **ADDRESSES,** on or before January 4, 1996.

ADDRESSES: The CTAC meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. Written material should be sent to Commander Kevin S. Cook, Executive Director, Commandant (G–MOS–3), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook Executive Director, or Lieutenant Rick J. Raksnis, Assistant to the Executive Director, Commandant (G–MOS–3), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2, section 1 *et. seq.* The agenda for the CTAC meeting will comprise the following topics:

(1) Introduction and swearing-in of new Executive Director and new members;

(2) Progress report from the *ad hoc* subcommittee on recommended 46 CFR part 152;

(3) Progress report from the subcommittee on Hazardous Substances Response Plans;

(4) Presentation of task statement, and formation of subcommittee on Prevention through People;

(5) Status Report on the Navigation and Vessel Inspection Circular (NCIV) on tank barge cleaning;

(6) Status Report on policy guidance for Marine Vapor Control Systems; and

(7) Status Report on the implementation of the International Safety Management Code (ISM), SOLAS Chapter IX.

The HSRP Subcommittee will review and discuss the work completed by each of the four work groups. Each work group will present its major accomplishments, and its plans for the future.

Attendance at all the meetings is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES,** no later than January 4, 1996. Written material may be submitted at any time for presentation to CTAC or the HSRP Subcommittee.

Dated: November 13, 1995.

Howard L. Hime,

Acting Director of Standards Directorate, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–29048 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; ''Technical Management Committee''; Notice of RTCA Technical Management Committee Meeting To Be Held December 1, 1995; Meeting Cancellation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Cancellation.

SUMMARY: The RTCA Technical Management Committee meeting scheduled to be held on December 1, 1995, as announced in a notice published in the Federal Register for November 13, 1995 (60 FR 57053), has been canceled. A new date has not been determined at this time.

Issued in Washington, D.C., on November 22, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–29014 Filed 11–27–95; 8:45 a.m.]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held January 10–12, 1996, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from the Previous Meeting; (4) Assemble Draft 0.1 of MOPS Document: Section 1 Purpose and Scope' Section 2.1.2 General Requirements, Intended Function; (5) Recertification of Post-Type Certification Changes: Answer from FAA Software NRS; (6) Proposed DO–178B Objectives Satisfied Independent of Target; (7) Update Glossary (RTCA Paper No. 280–94/SC182–10): Application, Channel, Data Base, Fault, Operating System, Partition, Process, Platform; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on November 22, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–29017 Filed 11–28–95; 8:45 a.m.]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 183; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public

Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meeting to be held January 17, 1996, beginning at 9:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036. The agenda will include: (1) Administrative Announcements; (2) Chairman's Opening Remarks; (3) Review and Approval of Agenda; (4) Review and Approval of Minutes of the Previous Meeting; (5) Review of Comments From Proposed Final Draft Ballot Process; (6) Consideration of Recommending Proposed Final Draft to TMC for Approval; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 22, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–29016 Filed 11–27–95; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent to Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) Imposed at Cleveland Hopkins International Airport, Cleveland, Ohio at Burke Lakefront Airport, Cleveland, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC imposed at Cleveland Hopkins International Airport at Burke Lakefront Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William F. Cunningham Jr., A.A.E., Director of the Department of Port Control at the following address: Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Control under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Conrad, Project Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313) 487–7295. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC imposed at Cleveland Hopkins International Airport at Burke Lakefront Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR 158).

On November 8, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Cleveland, Department of Port Control, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 30, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–04–U–00–CLE.

Level of the PFC: $3.00.

Actual charge effective date: November 1, 1992.

Estimated charge expiration date: February 1, 1997.

Total approved net PFC revenue: $57,819,282.

Brief description of proposed project:

Burke Lakefront Airport

Sewers for Confined Disposal Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Department of Port Control, Cleveland Hopkins International Airport.

Issued in Des Plaines, Ill., on November 20, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–28994 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chisholm-Hibbing Airport, Hibbing, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chisholm-Hibbing Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Danielson, Airport Manager, Chisholm-Hibbing Airport Authority, at the following address: Chisholm-Hibbing Airport Authority 11038 Highway 37, Hibbing, Minnesota 55746.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Chisholm-Hibbing Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Chisholm-Hibbing Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 8, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Chisholm-Hibbing Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–01–C–00–HIB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1996.

Proposed charge expiration date: October 1, 2004.

Total estimated PFC revenue: $340,667.

Brief description of proposed project(s):

1. Reimbursement for 1991 Parallel Taxiway and Pavement Rehabilitation.
2. Reimbursement for the 1993 Airfield Signs and Drainage Improvements.
3. Reimbursement for 1994 Airport Drainage, Perimeter Fence, Airport Layout Plan (ALP) Update and Pavement Rehabilitation.
4. Fencing.
5. Passenger Facility Charge (PFC) Application administration costs.
6. Drainage Improvements.
7. Passenger Terminal Building Remodeling.
8. Environmental Assessment (EA) for Runway 13 Medium Intensity Runway Lighting System with Runway Alignment Indictor Lights (MALSR).
9. Replace high speed snow plow and carrier unit.
10. Entrance Road and Parking Lot Reconfiguration and Pavement Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chisholm-Hibbing Airport Authority office.

