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Wednesday
January 31, 1996

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of 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

[Two Sessions]

WHEN:	February 6, 1996 at 9:00 am and February 21, 1996 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

Contents

Federal Register

Vol. 61, No. 21

Wednesday, January 31, 1996

Separate Parts In This Issue

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.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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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. 61, No. 21
Wednesday, January 31, 1996

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH29

Prevailing Rate Systems; Abolishment of Franklin, OH, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to abolish the Franklin, OH, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the five counties having continuing FWS employment as areas of application to the Greene-Montgomery, OH, NAF wage area for pay-setting purposes. Those five counties include three Ohio counties (Franklin, Licking, and Ross) and two West Virginia counties (Raleigh and Wayne).

DATES: This interim rule becomes effective on January 31, 1996. Comments must be received by March 1, 1996. Employees currently paid rates from the Franklin, OH, NAF wage schedule will continue to be paid from that schedule until their conversion to the Greene-Montgomery, OH, NAF wage schedule 1 day prior to the effective date of the next Greene-Montgomery, OH, wage schedule.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

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

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) recommended to the Office of Personnel Management that the Franklin, OH, FWS NAF wage area be abolished and that the five counties having continuing FWS employment be added as areas of application to the Greene-Montgomery, OH, NAF wage area. Those five counties include three Ohio counties (Franklin, Licking, and Ross) and two West Virginia counties (Raleigh and Wayne). The remaining Franklin wage area county (Cabell County, WV) is being deleted because it has no FWS employment. This change is necessary because the pending closure of the wage area host activity, Newark Air Force Base, leaves the Franklin wage area without an activity having the capability to conduct a wage survey.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

For Franklin County, proximity and transportation facilities and commuting patterns strongly favor Greene-Montgomery. The third criterion, similarities of the counties, is not definitive. For each of the three factors in this criterion, Franklin falls between the more populous Allegheny, PA, and the two less populous areas, Greene-Montgomery and Hardin-Jefferson, KY.

For Ross County, all three criteria favor Greene-Montgomery.

For Licking County, proximity and similarities of the counties strongly favor Greene-Montgomery. Transportation facilities and commuting patterns slightly favor Allegheny (23 commuters to Allegheny versus 20 commuters to Greene-Montgomery).

Raleigh County is a little closer to Allegheny, 372 kilometers (231 miles), than it is to Greene-Montgomery, 433 kilometers (269 miles). With no commuters to the survey areas under consideration, the second criterion does not distinguish between them. The third criterion, similarities of the counties, strongly favors Greene-Montgomery.

For Wayne County, both proximity and similarities of the counties favor Greene-Montgomery. The transportation facilities and commuting patterns criterion does not distinguish among the options because there are no commuters to the counties in question.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the 1996 Franklin, OH, NAF wage area survey must otherwise begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they 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.

Office of Personnel Management
Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—[Amended]

2. In Appendix B to subpart B, the listing for the State of Ohio is amended by removing the entry for Franklin.

3. Appendix D to subpart B is amended by removing the wage area list for Franklin, Ohio, and by revising the list for Greene-Montgomery, Ohio, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Ohio

* * * * *

Greene-Montgomery

Survey Area

Ohio:
Greene
Montgomery

Area of application. Survey area plus:

Ohio:
Clinton
Franklin (Effective date March 8, 1996)
Hamilton
Licking (Effective date March 8, 1996)
Ross (Effective date March 8, 1996)
West Virginia:
Raleigh (Effective date March 8, 1996)
Wayne (Effective date March 8, 1996)

* * * * *

[FR Doc. 96–1836 Filed 1–30–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92–139–9]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are affirming, without change, the pine shoot beetle regulations, as established and amended by a series of interim rules published in the Federal Register between November 1992 and January 1995. The regulations quarantine portions of several States and restrict the interstate movement of regulated articles from those areas to prevent the artificial spread of the pine shoot beetle into noninfested areas of the United States. The pine shoot beetle is a highly destructive pest of pine trees.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Knight, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–7935.

SUPPLEMENTARY INFORMATION:

Background

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During ''maturation feeding,'' young beetles bore up the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in the host trees. The pine shoot beetle is also a vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances. This pest damages urban trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

Pine shoot beetle hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus spp.*) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of the pine shoot beetle.

The Animal and Plant Health Inspection Service (APHIS) established regulations at 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) to prevent the artificial spread of the pine shoot beetle into noninfested areas of the United States.

The regulations were established and refined by a series of interim rules, beginning with Docket 92–139–1, which was effective on November 13, 1992, and published in the Federal Register on November 19, 1992 (57 FR 54492–54499). Docket 92–139–1 quarantined 42 counties in Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania, and established restrictions on the interstate movement of various articles, including pine trees, from the quarantined areas. We solicited comments on the interim rule for 60 days ending January 19, 1993. We received 96 comments by that date from nurseries, Christmas tree producers, State governments, and others. Nearly all asked us to ease restrictions by establishing a mechanism for allowing all pine nursery stock to be certified for interstate movement by visual inspection.

Docket 92–139–2, effective January 19, 1993, and published in the Federal Register on January 28, 1993 (58 FR 6346–6348), established the requested visual inspection protocol for pine nursery stock and provided an alternative treatment for pine Christmas trees. It also quarantined one additional county in Illinois. We solicited comments on the interim rule for 60 days ending March 29, 1993. We received six comments by that date from a nursery association, State governments, and others. One simply expressed support; the others encouraged APHIS to continue to examine treatment and inspection processes.

In response to these comments APHIS continued to examine its treatment and inspection processes. As a result, Dockets 92–139–3 through 92–139–8 further amended the regulations by removing fir, larch, and spruce from the list of regulated articles, relieving certain restrictions on logs and lumber of pine, allowing visual certification of certain pine transplants, providing a new and less harsh methyl bromide treatment schedule for cut pine Christmas trees, and adding pine stumps and pine bark nuggets (including bark chips) to the list of regulated articles. In addition, these dockets added 8 counties in Illinois, 13 counties in Indiana, 33 counties in Michigan, 10 counties in New York, 4 counties in Ohio, and 7 counties in Pennsylvania to the list of quarantined areas.

These interim rules were effective and published as follows: Docket 92–139–3, effective May 13, 1993, and published May 13, 1993 (58 FR 28333–28335); Docket 92–139–4, effective June 23, 1993, and published June 29, 1993 (58 FR 34681–34683); Docket 92–139–5, effective November 23, 1993, and published November 30, 1993 (58 FR 63024–63027); Docket 92–139–6, effective August 1, 1994, and published August 5, 1994 (59 FR 39937–39941); Docket 92–139–7, effective October 14, 1994, and published October 20, 1994 (59 FR 52891–52894); and Docket 92–139–8, effective December 29, 1994, and published January 9, 1995 (60 FR 2321–2323). We solicited comments on each interim rule for 60 days, and received a total of four comments, three in support and one expressing concern about enforcement of the regulations. The enforcement concerns involve the availability of money and persons to enforce the regulations, and not the need for changes in the regulations.

This document affirms, without change, the pine shoot beetle regulations, as established and amended by the interim rules listed above.

This action also affirms the information contained in the interim rules concerning Executive Orders 12291 and 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

Accordingly, we are adopting as a final rule, without change, the regulations at 7 CFR 301.50 through 301.50–10, as established and amended by interim rules published at: 57 FR 54492–54499 on November 19, 1992; at 58 FR 6346–6348 on January 28, 1993; at 58 FR 28333–28335 on May 13, 1993; at 58 FR 34681–34683 on June 29, 1993; at 58 FR 63024–63027 on November 30, 1993; at 59 FR 39937–39941 on August 5, 1994; at 59 FR 52891–52894 on October 20, 1994; and at 60 FR 2321–2323 on January 9, 1995.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 25th day of January 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–1855 Filed 1–30–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0915]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for creditors offering home-secured loans with total points and fees payable by the consumer at or before loan consummation that exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to annually adjust the $400 amount based on the annual percentage change in the Consumer Price Index as reported on June 1. The Board has adjusted the dollar amount from $400 to $412.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf only, please contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601—1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. Creditors are required to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The TILA and § 226.32(a)(1)(ii) of Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. See 15 U.S.C. 1602(aa).

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not ''report'' a CPI change on June 1; adjustments are reported in the middle of each month. The CPI–U is based on all urban consumers and represents approximately 80 percent of the U.S. population; the CPI–W is based on urban wage earners and clerical workers and represents about 30 percent of the population. The Board believes the index representing the broader population of U. S. consumers—the CPI–U—is the appropriate index to use in any adjustment to the $400 dollar figure.

The adjustment to the $400 dollar figure reflects the adjustment reported on May 15 (the rate ''in effect'' on June 1) which states the percentage increase from April 1994 to April 1995. During that period the CPI–U increased by 3.1 percent which would cause an adjustment of the $400 to $412.40. The Board is rounding that number to whole dollars for ease of compliance.

Adjustment

Effective January 1, 1996, under § 226.32(a), a home mortgage loan is covered by § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $412 or 8 percent of the total loan amount. The adjustment will be codified in the official staff commentary to Regulation Z.

By order of the Board of Governors of the Federal Reserve System, January 25, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–1859 Filed 1–30–96; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations found at 13 CFR Part 107, governing the Small Business Investment Company (SBIC) Program. It eliminates inconsistencies, clarifies procedures, accommodates program experience and industry changes, and provides for more efficient program operation. It also clarifies and shortens regulations where appropriate, eliminates redundant provisions, consolidates and reorganizes sections and clarifies ambiguous language.

EFFECTIVE DATE: This final rule is effective January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard Fagan, Office of Investment; telephone no. (202) 205–6510.

SUPPLEMENTARY INFORMATION: In response to a Memorandum from President Clinton for all federal agencies to simplify their regulations, SBA published a proposed rule on November 28, 1995, to revise the regulations governing the SBIC program. See 60 FR 58530 (November 28, 1995). The public was afforded a thirty-day period in which to submit comments on the proposed rule to SBA. During that period, SBA received over 30 letters containing over 200 comments. After giving careful consideration to the comments and concerns raised in those letters, SBA is today finalizing the proposed rule with certain modifications discussed below. Only those sections which have changed, which were commented on or which

need some clarification will be discussed.

In accordance with 5 U.S.C. 553(d)(3), SBA has determined that good cause exists to make this rule effective upon publication. Ample notice of material changes has been given the interested public through proposed rules published in the Federal Register inviting public comment and through distribution of draft rules before publication of the proposed rules. All comments received from the interested public have been carefully considered. Representatives of the entities affected by this rule concur with an immediate effective date. Almost all regulatory changes will relieve restrictions or merely reorganize and simplify text. To the extent there are substantive changes contained in these rules, SBA believes no prejudice will occur to affected entities by making the rules immediately effective. The affected entities will have had an adequate opportunity to take any necessary steps to be in compliance with the rules by the effective date, but to the extent that may not be the case, any instance of non-compliance with a changed regulatory provision during the first 30 days after publication will be treated with such liberality as may be needed to avoid prejudice. New fees imposed through these rules will not be enforced until at least 30 days after publication.

General Comments

Those comment letters which addressed the proposed renumbering, reorganization and rewrite of Part 107 were overwhelmingly complimentary. Some felt the proposed regulations were a vast improvement over the old, while others commended SBA on its efforts to simplify and streamline the regulations. Most agreed that the reorganization and stylistic revisions will make Part 107 easier to follow and understand. As one commenter stated, ''Practicality and common sense really pervade these new proposals.''

Part I

1. Subpart A—Introduction to Part 107

SBA agrees with the comment received on proposed § 107.20, suggesting that it is unnecessary to specifically mention Section 301(d) Licensees when discussing the fact that all Licensees must comply with all applicable regulations. The section has been revised and finalized accordingly.

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

a. ''Associate''

(1) Several commenters suggested that the proposed language defining ''any person regularly serving a Licensee in the capacity of attorney at law'' as an Associate was ambiguous and could be construed too broadly. SBA agrees and will return to the language in the current definition which states that an Associate includes ''any Person regularly serving a Licensee on retainer in the capacity of attorney at law''. The definition is finalized accordingly.

b. ''Control''

The proposed definition of ''Control'' has been adopted with a change suggested by one commenter. In the proposed rule, Control could be achieved through possession of the ''power to veto'' the direction of the management and policies of a concern; in the final rule, the reference to veto power is deleted. The commenter's concern was that this phrase could be interpreted so broadly as to prohibit normal covenants necessary to protect a Licensee's investments. This was not SBA's intention; furthermore the Agency believes that its concerns about negative Control of Small Businesses are sufficiently addressed by the reference in the definition to ''indirect'' Control, as well as by the ''presumption of Control'' provisions under § 107.865(b).

c. ''Control Person''

Under the existing regulations, a Person with at least a 40 percent limited partnership interest in a Licensee's general partner is a Control Person. Paragraph (4) of the proposed definition would apply the same criterion to a limited partner in the Licensee itself. One commenter objected to the entire concept of classifying a limited partner as a Control Person, suggesting that the provision contradicts established partnership principles and could threaten a limited partner's limited liability status. SBA does not believe that a regulatory definition would have this effect; furthermore, the Agency has stated previously that the definition of Control Person is intended to cover persons in a position to exercise influence, but not necessarily control, over a Licensee. Nevertheless, in response to the concern expressed, SBA has increased the ownership percentage required to classify a limited partner (of either a Licensee or its general partner) as a Control Person from 40 percent to 50 percent.

d. ''Disadvantaged Businesses''