Issued in Des Plaines, Ill. on November 20, 1995.

Benito De Leon,

Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–28993 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rochester International Airport, Rochester, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steven W. Leqve, Airport Manager of the City of Rochester, Rochester, MN at the following address: Helgerson Drive Southwest, Rochester, MN 55902.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rochester under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra Depottey, Program Manager, Airport District Office, 6020 28th Avenue South Room 102, Minneapolis, MN 55450, (612) 725–4359. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 9, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rochester was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 10, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–01–C–00–RST.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1996.

Proposed charge expiration date: April 1, 1999.

Total estimated PFC revenue: $1,160,582.

Brief description of proposed project(s):

Projects to Impose and Use

Reconstruct Runway 13/31, Reconstruct Taxiway A, D, E & F, Reconstruct NW Apron, Acquire Airport Snow Removal Vehicles (plow & grader), Install Airport Security access system, Install signs, replace beacon and Install electrical regulator, Reconstruct portion of Taxiway A, Conduct Part 150 Noise study, Update Master Plan, Modify cooling system in terminal building, Conduct environmental assessment for extension of Runway 2/20, Reconstruct Taxiways B, G, H, and J, Acquire Snow removal Equipment (blower and broom), PFC Administration.

Impose-Only Project

Acquire land for Runway 2/20 extension Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois on November 20, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–28992 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Lincoln, NE

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 beltway project on the south and east fringes of the City of Lincoln, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Barnes, Operations Engineer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795. Mr. Richard Erixson, Director of Public Works, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska 68508, Telephone: (402) 441–7566.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Nebraska Department of Roads and the City of Lincoln, Nebraska, is preparing a major investment study (MIS) and environmental impact statement (EIS) for the South and East Beltways around Lincoln. The primary goal of the study work is to determine the need and feasibility of a new transportation corridor on the south and east fringes of Lincoln, and the ultimate preservation of such corridors. The project will encompass two project corridors. The general limits for the South Corridor are: from Yankee Hill Road on the north to 0.8 km (0.5 mi) south of Saltillo Road on the south, and from US 77 on the west to Nebraska Highway 2 on the east. The general limits for the East Corridor are: from 96th Street on the west to 148th Street on the east, and from I–80 on the north to Nebraska Highway 2 on the south. The approximate length of the total study area is 27.4 km (17mi).

The principle alternatives will include (1) taking no action, (2) building local arterial roads on section lines, and (3) plans for an eventual bypass. Other alternatives under consideration include intermodal and multi-use options, alternative design and enhancement features, alternative alignments, and phasing.

The general design concept for the proposed South and East Beltways envisions a multi-lane freeway or expressway-type facility with consideration to such design features as depressed center median, paved shoulders, full control of access, fence along the right-of-way, bridges at creek crossings, two-span bridges over the beltways, few if any at-grade intersections, and 62 to 75 m (203–246 ft) typical right-of-way widths. Greater right-of-way widths could be proposed for buffer areas or joint use corridor uses. At a minimum, interchanges would connect the South and East Beltways to US 77, Nebraska Highway 2, US 34 and I–80.

Several public information meetings will be held. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the meetings and hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project 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.)

Philip E. Barnes,

Operations Engineer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska

[FR Doc. 95–28675 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–927]

Aquarius Marine Co. and Atlas Marine Co.; Application for Payment of Unused Operating-Differential Subsidy

Notice is hereby given that Aquarius Marine Company (Aquarius) and Atlas Marine Company (Atlas), contractors under Operating-Differential Subsidy Agreements, Contracts MA/MSB–309 and MA/MSB–274, respectively, request the Maritime Subsidy Board to extend the term of these contracts by four years each, to expire October 15, 1999, and December 30, 2000, subject to the restriction that subsidy will not be paid for more than 1,188 voyage days (about 3.25 years) of operations in subsidized service during the additional term, under whichever of the two contracts such operations may take place. In the alternative, Aquarius and Atlas requests a new four year operating-differential subsidy contract covering the operations of the CHARLESTON.

Aquarius and Atlas (applicants) advise that subsidized operations under Contract MA/MSB–309 terminated October 15, 1995, and subsidized operations under Contract MA/MSB–274 will terminate December 29, 1996. The applicants state that the vessels under these contracts were the AMERICAN HERITAGE, GOLDEN MONARCH, and CHARLESTON, under a subsidy-sharing arrangement stipulated in Addendums 84 and 85 of the respective contracts. Effective January 12, 1993, these addenda amended the contracts by adding to Article I–3(a) the CHARLESTON as a vessel eligible for subsidy under the terms of the two contracts and permitted to be substituted in the subsidized service for Aquarius's GOLDEN MONARCH and Atlas' AMERICAN HERITAGE, subject to the condition that the annual amount of subsidy accrued for all three vessels operating under the two contracts could not exceed two ship-years of subsidized operations annually.

The applicants advise that the AMERICAN HERITAGE entered subsidized service on or about December 30, 1976; the GOLDEN MONARCH on or about October 15, 1975; and the CHARLESTON on or about January 12, 1993. The AMERICAN HERITAGE was withdrawn, sold, and scrapped in or about November 1994. The GOLDEN MONARCH was withdrawn, sold, and transferred to foreign registry in or about June 1995. The CHARLESTON continues in subsidized service.

The applicants advise that the AMERICAN HERITAGE performed no subsidized service after June 5, 1993, and the GOLDEN MONARCH operated sometimes in and sometimes out of subsidized service after October 25, 1992. As a result, these two vessels will have accumulated more than 2,500 voyage days of ''unused subsidy''—that is to say, voyage days during which they had a contractual right to earn subsidies but refrained from doing so—from those dates to the end of the terms of the respective contracts. The applicants advise that allowing for the absorption of 1,370 of these unused days by subsidized operations of the CHARLESTON, there will remain 1,188 unused days of entitlement to subsidy. They are proposing that the contracts be extended to enable them to absorb these 1,188 days by continuing the subsidized operation of the CHARLESTON. 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, DC 20590. Comments must be received no later than 5 p.m. on December 12, 1995. 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. 2.804 Operating-Differential Subsidies).

By order of the Maritime Subsidy Board.

Dated: November 21, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–29041 Filed 11–27–95; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee, U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement (''NAFTA'') Implementation Act (Pub. L. 103–182), established an advisory committee (the ''Advisory Committee'') for the community adjustment and investment program (the ''Program''). The Program will provide financing to businesses and individuals in communities adversely impacted by NAFTA to create new jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in Los Angeles, California, at the Mexican American Opportunity Foundation (MAOF) Auditorium, 401 N. Garfield Avenue, Montebello, CA 90640, from 9 a.m. to 1 p.m. on Tuesday, December 12, 1995. The room will accommodate approximately 75 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to December 8, 1995. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1124, Washington, DC 20220 no later than Tuesday, December 5, 1995. If you have any questions, please call Dan Decena at (202) 622–0637. (Please note that this telephone number is not toll-free.)

Mozelle W. Thompson

Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 95–28996 Filed 11–27–95; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

Proposed Agency Information Collection Activities; Comment Request; Public Input

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Manufacturer/Shipper Identification Required at Time of Entry. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 15, 1996, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn: Norman Waits, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Manufacturer/Shipper Identification Required at Time of Entry.

OMB Number: 1515–0170.

Form Number: N/A.

Abstract: This collection of information requires that all importers provide the name and complete address of the individual or firm who is responsible for invoicing the merchandise. This information assists Customs in the selection process for intensive examinations or scrutiny of those shipments that are considered high risk for violations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 119,570.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 5,978.

Dated: November 22, 1995.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 95–28997 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

Proposed Agency Information Collection Activities; Comment Request; Public Input

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Authorization of Bonded Carriers to Transport Cargo Within Port Limits Without Obtaining Cartman's License. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 15, 1996, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Authorization of Bonded Carriers To Transport Cargo Within Port Limits Without Obtaining Cartman's License .

OMB Number: 1515–0193.

Form Number: N/A.

Abstract: This collection of information authorizes the approval of a bond and license to transact business as a cartman or a lighterman for the cartage or lighterage of merchandise entered for warehouse, designated for examination, taken to container stations, or taken into custody as unclaimed.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 42.

Dated: November 22, 1995.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 95–28999 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

Proposed Agency Information Collection Activities; Comment Request; Public Input

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of International Transportation of Currency or Monetary Instruments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 15, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of International Transportation of Currency or Monetary Instruments.

OMB Number: 1515–0079.

Form Number: CF–4790.

Abstract: This collection of information is required to provide Customs Agents with an established record, where none previously existed, of currency and negotiable instruments entering the United States, and has a high level of usefulness in criminal, tax and regulatory investigations and proceedings.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 178,943.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 29,830.

Dated: November 22, 1995.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 95–29000 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

Proposed Agency Information Collection Activities; Comment Request; Public Input

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to

comment on an information collection requirement concerning Request for Information. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 15, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1515–0068.

Form Number: CF–28.

Abstract: This collection of information is requested by Customs to provide additional information from importers if sufficient information is not provided on the invoice or entry documentation. This helps Customs Officers in ascertaining the classification and rate of duty on imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 30,000.

Dated: November 22, 1995.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 95–28998 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (70 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Pergamon: The Legend of Telephos on the Great Altar'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, from on or about January 16, 1996, through on or about April 14, 1996, and at The California Palace of the Legion of Honor, San Francisco, California, from on or about May 4, 1996, through on or about September 8, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: November 20, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–28913 Filed 11–27–95; 8:45 am]

BILLING CODE 8230–91–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Loan Guaranty Funding Fee Transmittal, VA Forms 26–8986 and 26–8986–1

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 29, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0474.

Title and Form Number: Loan Guaranty Funding Fee Transmittal, VA Forms 26–8986 and 26–8986–1.

Type of Review: Extension of a currently approved collection.

Need and Uses: Use of these forms will allow lending institutions to transmit funding fees required for VA-guaranteed home loans to a lockbox depository.