SBA received one comment objecting to the proposed language requiring that a Disadvantaged Business be managed ''on a day to day basis'' by persons who meet the criteria for social or economic disadvantage. The commenter considered this phrase an unwarranted expansion of the definition. SBA disagrees; the requirement that disadvantaged owners be actively involved in the management of their companies reflects long-standing SBA policy and is consistent with the Agency's statutory mandate for all of its programs for Disadvantaged Businesses. Accordingly, the definition is finalized as proposed.

e. ''Equity Capital Investment''

SBA received one comment suggesting that ''a preferred stock investment with the liquidating dividend payable to the extent of available assets'' should be considered an Equity Capital Investment. SBA's interpretation of the Small Business Investment Act of 1958, as amended (''Act'') is that dividends may be payable only to the extent of retained earnings; this treatment is consistent with the statutory language concerning subordinated debt instruments, which can qualify as Equity Capital Investments if, among other things, they ''provide for interest payments contingent upon and limited to the extent of earnings.'' Accordingly, the definition is finalized without change.

f. ''Institutional Investor''

In the proposed rule, SBA added language to the definition of ''Institutional Investor'' to clarify that an entity cannot satisfy the net worth test on the basis of unfunded commitments from its investors. One commenter suggested that this language be dropped and that such commitments be recognized. SBA disagrees with this suggestion because it increases the government's financial risk. SBA has protections in place which allow it to require Institutional Investors to fund their commitments to a Licensee under certain circumstances; however, it is unlikely that such requirements could be extended to investors who are one or more levels removed from the Licensee. Therefore, the proposed definition is adopted as final.

g. ''Start-Up Financing''

The proposed rule did not make any changes in this definition, but used it in a new context—it was proposed that Licensees be permitted to take temporary Control of Start-Up Financing under § 107.865(d). In this context,

several commenters felt that the definition was too narrow in terms of the types of businesses covered, the length of time the business had been in existence, and the exclusion of businesses formed to acquire existing businesses. SBA agrees that a broader definition is appropriate for purposes of § 107.865 and is not objectionable for purposes of determining Capital Impairment, the other context in which it appears. Accordingly, the final rule largely eliminates these restrictions. A business formed as an acquisition company can qualify as long as the acquired company meets the criteria for a Start-Up Financing.

The limitations on sales revenue and cash flow have also been modified: Under paragraph (3) of the proposed definition, companies could not have ''sales exceeding $5,000,000 or positive cash flow in any fiscal year.'' The final rule prohibits ''sales exceeding $3,000,000 or positive cash flow from operations in any of the past three fiscal years.'' SBA believes the lower sales ceiling is more appropriate to a true start-up company; the other changes respond to comments received.

h. ''Unrealized Appreciation''

The proposed definition is adopted with one minor editorial change.

i. ''Unrealized Depreciation''

The proposed definition is adopted with one minor editorial change.

j. ''Qualified Non-Private Funds''

The proposed definition, which appears in § 107.230(d), is adopted without change. SBA received one comment objecting to the language that permits government grants to nonprofit entities to be Qualified Non-Private Funds ''if SBA determines that such funds have taken on a private character and the nonprofit corporation or institution is not a mere conduit.'' SBA believes the language is an appropriate interpretation of the Act; in particular, the ''private character'' standard is specifically cited in the legislative history.

3. Subpart C—Qualifying for an SBIC License

a. Organizing a Licensee

Comments received on proposed § 107.100 and § 107.110 questioned why Section 301(c) and Section 301(d) Licensees could not be formed as limited liability companies. Limited liability companies are not a permitted form of organization recognized by the Act. Therefore, the rule is adopted as proposed.

b. 1940 Act and 1980 Act Companies

SBA received several comments on proposed § 107.115, all of which objected to the restriction against licensing 1940 Act or 1980 Act companies that elect to be taxed as regulated investment companies under section 851 of the Internal Revenue Code. SBA is persuaded that Licensees would not be denied the ability to access capital by using these structures. Therefore, the final rule allows Licensees to organize as or convert to 1940 Act or 1980 Act Companies, and to elect to be taxed as regulated investment companies. The regulation also clarifies that when the tax code conflicts with SBA regulations or guidelines governing distributions, the SBA requirements will apply unless the Licensee requests and receives a waiver in accordance with the regulations.

c. SBA Approval of Initial Management Expenses

Proposed § 107.140, which requires all new SBIC license applicants (not just applicants planning to issue Participating Securities) to obtain SBA approval of their initial Management Expenses, is adopted with one change: This section will not apply to non-leveraged Licensees, which present no financial risk to the Agency.

d. Management and Ownership Diversity

Proposed § 107.150, which requires all license applicants planning to obtain Leverage to have diversity between management and ownership, is adopted without change. SBA received one comment that applicants should be permitted in all cases to satisfy the diversity requirement on a ''look through basis'' (that is, at the parent level). This option is available to Licensees if SBA approves; however, as stated in the preamble to the proposed rule, the Agency believes it must have discretion in this area in order to assure that a Licensee has genuine diversity, as opposed to an ownership structure that provides ''technical'' diversity but does not satisfy the intent of the regulation.

e. Special Rules for Partnership Licensees

Proposed § 107.160(b), allowing an Entity General Partner to be organized for the sole purpose of serving as the general partner of one or more licensees, is adopted without change. SBA considered the comment suggesting that an Entity General Partner not be precluded from other activities, but rejected the suggestion due to the complexity of examining a general partner involved in both SBA and non-SBA related activities. The Agency believes that this would result in an undue burden both on its examiners and on the Entity General Partner.

f. Minimum Capital Requirements for Licensees

SBA received one comment on proposed § 107.210(b) (which did not contain any substantive changes) suggesting that the Regulatory Capital requirement for Section 301(d) Licensees be inclusive, not exclusive of, unfunded commitments. This comment is inconsistent with SBA's interpretation of the minimum capital requirements of the Act; therefore, the proposed rule has been adopted as final without change.

g. Special Minimum Capital Requirements for Licensees Issuing Leverage

A comment received on proposed § 107.220(b) argued in favor of omitting the ''special'' minimum capital requirements which 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. The same commenter also suggested revising the ''grandfather'' provisions in § 107220(c)(1), which allow certain existing Licensees that do not meet the current minimum capital requirements to receive additional Leverage if they are profitable. The commenter wrote that other criteria besides profitability should be considered.

SBA is finalizing both provisions as proposed. The Agency considers these standards to be vital to the continuing success of the SBIC program. As stated in the preamble to the proposed rule, a review of the financial performance of Licensees supports the conclusion that higher levels of Regulatory Capital significantly reduces the likelihood of unprofitable operations over the long term. As to § 107.220(c), the profitability criterion has been used since 1990, and SBA continues to believe that profitability is the best and most objective indicator of future successful operations.