Current Actions: A funding fee must be paid to VA before loans will be guaranteed. A fee is payable for both home and manufactured home loans and for assumptions of VA-guaranteed loans. The only exceptions are loans made to veterans receiving VA compensation for service-connected disabilities, or who, but for receipt of retirement pay, would be entitled to receive compensation, and loans made to surviving spouses of veterans who died in service or from a service-connected disability regardless of whether the spouse has his or her own eligibility, provided the spouse's eligibility was not used to obtain the VA-guaranteed loan. This fee is required by 38 U.S.C. 3729, 38 CFR 36.4232 and 36.4312. There is a schedule of funding fees to be applied to VA home loans. The amount of the fee will be dependent

[1] A copy of this list may be obtained by contacting Neila Sheahan, Assistant General Counsel, at 202/619–5030; the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

upon whether the veteran's eligibility is based upon active or reservist duty and upon the amount of down-payment, if any, paid by a veteran.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 58,333 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 350,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 9, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28948 Filed 11–27–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 29, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0320.

Title and Form Number: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is a legal agreement between builder/seller, lender, and escrow agent covering escrow of funds for unfinished exterior onsite improvements of newly constructed housing proposed for VA guaranteed financing.

Current Actions: Title 38, U.S. Code, Section 501(a) authorizes the Secretary to make necessary rules and regulations appropriate to carry out the laws administered by VA. Accordingly, escrow procedures were originally developed so that the Loan Guaranty Program could carry practices similar to those of the private mortgage lending industry. The escrow procedures and VA Form 26–1849 were developed for the benefit of the veteran who may gain occupancy of the property when specified exterior onsite improvements must be postponed because of delays.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: Because escrow agreements, such as VA Form 26–1849, are common practices in the building and lending industry, only 1 hour is being requested.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 32,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 9, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28947 Filed 11–27–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 228
Tuesday, November 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: November 29, 1995, 10:00 a.m.

PLACE: 888 First Street, NE., Room 2C, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 642nd Meeting—November 29, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–10078, 021, Carl and Elaine Hitchcock
CAH–2.
Omitted
CAH–3.
Docket # P–2436, 035, Consumers Power Company
Other #s P–2447, 035, Consumers Power Company
P–2448, 045, Consumers Power Company
P–2449, 033, Consumers Power Company
P–2450, 033, Consumers Power Company
P–2453, 032, Consumers Power Company
P–2580, 052, Consumers Power Company
CAH–4.
Docket # P–5456, 003, Nekoosa Packaging Corporation
CAH–5.
Docket # P–10455, 004, JDJ Energy Company
CAH–6.
Docket # UL94–1, 001, Union Water Power Company
Other #s UL94–3, 001, Kennebec Water Power Company
CAH–7.
Docket # P–5, 026, Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation
CAH–8.
Docket # P–4797, 034, Cogeneration, Inc.

Consent Agenda—Electric

CAE–1.
Docket # ER95–1586, 000, Citizens Utilities Company
Other #s EL96–17, 000, Citizens Utilities Company
CAE–2.
Docket # ER96–43, 000, San Diego Gas and Electric Company
CAE–3.
Docket # EC94–23, 000, The Washington Water Power Company and Sierra Pacific Power Company
Other #s ER95–808, 000, The Washington Water Power Company and Sierra Pacific Power Company
CAE–4.
Docket # ER93–465, 022, Florida Power & Light Company
Other #s EL93–28, 008, Florida Power & Light Company
EL93–40, 008, Florida Power & Light Company
EL94–12, 008, Florida Power & Light Company
EL94–28, 006, Florida Power & Light Company
EL94–47, 006, Florida Power & Light Company
ER93–922, 013, Florida Power & Light Company
CAE–5.
Docket # ES96–4, 000, El Paso Electric Company
CAE–6.
Docket # ER95–215, 000, Southern California Edison Company, the Montana Power Company, Nevada Power Co., and Pacificorp, et al.
CAE–7.
Omitted
CAE–8.
Docket # ER95–1453, 001, Commonwealth Electric Company
CAE–9.
Docket # ER95–1842, 001, New England Power Company
Other #s ER92–764, 005, New England Power Company
ER92–766, 005, Northeast Utilities Service Company
ER95–1668, 001, Northeast Utilities Service Company
CAE–10.
Docket # ER95–1468, 001, Southern Company Services, Inc.
Other #s ER95–976, 001, Southern Energy Marketing, Inc.
TX95–5, 001, Southeastern Power Administration
CAE–11.
Docket # ER95–791, 001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Co.
CAE–12.
Omitted
CAE–13.
Docket # EG96–8, 000, Compania Samalayuca II, S.A. De C.V.
CAE–14.
Docket # EG96–4, 000, Jamaica Energy Partners
CAE–15.
Docket # EG96–5, 000, Jamaica Energy Operators
CAE–16.
Docket # EG96–2, 000, Houston Industries Energy—Peru, Inc.
CAE–17.
Docket # EG96–3, 000, China U.S. Power Partners I, Ltd.
CAE–18.
Omitted
CAE–19.
Docket # EG96–1, 000, International Power Advisors, Inc.
CAE–20.
Docket # RM96–3, 000, Delegation of Authority to the Secretary, Director of Office of Electric Power and the General Counsel
CAE–21.
Docket # EL95–31, 000, City of Concord, North Carolina, Town of Dallas, North Carolina, et al. v. Duke Power Company
CAE–22.
Docket # EL95–29, 000, Kamine/Besicorp Allegany L.P.
Other #s QF88–292, 003, Kamine/Besicorp Allegany L.P.

Consent Agenda—Gas and Oil

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Omitted
CAG–4.
Docket# PR95–15, 000, Manchester Pipeline Corporation
CAG–5.
Omitted
CAG–6.
Docket# RP96–22, 000, Iroquois gas Transmission System, L.P.
CAG–7.
Omitted
CAG–8.
Omitted
CAG–9.
Docket# RP96–28, 000, Tennessee Gas Pipeline Company
CAG–10.
Docket# RP96–29, 000, National Fuel Gas Supply Corporation
CAG–11.
Omitted
CAG–12.
Docket# RP96–34, 000, Texas Eastern Trasnmission Corporation

OTHER#S RP96–34, 002, Texas Eastern Transmission Corporation
CAG–13.
Docket# RP96–35, 000, East Tennessee Natural Gas Company
CAG–14.
Omitted
CAG–15.
Omitted
CAG–16.
Docket# TM96–3–29, 000, Transcontinental Gas Pipe Line Corporation
CAG–17.
Docket# RP94–220, 009, Northwest Pipeline Corporation
CAG–18.
Omitted
CAG–19.
Docket# RP95–326, 004, Natural Gas Pipeline Company of America
OTHER#S CP95–534, 000, Natural Gas Pipeline Company of America
CP95–535, 000, Natural Gas Pipeline Company of America
RP95–242, 002, Natural Gas Pipeline Company of America
RP95–242, 005, Natural Gas Pipeline Company of America
RP95–326, 001, Natural Gas Pipeline Company of America
RP95–424, 000, Natural Gas Pipeline Company of America
CAG–20.
Docket# RP96–23, 000, Natural Gas Pipeline Company of America
CAG–21.
Docket# RP96–33, 000, Northern Natural Gas Company
CAG–22.
Omitted
CAG–23.
Omitted
CAG–24.
Docket# RP94–96, 012, CNG Transmission Corporation
Other#s RP94–213, 009, CNG Transmission Corporation
RP95–115, 003, CNG Transmission Corporation
RP95–116, 000, CNG Transmission Corporation
RP95–222, 000, CNG Transmission Corporation
TM95–2–22, 000, CNG Transmission Corporation
CAG–25.
Docket# RP95–182, 000, ANR Pipeline Company
CAG–26.
Docket# RP95–197, 004, Transcontinental Gas Pipe Line Corporation
CAG–27.
Docket# RP95–175, 003, Mojava Pipeline Company
CAG–28.
Omitted
CAG–29.
Docket# RP96–27, 000, Northwest Pipeline Corporation
CAG–30.
Docket# RP96–31, 000, Northwest Pipeline Corporation
CAG–31.
Docket# PR94–22, 000, Mobil Vanderbilt-Beaumont Pipeline Company
Other#s PR94–22, 001, Mobil Vanderbilt-Beaumont Pipeline Company
CAG–32.
Docket# RP88–262, 029, Panhandle Eastern Pipe Line Company
Other#s RP88–262, 022, Panhandle Eastern Pipe Line Company
RP88–262, 023, Panhandle Eastern Pipe Line Company
RP88–262, 026, Panhandle Eastern Pipe Line Company
RP88–262, 027, Panhandle Eastern Pipe Line Company
RP88–262, 028, Panhandle Eastern Pipe Line Company
CAG–33.
Docket# TM96–1–59, 001, Northern Natural Gas Company
CAG–34.
Docket# RP95–429, 001, ANR Pipeline Company
CAG–35.
Docket# OR95–5, 001, Mobil Oil Corporation V. SFPP, L.P.
Other#s OR92–8, 006, SFPP, L.P.
OR94–4, 003, SFPP, L.P.
CAG–36.
Docket# RP95–190, 004, Williams Natural Gas Company
CAG–37.
Docket# RP95–146, 001, Texas Gas Transmission Corporation
CAG–38.
Docket# AC93–116, 001, Northern Border Pipeline Company
CAG–39.
Docket# RP95–98, 002, Columbia Gas Transmission Corporation
Other#s CP95–186, 002, Tennessee Gas Pipeline Company
CP95–231, 002, Ozark Gas Transmission System
CP95–232, 002, Ozark Gas Transmission System
RP95–144, 002, Tennessee Gas Pipeline Company
CAG–40.
Omitted
CAG–41.
Docket# RP95–303, 002, Williams Natural Gas Company
CAG–42.
Docket# RP95–141, 001, Pacific Gas Transmission Company
CAG–43.
Docket# RP91–203, 057, Tennessee Gas Pipeline Company
CAG–44.
Docket# RP95–206, 001, Tennessee Gas Pipeline Company
CAG–45.
Docket# RP95–208, 001, Kansas and Oklahoma Cities v. Williams Natural Gas Company
CAG–46.
Docket# GP90–11, 004, Nicor Exploration Company
CAG–47.
Docket# RP90–137, 023, Williston Basin Interstate Pipeline Company
Other#S RP90–137, 020, Williston Basin Interstate Pipeline Company
RP90–137, 021, Williston Basin Interstate Pipeline Company
RP90–137, 022, Williston Basin Interstate Pipeline Company
RP90–137, 023, Williston Basin Interstate Pipeline Company
RP90–137, 025, Williston Basin Interstate Pipeline Company
RP90–137, 026, Williston Basin Interstate Pipeline Company
CAG–48.
Omitted
CAG–49.
Docket# RP95–112, 012, Tennessee Gas Pipeline Company
CAG–50.
Docket# RP91–203, 058, Tennessee Gas Pipeline Company
Other#S RP92–132, 045, Tennessee Gas Pipeline Company
CAG–51.
Docket# IS94–1, 000, Phillips Pipe Line Company
Other#S IS94–21, 000, Phillips Pipe Line Company
OR94–1, 000, Sinclair Oil Corporation v. Phillips Pipe Line Company
CAG–52.
Docket# IS94–9, 000, Total Pipeline Corporation
Other#S IS94–25, 000, Total Pipeline Corporation
IS95–4, 000, Total Pipeline Corporation
CAG–53.
Docket# MG88–54, 006, Trunkline Gas Company
CAG–54.
Docket# MG95–6, 001, Young Gas Storage Company, LTD.
CAG–55.
Docket# MG95–9, 000, National Fuel Gas Supply Corporation
CAG–56.
Omitted
CAG–57.
Docket# CP94–183, 002, El Paso Natural Gas Company
CAG–58.
Omitted
CAG–59.
Docket# CP95–482, 000, Columbia Gas Transmission Corporation
CAG–60.
Docket# CP95–505, 000, Southern Natural Gas Company
Other#S RP95–301, 000, Southern Natural Gas Company
CAG–61.
Docket# CP95–636, 000, Transcontinental Gas Pipe Line Corporation
CAG–62.
Docket# CP95–645, 000, Colorado Interstate Gas Company
CAG–63.
Docket# CP94–763, 000, Northern Natural Gas Company
CAG–64.
Docket# CP95–677, 000, Colorado Interstate Gas Company
CAG–65.
Docket# CP93–685, 002, Tuscarora Gas Transmission Company
CAG–66.
Docket# CP95–464, 000, Continental Natural Gas, Inc. v. Colorado Interstate Gas Company
CAG–67.
Docket# CP95–657, 000, Columbia Gas Transmission Corporation
CAG–68.