SBA has made two editorial changes to proposed § 107.220(c)(2). Proposed paragraph (c)(2)(i), which deals with Debentures maturing before December 31, 1995, has been deleted because it is not longer applicable. Proposed paragraph (c)(2)(ii) has been incorporated into paragraph (c)(2) and revised by replacing ''a term of three years'' with ''a term to be determined by

SBA.'' This change has been made because three-year Leverage is not routinely available at this time.

h. Limitations on Accepting Non-Cash Capital Contributions

The heading of proposed § 107.240 has been revised to read ''Limitations on including non-cash capital contributions in Private Capital'', which is more consistent with the substance of the section. One commenter suggested that the section be revised to state that Licensees may still accept non-cash assets that cannot be included in Private Capital. SBA did not adopt this suggestion, primarily because of its concerns about liabilities that may be associated with unapproved non-cash assets. Therefore, except for the change in the section heading, proposed § 107.240 is finalized without change.

i. Issuance of Stock Options by Licensees

SBA agrees with the comment that proposed § 107.250(a), which states that a Licensee may issue stock options, is unnecessary and has deleted it in the final rule. The deletion does not affect a Licensee's ability to issue stock options.

j. License Application Form & Fee

A comment received on proposed § 107.300 objected to the increase in the license fee for partnerships that plan to issue participating securities, particularly those using the standard partnership agreement annex already approved by SBA. SBA proposed the fee increase in order to reflect the Agency's costs of processing applications. Pursuant to 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. After due consideration, SBA believes the increase in fees to be justified and is finalizing § 107.300 as proposed.

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

a. Changes in Control/SBA Prior Approval

Section 107.410 requires SBA's prior approval for a change of Control while § 107.440 sets out the standards governing SBA's approval. One commenter suggested that a grandfather clause be adopted for these sections. The effect of such a clause would be to allow an existing Licensee to undergo a change of Control without having to meet the increased minimum capital requirements currently in effect. SBA believes that a grandfather clause is not necessary because the Agency will apply the capital adequacy and financial viability standards of §§ 107.200 and 107.220 in evaluating an application for a change of Control. Therefore, both sections are finalized without change.

b. Restrictions on Common Control or Ownership of Two (or More) Licensees

SBA agrees with the comment that § 107.460, which requires SBA approval of common Control or ownership of two or more Licensees, should not be applicable to unleveraged Licensees, so long as none of the Licensees involved has any Leverage. This change has been incorporated in the final rule.

5. Subpart E—Managing the Operations of a Licensee

a. Identification as a Licensee

SBA received one comment which argued the difficulty of identifying an SBIC as a Federal Licensee on each Financing document. SBA agrees, and has decided to revise proposed § 107.501 to state that before extending Financing or collecting an application fee from a Small Business, a Licensee must obtain a written statement from the concern acknowledging its awareness that it is dealing with a Federally licensed SBIC.

b. Licensee's Adoption of an Approved Valuation Policy

Many comments on proposed § 107.503(c) objected to the language which sated that ''SBA reserves the right to review or independently establish valuations of your Loans and Investments''. All the commenters agreed that SBA should only become involved in a specific valuation if that valuation is in violation of the agreed upon valuation policy. The proposed language was intended to address SBA's continuing concerns regarding certain instances of egregious non-compliance with agreed-upon valuation policies, and the difficulties it has encountered in its attempts to take action regarding such non-compliance. However, in recognition of the legitimate concerns of Licensees, SBA is revising § 107.503. In the final rule, the language cited at the beginning of this paragraph has been replaced by the following: ''If SBA reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party, acceptable to SBA, to substantiate the valuations.''

In addition, purposed § 107.503(d)(4) has been revised by adding the word ''adverse'' before the word ''change'', so that only material adverse changes in valuations must be reported quarterly to SBA.

c. SBA Approval of Licensee's Investment Adviser/Manager

SBA agrees with the comment on proposed § 107.510 that annual approval of the management contract by the Licensee's board of directors is unnecessary. The proposed rule has been revised and is finalized accordingly.

d. Restrictions on Investments of Idle Funds by Leveraged Licensees

With one change, proposed § 107.530 regarding idle funds is adopted as proposed. The section has been amended to permit Licensees to maintain a reasonable petty cash fund.

e. Limitations on Secured Third-Party Debt

As discussed in the preamble to the proposed rule, proposed § 107.550(a) was intended primarily as a restatement of the existing regulation requiring leveraged Licensees to obtain SBA approval before incurring secured third-party debt. The only change was the requirement that Licensees also obtain SBA approval before expanding the scope of a security interest or lien associated with existing debt. Based on some of the comments received, SBA realized that paragraph (a) was being misinterpreted. In particular, it was not SBA's intention to require approval each time a Licensee wants to draw down an approved line of credit. Nor did SBA intend to require Licensees to obtain approval to substitute one asset or group of assets for another as the subject of a security interest, as long as the values are comparable. In the final rule, proposed § 107.550(a) has been split into two paragraphs and revised to clarify the intent.

Two comments were received on proposed § 107.550(c), suggesting that the limitation of the security interest to 125 percent of a proposed borrowing against a Licensee's investor commitments is impractical. SBA recognizes that some Licensees may not be able to borrow under this provision. However, it is only with reluctance that the Agency has permitted *any* third-party borrowing against investor commitments, since these are the same commitments that SBA may look to at some point to protect its own financial interests. Therefore, SBA is finalizing this provision (renumbered as § 107.550(d)) without change.

Proposed § 107.550(d) stated the conditions under which SBA will provide a 30-day turnaround on applications for approval of secured third-party debt. One of these conditions was that the security interest be limited to the assets acquired with the borrowed funds, or an asset coverage ratio of no more than 1.25:1. SBA agrees with the commenters who suggested that the coverage ratio is unrealistically low, and is revising the ratio to 2:1 in the final rule (with this paragraph renumbered as § 107.550(e)).

f. Subordination of SBA's Creditor Position

Proposed § 107.560 is adopted without change. One commenter argued that without a specific definition of subordination, expressed in a formal subordination agreement, Licensees would find it impossible to obtain third-party debt. SBA's experience with the subordination regulation, which was first adopted in 1991, is that lenders have been willing to work out the details of subordination agreements with SBA on an individual basis. Nevertheless, SBA is sympathetic to Licensees' desire to understand the Agency's specific concerns in this area, and will attempt to develop guidelines for a subordination agreement that would be generally acceptable to SBA.

g. Activity Requirement

SBA received several comments on proposed § 107.590 suggesting that the activity test is unnecessary, or should be revised, or should not apply to non-leveraged Licensees.

SBA strongly believes that some form of activity test is necessary for both leveraged and non-leveraged Licensees. Companies are licensed with the understanding that they will help to fulfill the public purpose of the program, which is to further the growth and development of small businesses. Clearly, an inactive Licensee is not contributing to this goal. Furthermore, an inactive Licensee, even if it is non-leveraged, imposes some degree of administrative burden on SBA.