Docket# CP95–272, 000, Mobil Natural Gas, Inc.
Other#S CP95–270, 000, Northern Natural Gas Company
CAG–69.
Docket# CP94–610, 000, Enron Gathering Company
Other#S CP94–608, 000, Northern Natural Gas Company
CP94–608, 001, Northern Natural Gas Company
CP94–608, 002, Northern Natural Gas Company
CP94–608, 003, Northern Natural Gas Company
CP94–608, 004, Northern Natural Gas Company
CP94–610, 001, Enron Gathering Company
CP94–610, 002, Enron Gathering Company
CP94–610, 003, Enron Gathering Company
CP94–610, 004, Enron Gathering Company
MT95–12, 000, Northern Natural Gas Company
CAG–70.
Docket# PR95–14, 000, Louisiana Resources Pipeline Company, L.P.

Hydro Agenda

H–1. Reserved

Electric Agenda

E–1. Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Docket# RM96–5, 000, Gas Pipeline Facilities and Services on the Outer Continental Shelf, et al.

Dated: November 22, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29138 Filed 11–24–95; 12:27 pm]

BILLING CODE 6717–01–P

Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, December 4, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29165 Filed 11–24–95; 12:43 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 27, December 4, 11, and 18, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of November 27

There are no meetings scheduled for the Week of November 27.

Week of December 4—Tentative

Friday, December 8

1:30 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of December 11—Tentative

Tuesday, December 12

10:00 a.m.
Briefing by DOE on Statue of High Level Waste Program (Public Meeting)
2:00 p.m.
Briefing on Materials Events Data Base (Public Meeting)
(Contact: Samuel Pettijohn, 301–415–6822)

Thursday, December 14

10:00 a.m.
Briefing on Industry Restructuring and Deregulation (Public Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting)
(Contact: Denny Crutchfield, 301–415–1199)
2:00 p.m.
Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of ''Georgia Power Company's Interlocutory Appeal of Licensing Board Discovery Order'' (Public Meeting) was held on November 21.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: November 22, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–29134 Filed 11–24–95; 10:41 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATE: A regular open meeting will be held Wednesday, December 13, 1995, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: November 20, 1995.

Robert E. McCally,

General Counsel.

[FR Doc. 95–29121 Filed 11–24–95; 12:26 pm]

BILLING CODE 7630–01–M

Corrections

Federal Register
Vol. 60, No. 228
Tuesday, November 28, 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

Agricultural Marketing Service

7 CFR Part 1049

[Docket No. AO-14-A66, etc.; DA-92-11]

Milk in the New England and Other Marketing Areas; Order Amending the Orders

Correction

In rule document 95–9009 beginning on page 18952 in the issue of Friday, April 14, 1995 make the following correction:

§1049.51 [Corrected]

On page 18965, in §1049.51, in the second column, the section number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–205–AD; Amendment 39–9421; AD 95–22–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

Correction

In rule document 95–27075 beginning on page 55785 in the issue of Friday, November 3, 1995, make the following correction:

Under the heading **DATES:**, in the second full paragraph, in the third line, ''January 2, 1995'' should read ''January 2, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8618]

RIN 1545-AM15

Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

Correction

In rule document 95–21838 beginning on page 46500 in the issue of Thursday, September 7, 1995, make the following correction:

§ 1.954-2 [Corrected]

On page 46527, in the first column, in § 1.954-2(g)(3)(ii), in the third line, ''§ 1.954-1(c)(5)'' should read ''§ 1.964-1(c)(5)''.

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 60, No. 228

Tuesday, November 28, 1995

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Public inspection announcement line **523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

9002.....57537
9003.....57537
9004.....57537
9006.....57537
9007.....57537
9008.....57537
9032.....57537
9033.....57537
9034.....57537, 57538
9036.....57537
9037.....57537
9038.....57537, 57538
9039.....57537

Proposed Rules:
9002.....56268

12 CFR

4.....57315
10.....57315
11.....57315
18.....57315
204.....57911
Ch. VI.....57913
615.....57916, 57919
620.....57919
701.....58203, 58502
705.....58502
707.....57173
741.....58502
943.....57681

Proposed Rules:
614.....57962
615.....57963
701.....55663
960.....55487

13 CFR

122.....55653

Proposed Rules:
101.....57965
102.....57970
103.....57980
105.....58260
107.....58530
114.....55808
115.....58263
121.....57982
123.....58014
125.....58276
132.....58282
133.....57965
134.....58282
135.....57965
137.....57970
142.....58297

14 CFR

23.....57922
25.....56223
29.....55774
33.....58204
35.....58508
39 .....55443, 55781, 55784, 55785, 56115, 56224, 56506, 56937, 56939, 56941, 57174, 57333, 57539, 57541, 57823, 57824, 58208, 58209, 58210, 58212, 58213, 58215, 58217, 58218, 58220, 58731
61.....57334
63.....57334
65.....57334
71 .....55445, 55649, 55655, 55656, 55787, 56508, 56509, 57334, 57842, 57843, 58509
97 .....56509, 56944, 58510
108.....55656, 57334
121.....57334, 57335
135.....57334

Proposed Rules:
Ch. I.....56269
1.....58492
23.....55491
39 .....55491, 55495, 55496, 55668, 55673, 55680, 55681, 55811, 56270, 56271, 56274, 57201, 57840, 58023, 58579, 58580, 58583, 58584, 58586
71 .....55498, 55502, 55503, 55813, 55814, 56276, 56277, 56539, 56639, 57551, 57552, 57842, 57843, 58020, 58021, 58022

15 CFR

776.....58512
799.....58512
801.....57335
902.....58221

Proposed Rules:
945.....56540

16 CFR

3.....58514
259.....56230
305.....56945
435.....56949

Proposed Rules:
423.....57552

17 CFR

232.....57682

Proposed Rules:
36.....56093

18 CFR

11.....55992, 57924

Proposed Rules:
Ch. I.....56278
35.....57844, 58304
284.....55504

19 CFR

10.....55995
12.....55995, 58516
102.....55995
111.....56117
178.....55995

Proposed Rules:
134.....57559

20 CFR

404.....56511
498.....58225
626.....58228
632.....58228

Proposed Rules:
498.....58305

21 CFR

5.....57337
73.....55446
103.....57076
129.....57076
146.....56513
165.....57076
175.....57338
177.....57926
184.....55788, 57076
310.....57927
355.....57927
369.....57927
429.....56515
430.....58229
436.....58229
442.....58229
510.....55657
520.....55657, 57832
522 .....55657, 57832, 57833
524.....55657
526.....55657
529.....55657
558 .....55657, 57927, 57528

Proposed Rules:
101.....56541
131.....56541
133.....56541
165.....57132
201.....58025
208.....58025
314.....58025
2510.....57845
601.....58025
812.....58308

22 CFR

Proposed Rules:
42.....56961
89.....58026

23 CFR

1317.....57930

Proposed Rules:
668.....56962
710.....56004
711.....56004
712.....56004
713.....56004
714.....56004
715.....56004
716.....56004
717.....56004
718.....56004
719.....56004
720.....56004
721.....56004
722.....56004
723.....56004
724.....56004
725.....56004
726.....56004
727.....56004
728.....56004
729.....56004
730.....56004
731.....56004
732.....56004
733.....56004
734.....56004
735.....56004
736.....56004
737.....56004
738.....56004
739.....56004
740.....56004

24 CFR

15.....58456
29.....57484
91.....56892
103.....58446
125.....58446
203.....57676
235.....56498
570.....56892
888.....55934
950.....57304
990.....57304

Proposed Rules:
570.....56104

25 CFR

Proposed Rules:
161.....55506

26 CFR

1 .....56117, 58234, 58731

27 CFR

Proposed Rules:
5.....58311
19.....58311
24.....58311
25.....58311
70.....58311
250.....58311

28 CFR

70.....57931

Proposed Rules:
35.....58462

29 CFR

102.....56233
452.....57177
1952.....56950
2619.....57339
2676.....57339

Proposed Rules:
Ch. XIV 58042
103.....58319
1910.....56127
1915.....56127
1926.....56127, 56279
2510.....57845
2607.....57372

30 CFR

250.....55683
701.....58480
773.....58480
785.....58480
816.....58480
817.....58480
914.....55649, 56516
916.....58234
920.....56521
935.....56523
936.....56528
943.....56529