In response to the comments concerning the specific structure of the activity requirements, SBA has made a number of changes intended to make the test more practical and to modify provisions that were subject to interpretation. In the proposed rule, the basic activity test (in § 107.590(a)) required a Licensee to satisfy two criteria dealing with investment activity and percentage of assets maintained as idle funds. In the final rule, a Licensee must satisfy only one of the criteria to be considered active.

In paragraph (b)(1), the proposed rule stated that certain ''recent'' cash inflows would be disregarded in determining whether a Licensee is active. In the final rule, ''recent'' has been replaced by a specific time period (within nine months of the Licensee's fiscal year end).

In paragraph (b)(3), under the proposed rule, one of the criteria for an exception to the activity requirements was that a Licensee have ''no remaining unfunded commitments from investors''. SBA agrees with the commenter who suggested that this standard was too narrow, and has revised the provision to include Licensees with unfunded commitments equal to no more than 20 percent of their Regulatory Capital.

Finally, in § 107.590(d), SBA has added a phase-in period for new Licensees, recognizing that the activity test is not relevant to those companies that have been in operation for less than 18 months.

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

a. Information Required From Portfolio Concerns

With some minor changes, § 107.620 is adopted as proposed. SBA is not adopting the suggestion of one commenter that paragraphs (a) and (b), which require Licensees to obtain certain information from Small Businesses before extending Financing and on a periodic basis thereafter, should not apply to non-leveraged Licensees. Although one of the aims of these paragraphs is to mitigate SBA's financial risk, they are also intended to insure that Licensees are operating in a manner consistent with the goals of the Act. SBA agrees with the comment that paragraph (b)(2), which requires that the information submitted to the Licensee be certified by the chief financial officer, general partner, or proprietor of the Portfolio Concern, should be expanded to permit certification by the chief executive officer, President, or Treasurer. The section is finalized accordingly.

b. Requirements for Licensees To File Annual Financial Statements

Except as hereafter noted, SBA adopts as final proposed § 107.630, which deals with the requirements for filing annual financial statements with SBA. Based on comments received, SBA has added language to § 107.630(a) clarifying that the portion of SBA Form 468 containing economic information on the Licensee's portfolio companies may be filed up to two months later than the remainder of the form; this reflects SBA's current policy. In § 107.630(b), a cross reference to § 107.1220 has been added to clarify the reporting requirements for Licensees with outstanding Leverage commitments.

One commenter suggested that the ''economic impact'' information required by proposed § 107.630(e) places an unfair burden on the Licensee. SBA is finalizing this paragraph as proposed; the information requirement is not new, having been in effect since April 25, 1994, and § 107.630(e) is actually worded more narrowly than the current regulation that it replaces. While SBA considers the economic impact information to be vitally important to the mission and future of the SBIC program, the Agency recognizes that this information is not always easy to obtain. SBA has generally accepted Licensees' good faith efforts to provide the required data and will continue to do so to the extent possible.

Proposed § 107.630(a)(2) would have required a Licensee's independent public accountant to carry errors and omissions insurance in an amount acceptable to SBA, or be self-insured and have net worth acceptable to SBA. This proposal elicited comment from representatives of the accounting profession who objected to SBA's attempt to create a ''deep pocket'' for recovery of damages, as well as concern from a few other commenters that the amount of insurance required be more clearly defined. SBA is sensitive to concerns that this requirement may prevent many smaller, but highly competent, practitioners from performing SBIC audits; however, the Agency also must consider its need to control financial risk. Furthermore, SBA feels that the ability of a firm to obtain some amount of insurance can be, in itself, a useful indicator of professional standing. After careful consideration of the issue, SBA is finalizing § 107.630(a)(2) to require the independent public accountant to have errors and omissions insurance of at least $1,000,000, or to be self-insured and have a net worth of at least $1,000,000, unless SBA approves otherwise. This wording will give SBA the flexibility to make exceptions for firms that do not meet the insurance requirement but have strong track records as auditors of SBICs or similar entities.

c. Changes Not Subject to SBA Prior Approval

Proposed § 107.680 has been finalized with one change. A commenter suggested that this section, which

requires SBA's post approval of certain changes in the Licensee's operations, capitalization, and management, should not apply to non-leveraged Licensees. SBA does not entirely agree, particularly with regard to changes that cause Licensee to operate in a different way than was contemplated at the time it was licensed. However, for Licensees that have no outstanding Leverage or Earmarked Assets, SBA believes safety and soundness considerations do not require post approval of directors and officers (other than the Licensee's chief operating officer), and that it is sufficient for such Licensees to notify SBA of any changes.

d. Responsibilities of Licensee During Examination

Proposed § 107.691 included a provision requiring a Licensee and its independent public accountant to agree that the accountant's working papers would be made available to SBA upon request for examination purposes. One commenter stated that this requirement would not be objectionable if SBA provided assurance that any workpapers requested would be treated as confidential under the Freedom of Information Act (FOIA) or similar laws. An accountant's working papers relating to an individual Licensee are indeed protected from disclosure under the exemptions available under FOIA. Since these exemptions are statutory, SBA believes it is unnecessary to restate them in the regulations, and § 107.691 is finalized as proposed.

e. Examination Fees

SBA received more than ten comments on proposed § 107.692. All of the comments objected to the increase in the examination fees to be charged to SBICs. Many stated that the cost of an SBA examination would far exceed the cost of their annual audit, even though the procedures involved are more limited. Further, some felt that unleveraged licensees would bear an unfair portion of the overall fees due to the fact that the fees are to be assessed on total assets of the Licensee. Unleveraged (usually bank owned) SBICs tend to have the largest amount of total assets yet have no federal funds at risk. Therefore, it was argued that the cost of enforcement should weigh more heavily against leveraged Licensees.

As stated in the preamble to 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. SBA considers examinations to be a key element in maintaining the integrity of the SBIC program. However, based on the comments, SBA is persuaded that the proposed fees were too high in general, and that the increases were particularly excessive for the largest Licensees. In the final rule, the examination fees have been lowered significantly, although they still represent an increase over the current levels.

7. Subpart G—Financing of Small Business by Licensees

a. Ineligible Small Businesses

Under proposed § 107.720 (a) through (i), SBA lists those Small Businesses which are ineligible for SBIC Financing and certain exceptions to those restrictions. Except for the revisions discussed below, this section is finalized as proposed.

SBA received seventeen comments on this proposal. One comment questioned whether § 107.720 as a whole should be applicable to non-leveraged Licensees. Another suggested deletion of the prohibition in § 107.720(a) against financing relenders or reinvestors as this type of financing could result in jobs and the payment of taxes. Neither of these comments were adopted because the provisions in question are mandated by the Act.

b. Passive Businesses

One of the criteria defining a passive business in proposed § 107.720(b) is that the business ''is not engaged in a regular and continuous business operation''. The proposed rule goes on to state that the ''mere receipt of payments * * * such as * * * lease payments'' would not be considered a regular and continuous business operation. One commenter asked how this definition would apply with respect to taxi medallion financing, an industry in which several SBICs already have millions of dollars invested. It is common practice in this industry for medallion owners to lease their medallions rather than employ taxi drivers directly.