Proposed Rules:
Ch. II.....58032
18.....57203
75.....57203
202.....56007
206.....56007, 57204
211.....56007, 56033
250.....57560
260.....57204
764.....55815
902.....56547
920.....58319
934.....56549
942.....55815
946.....58320

31 CFR

1.....57315

Proposed Rules:
224.....56551

32 CFR

199.....55448

706 .....56120, 56237, 57932, 57933, 58236
818a.....57934
892.....57934

Proposed Rules:
552.....55816

33 CFR

100.....55456
117.....58518
165 .....55456, 57341, 57342, 58519
334.....57934
402.....56121

Proposed Rules:
100.....55511
110.....56964
117.....55515
157.....55904
164.....55890
165.....56968

34 CFR

370.....55758
371.....58136

Proposed Rules:
535.....56920

36 CFR

Ch. I.....55789
1.....55789
7.....55789
9.....55789
14.....55789
20.....55789
64.....55789

Proposed Rules:
7.....56034

37 CFR

1.....55691
5.....55691
201.....57935
10.....55691
255.....55458

38 CFR

0–17.....57684
2.....55995
3.....55791, 57178
21.....55995

39 CFR

224.....57343
261.....57343
262.....57343
263.....57343
264.....57343
265.....57343
266.....57343
267.....57343
268.....57343
955.....57938

40 CFR

51.....57179
52 .....55459, 55792, 56238, 56241, 56244
60.....58237
63.....57834
70 .....55460, 57186, 57188, 57346, 57352, 57357, 57836
81.....55792
93.....57179
180.....57361, 57364
264.....56952
265.....56952
271.....56952, 58520
300.....55456, 58238
766.....56954
799.....56954

Proposed Rules:
Ch. I.....58033
51.....57691
52 .....55516, 55820, 56127, 56129, 56279, 56280
60.....57373
63 .....56133, 57628, 57846, 58589
70 .....55516, 56281, 56285, 57204, 58033
81.....55820
85.....57691
86.....55521, 57691
180 .....57375, 57377, 57379
260.....56468
261.....56468, 57747
262.....56468
263.....56468
264.....56468
265.....56468
266.....57747
268.....57747
270.....56468
271.....57747
302.....57747
372.....57382

41 CFR

101–41.....56246
Ch. 132.....57939
201–9.....55660
201–39.....56248

42 CFR

Proposed Rules:
100.....56289
1003.....58239

43 CFR

4.....58242
12.....57542
2800.....57058
2810.....57058
2880.....57058

Proposed Rules:
2810.....57561
3160.....58590
3170.....56970

Public Land Orders:
7170.....57192
7171.....57192
7172.....57192
7173.....57939
7174.....58521
7175.....58521

44 CFR

65 .....55467, 55469, 56249, 56251, 56252
67.....55471, 56253

Proposed Rules:
61.....56552
67 .....55525, 56300, 56307

46 CFR

90.....57630
98.....57630
125.....57630
126.....57630
127.....57630
128.....57630
129.....57630
130.....57630
131.....57630
132.....57630
133.....57630
134.....57630
135.....57630
136.....57630
170.....57630
174.....57630
175.....57630
501.....57940
514.....56122

Proposed Rules:
10.....56970
12.....56970
15.....56970
31.....55904
35.....55904

47 CFR

0.....55996
11.....55996
21.....57365
63.....57193
64.....56124
73 .....55996, 56000, 56001, 56125, 56255, 56531, 56532, 57368
74.....57365
80.....58243

Proposed Rules:
Ch. I.....55529
22.....58593
47.....56034
73 .....55476, 55661, 55801, 56310, 55820, 55821, 55822, 56553, 56554, 58038
74.....55476
90.....55484
97.....55485
100.....55822

48 CFR

1215.....55801
1252.....55801
1253.....55801
1815.....56125

Proposed Rules:
1.....57140
3.....57140
4.....57140
9.....55960
13.....57140
15.....56035
31.....56216, 57140
52.....57140
53.....57140
210.....57691
213.....57691
214.....57691
215.....57691
216.....56972
217.....56972
233.....56972
237.....56972
242.....57691
247.....56972
250.....56972
252.....56972, 57691
1213.....55827
1237.....55827
1252.....55827, 56975

49 CFR

1.....56532
173.....56957
384.....57543
564.....58522
571 .....57838, 57943, 57949, 58522
586.....57838
591.....57953

Proposed Rules:
229.....58322
567.....57694
568.....57694
571 .....56554, 57562, 57565, 57567, 57846, 58038

50 CFR

17.....56533
285.....57685
371.....56959
625 .....57685, 57686, 57955
630.....58245
638.....56533
641.....55805
642.....57686
663.....58527
672.....56255
675 .....55662, 55805, 55806, 56001, 57545
676.....57546, 58528
697.....58246

Proposed Rules:
10.....57386
12.....58468
13.....57386
17 .....56976, 57386, 57387, 58323
625.....58593
655.....57696

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2394/P.L. 104–57

Veterans' Compensation Cost-of-Living Adjustment Act of 1995 (Nov. 22, 1995; 109 Stat. 555)

Last List November 22, 1995