SBA's previously-stated position regarding taxi medallion lending is that Licensees may finance medallion owners who lease the medallions to others, but only if such owners are actively engaged in day to day management activities. These include supervision of lessees and responsibility for vehicle maintenance, insurance, and compliance with local laws and regulations. Owners who lease their medallions and receive payments without such active involvement will continue to be considered passive businesses under the final rule.

Two comments objected to proposed § 107.720(b)(1)(ii), which would define as passive any companies whose employees are not carrying on the majority of the day to day operations. The commenters argued that many businesses use third parties, including independent contractors and ''leased'' employees, to carry on day to day operations. SBA recognizes that such arrangements are now common and are not necessarily an indicator of a passive business. The final rule has been revised to define a business as passive if ''its employees are not carrying on the majority of day to day operation, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract''.

Proposed § 107.720(b)(2) was a restatement of the existing ''holding company'' exception to the passive business rule, under which Licensees could finance a passive business if it passed through all the proceeds to a wholly-owned active business. A number of comments suggested that the provision could allow something less than 100 percent of the proceeds to be passed through without compromising the intent of the regulations. SBA agrees and has changed the final rule to require pass-through of ''substantially all'' the proceeds. The commenters also suggested deletion of the requirement that the active business be wholly-owned. SBA agrees that this restriction is not necessary. Instead, the final rule allows the financing of a passive business ''if, for all Financings extended, it passes substantially all the proceeds through the *same* eligible Small Business that is not passive'' (italic are added). This revision clarifies that a holding company must pass the Financing proceeds to only one Small Business, not to multiple businesses or to a series of different businesses if Financing is extended on more than one occasion.

c. Real Estate Businesses

SBA agrees with a comment which suggested that proposed § 107.720(c)(2) is too restrictive, in that it prohibits financing the acquisition of unimproved realty if the business does not intend to build on the property, even if the business intends to use it for another legitimate business purpose such as a parking lot for customers and employees, SBA did not intend to prohibit financing for this purpose and the final rule has been revised accordingly.

d. Project Financing

One comment objected to the prohibition against project financing in proposed § 107.720(d). As stated in the preamble to the proposed rule, though this prohibition does not appear in the current regulations, it has been in effect as a matter of policy for more than ten years. SBA views project financing as essentially short term and therefore, inconsistent with the Act. SBA considers this prohibition important and is therefore finalizing the rule without change.

e. Foreign Investments

With one change, proposed § 107.720(g) is adopted as final. The proposed rule generally would have prohibited financing a Small Business if more that 40 percent of its employees or tangible assets were located outside the United States. In response to comments suggesting that this percentage was too low, SBA has increased the allowable percentage to 49 percent in the final rule.

f. Conflicts of Interest

SBA received seven comments on proposed § 107.730. The proposed rule is adopted with changes to meet some of the concerns in the comment letters. One comment suggesting that the conflict of interest prohibitions not be applicable to unleveraged Licensees was rejected by SBA. Such an exception would be inconsistent with the purpose of the Act.

Two commenters were concerned that proposed § 107.730(a)(2), which deals with providing Financing to an Associate of another Licensee, would unduly restrict co-investing. In particular, the concern was whether the regulation could be construed to mean that if a Licensee brought an investor group involving another Licensee and its Associates into one of its investments, it would be prohibited from any future participation in investments initiated by that investor group. This interpretation is contrary to SBA's intent, which was to prohibit quid pro quo financing arrangements that would allow Licensees to accomplish indirectly what they are not permitted to do directly—provide Financing to an Associate. SBA does not consider it necessary to revise paragraph (a)(2) to clarify the intent, since the language is essentially unchanged from the previous regulations.

Proposed § 107.730(d) set forth provisions governing investments in the same Small Business by a Licensee and its Associates, either simultaneously or at different times. In general, Licensees were required to demonstrate that the terms and conditions of such investments were fair and equitable to the Licensee. The proposed rule identified certain categories of Financing with Associates requiring SBA approval, and others that would be exempt from this requirement. Two comments suggested that the exemption in paragraph (d)(3)(iv) should be expended to include all situations where the Licensee is nonleveraged, regardless of the status of the Associate. SBA believes the exceptions provided are adequate and is not adopting this suggestion.

Proposed § 107.730(e)(1) would require a Licensee to obtain SBA's written approval for an Associate to participate in the management of a Portfolio Concern if the Associate has an actual or potential equity interest in the Portfolio Concern that exceeds 3 percent. Comments received suggested that 5 percent is a more generally accepted standard used by other federal regulatory agencies in similar circumstances. SBA agrees and is revising the final rule accordingly.

One comment was received urging the elimination of the publication requirement of proposed § 107.730(g), which requires SBA to publish notice of exemptions requested under § 107.730. The concern was that this requirement could slow down Financings, work a hardship on the Small Business or potentially disclose confidential information to competitors. Although SBA is sympathetic to these concerns, the publication requirement is mandated by the Act and cannot be deleted.

g. Overline Limitation

Three comments were received on proposed § 107.740. One commenter suggested that the ''overline'' limits not be imposed on non-leveraged Licensees. This exemption has been effective since April 1994 and was included in the proposed rule. The other comments dealt with paragraph (c), which allows Licenses to compute an ''increased limit'' if they have unrealized gains on Publicly Traded and Marketable securities. Both commenters advocated a more liberal cure period if a Licensee has overline violations resulting from a drop in the value of its securities. Because of the inherent volatility of publicly traded securities, SBA does not consider it prudent to encourage the use of the increased limit and is finalizing the proposed rule without change.

h. Change of Ownership

The comments received on proposed § 107.750 addressed the definitions of ''debt'' (paragraph (c)(2)) and ''equity'' (paragraph (c)(3)) used in determining whether the Small Business has an acceptable debt to equity ratio. It was suggested that the definition of ''debt'' (which, in this section, generally means long-term debt) specifically exclude any liabilities under a non-compete covenant with the seller. SBA chose not to add this automatic exclusion because such covenants are unique to the circumstances of each transaction. It was also suggested that the definition of ''equity'' should include subordinated notes payable to the seller. Such notes are specifically excluded from the definition of debt; to also include them in equity would further reduce the debt to equity ratio. SBA believes this result is inconsistent with the intent of the regulation and is finalizing the section as proposed.

i. Change in Size or Activity of a Portfolio Concern—Affect on Licensee

SBA did not propose any change in the provisions governing additional investment in a Portfolio Concern that no longer meets the size standard. However, one commenter suggested that proposed § 107.760(a) should be revised to allow a Licensee to make additional investments in such a concern either to honor a Commitment it has made or to protect its investment. The proposed rule already allows a Licensee to make follow-on investments without restriction in any Portfolio Concern up to the time it makes a public offering, so the commenter's suggestion would be relevant only after that time. SBA has added language to the final rule permitting a Licensee to honor a Commitment made before a public offering, since it would be legally bound to do so in any case. However, the Agency believes the ''protection of investment'' standard is so broad as to be inconsistent with the goals of the program and has not adopted this change.

In response to a comment, proposed § 107.760(b) is being adopted as final with one non-substantive change. Paragraphs (b)(2) and (b)(3), which state that violations under paragraph (b) constitute default by the Small Business and allow the Licensee to pursue certain remedies, have been deleted. SBA agrees that these provisions cover matters that should be left to the Licensee and that it is unnecessary to include them in the regulations.

j. Definition of ''Equity Securities''

SBA received two comments on the definition of Equity Securities in proposed § 107.800. One suggested that the definition should include warrants

and options. SBA agrees and has revised the section accordingly. The other commenter sought clarification of the statement that the presence of certain default or redemption provisions would cause a security, even if it has the legal form of equity, to be considered a Debt Security ''for all regulatory purposes''. SBA's intent was that such a security would be treated as a Debt Security only for purposes of § 107.855, the Cost of Money regulations. The final rule is revised accordingly.

k. Options Received From Small Businesses

Except for the following changes and revisions, proposed § 107.815(b) is adopted as final. This section restricts the ability of a Licensee's employees, officers, directors, or general partners to receive options in a Small Business Financed by the Licensee. Under the proposed rule, such persons could receive options only if they participated in the Financing on the same terms and conditions as the Licensee (paragraph (b) (1)) or if approved by SBA (paragraph (b) (2)).

Three comments were received on this section. Two suggested that paragraph (b) not be applicable to non-leverage SBICs and SBA agrees. The provision is revised accordingly.

Two commenters suggested that the regulations should permit the receipt of stock options as compensation of service as a board member, as this is a common practice in the industry and is beneficial to the Small Business. SBA agrees and has added § 107.815(b)(3) to the final rule to permit this practice, with the condition that the compensation paid must not exceed that paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

l. Guarantees of the Obligations of Small Businesses

SBA received one comment seeking to clarify that if a Licensee invests in a Small Business and also guarantees its debt obligation, the guaranty should count against the overline limitation only to the extent of the Licensee's risk over and above its original investment. The situation described by the commenter is covered by § 107.820(a)(2), which states that a guaranty consisting only of ''a pledge of the Equity Securities of the issuer'' does not count towards the overline limitation.

m. Commitments to Small Businesses

SBA received one comment suggesting that proposed § 107.825 be deleted, a second suggesting that it be moved back to the definitions section, and a third seeking clarification as to whether ''reasonable conditions precedent'' to a Licensee's obligation to fund its commitment can include ''completion of due diligence which confirms the accuracy of the initial business plan''.

SBA is not deleting the defined term ''Commitment'' from the regulations because it is used in several important contexts (see, for example, the new provision in § 107.860(g) that allows a Licensee to charge a ''breakup fee'' if a Small Business accepts its Commitment and then fails to close because it has accepted funds from another source). SBA agrees that proposed § 107.825 properly belongs in the definitions section and has revised the final rule accordingly.

SBA has addressed the meaning of ''reasonable conditions precedent'' in an earlier preamble and will repeat that discussion here: Although SBA is reluctant to provide a list of reasonable conditions precedent in the regulation for fear that such list might be regarded as an exclusive one, it is willing to describe ''reasonable conditions precedent'' in general terms. A ''reasonable condition precedent'' is one that does not lie within the Licensee's ability to cause or prevent. ''Completion of due diligence with results satisfactory to the Licensee'' is an example of a condition precedent that lies within the Licensee's control. On the other hand, requirements that a disinterested person verify the value of the Small Businesses' assets or its net worth, or that there be no adverse change in the Small Businesses' financial condition between the date of the commitment and the scheduled disbursement date, or that the Small Business do or achieve something that lies reasonably within its capacity would all be considered a ''reasonable condition precedent.''

n. Purchasing Securites From an Underwriter

Comments received on proposed § 107.828 requested relief for non-leveraged Licensees, reduction or elimination of recordkeeping requirements and reconsideration of fee limitations for Associate underwriters. SBA believes certain constraints on purchasing securities from underwriters are warranted in keeping with the purpose of the Act, but has made some revisions in response to the comments. Non-leveraged Licensees have been exempted from the recordkeeping requirements in paragraph (b) and the fee restrictions in paragraph (c). For leveraged Licensees, paragraph (c) has been revised to permit a Licensee to pay ''reasonable and customary'' commissions and expenses to an Associate underwriter, provided the Licensee is purchasing no more than 25 percent of the total offering.

In the final rule, this section is renumbered as § 107.825.

o. Minimum Term of Financing

The comments received on proposed § 107.830 strongly supported the changes made with regard to the minimum term of Financings for Section 301(d) Licensees. One commenter suggested allowing Section 301(c) Licensees to have up to 25 percent of their investments with less than a five year term as long the weighted average duration of the portfolio is at least five years. SBA believes such a provision is not in keeping with the intent of the Act and would impose a burdensome recordkeeping requirement. Accordingly, SBA is finalizing the proposed rule without change.

p. Exceptions to Minimum Term of Financing

One commenter requested a clarification of proposed § 107.835, which allows a Licensee to make Short-term Financings (with terms less than five years) under certain circumstances. The commenter asked whether the provision in paragraph (c), which limits the dollar amount of Short-Term Financings to 20 percent of total Loans and Investment applies only to that paragraph or to all of § 107.835, as has been the case in the past. It was SBA's intent to apply the 20 percent limit only to paragraph (c), which deals with Short-Term Financing for the purpose of financing a change in ownership under proposed § 107.750. Therefore, the section is finalized as proposed. However, as stated in the preamble to the proposed rule, 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.

q. Maximum Term of Financing

All of the comments received on proposed § 107.840 suggested that the general rule which requires a maximum term of not longer than 20 years for any

Financing should apply only to Loans and Debt Securities. SBA agrees and has revised the final rule accordingly.

r. Redemption of Equity Securities

Two comments were received on proposed § 107.850. One commenter suggested that book value should be a permitted basis for determining the redemption price of an Equity Security under § 107.850(b)(2)(ii). SBA agrees and has revised the final rule accordingly.

The other commenter stated that § 107.850(b)(1) should be broadened to allow accumulated dividends to be included in the redemption price of an Equity Security. SBA is not adopting this change. A Licensee is already permitted to structure its investments in this manner; the only consequence is that such investments are subject to the Cost of Money rules. Furthermore, as long as the dividends are payable only from earnings, such investments are not precluded from qualifying as Equity Capital Investments.

s. Cost of Money

Under proposed § 107.855, SBA sought to substantively revise some of the Cost of Money rules and to clarify others. SBA received six comments on this section, two of which advocated deleting the entire section and letting the market control. While the proposed rule gave Licensees considerable more flexibility than in the past, the Agency believes that some Cost of Money rules are necessary to provide a measure of protection for Small Businesses. The commenters generally applauded the increase in the minimum ''Cost of Money ceiling'' for Loans in § 107.855(c); however, some argued that the ceiling for Debt Securities should also be raised. SBA believes that the proposed five percentage point difference between Loans and Debt Securities is justified because Loans do not allow for the Licensee to obtain any equity interest in the Small Business, and is finalizing this provision without change.

One comment stated that it was very important for Licensees to be able to establish the Cost of Money ceiling for a Financing as of the date a Commitment is issued, not as of the date of the first closing as proposed in § 107.855(b). The commenter explained that if rates went up between a Commitment date and a closing date, they would be able to increase the rate quoted in the Commitment. However, if rates went down, they would be forced by regulations to close at the lower rate. SBA is persuaded that Licensees should have flexibility in this area and has revised this paragraph to allow the ceiling to be set either at the time the Commitment is issued or as of the date of the first closing of the Financing.

A Licensee is permitted to compute its Cost of Money ceiling based on either the current Debenture rate on its own ''Cost of Capital'' as determined under proposed § 107.855(d). SBA received one comment suggesting that non-leveraged Licensees should be permitted to compute a Cost of Capital based on their non-SBA borrowings. The proposed rule would permit this practice and is therefore finalized without change.

Proposed § 107.855(g)(10) would allow a Licensee to charge a higher interest rate when a Small Business is in default. For this purpose, ''default'' is defined to include failure to provide information required under SBA regulations. One commenter pointed out that this appears to require Small Businesses to have knowledge of SBA regulations, and that it is the responsibility of Licensees to put all necessary default provisions in the Financing documents. SBA agrees and has deleted the reference to SBA regulations from the final rule.

Proposed § 107.855(i)(3) would allow Licensees to charge a one-time ''bonus'' at the end of a loan instead of taking equity in the Small Business. One commenter suggested that the bonus not be limited to one time only, and that the bonus be computable on the earlier of five years or when the debt was originally due.

SBA proposed the bonus to allow Licensees to obtain an adequate return on Financings of companies that do not want to give up equity. The Agency believes the proposed rule provides Licensees with sufficient flexibility and is not adopting the suggested changes. However, SBA is clarifying § 107.855(i)(1) in the final rule to state that the bonus is computable ''on or after the date that the Financing is repaid in full or was originally scheduled to be repaid in full, whichever is earlier''.

SBA has also made an editorial change in § 107.855(i)(3), which states that a bonus must be contingent upon factors that reflect the performance of the Small Business. As an example, the proposed rule stated that net income and operating cash flow were generally acceptable factors, while gross revenue and gross profit were generally unacceptable. One commenter interpreted ''gross profit'' as pretax profit and suggested that this should be acceptable. SBA's interpretation of ''gross profit'' was the difference between sales and cost of goods sold, also known as ''gross margin''; to avoid confusion, the latter term is used in the final rule.

s. Financing Fees Charged to Small Businesses

Two comments received on proposed § 107.860 dealt with problems faced by Licensees in their dealings with Small Businesses that apply for Financing. According to the comments received, it is not unusual for a Small Business to use a Licensee's Commitment to solicit competing offers. Also, there are a number of frivolous ''shoppers'' who will use a Licensee's time and resources with no genuine intent of closing a transaction. One such commenter suggested that Licensees be permitted to address these problems by charging a ''break-up'' fee if a Small Business fails to close a Financing because it has accepted funds from another source. SBA is persuaded that the break-up fee represents a reasonable protection for Licensees and has finalized § 107.860 with a new paragraph (g) containing this provision. The permitted fee is the same as the closing fee the Licensee would have been permitted to charge under § 107.860 (c) or (d).

Another comment questioned whether the ''application fee'' and the ''closing fee'' had to be two distinct fees separately identified, or whether they could both be collected together at closing. To clarify SBA's intent, language has been added to paragraph (a) of the final rule stating that the application fee may be collected at closing or at any time before closing.

t. Control of a Small Business

Twelve comments were received on proposed § 107.865. One comment objected to paragraph (b) which establishes a ''presumption of Control'' based on a Licensee's percentage of ownership, stating that this paragraph represented a ''poor and onerous change'', and further noting that investor groups typically own 75 percent of a business by the second or third round of Financing. In response, SBA, wishes to point out that the proposed provisions concerning the presumption of Control are exactly the same as those in the previous regulations. However, proposed paragraph (c) was added to identify specific conditions that would permit the presumption of Control to be rebutted. By defining such conditions, the provision was actually intended to make it easier for a Licensee to co-invest.

With respect to proposed § 107.865(c), two commenters argued that the ''presumption of Control'' should be

rebutted if management can elect 25 percent of the board seats. SBA believes 40 percent is an appropriate standard for an automatic rebuttal; Licensee can still seek to rebut the presumption based on other evidence if this test is not met. Accordingly, proposed paragraphs (b) and (c) are finalized without change.

u. Temporary Control

Proposed § 107.865(d) set out those circumstances under which a Licensee may take temporary Control of a Small Business, and includes the provision: ''(1) Where reasonably necessary for the protection of your investment under circumstances where a Small Business is threatened with insolvency or closure.'' Several commenters suggested that by the time insolvency or closure occurs, it is often too late to ''protect their investment''. SBA agrees and has revised the final rule to delete all of the language after the word ''investment'' in § 107.865(d)(1). However, SBA advises Licensees that mere disagreement with the management of a Small Business does not provide grounds for taking temporary Control under this provision; rather, the Licensee must be facing a clearly identifiable risk of financial loss.

In response to another comment, proposed § 107.865(d)(3) has been revised by deleting the world ''original'', which SBA agrees is unnecessary. Another comment requested that temporary Control be permitted if a Licensee satisfies either of the criteria in paragraph (d)(3) instead of both. SBA considers the language in the proposed rule to be appropriate and has not adopted the comment.

Proposed paragraph (d)(4) would allow a Licensee to take temporary Control 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. It was suggested by one commenter that this paragraph should also allow temporary Control if the Financing is a ''change of Control of a Small Business pursuant to proposed § 107.750.'' SBA believes that the proposed temporary Control provisions give Licensees sufficient protection and flexibility, and is finalizing § 107.865(d) without change.

SBA received three comments on proposed § 197.865(e)(3) questioning the reduction from seven years to five years of the time limit for maintaining temporary Control (subject to an extension granted by SBA in extraordinary circumstances). One comment suggested going back to seven years, one questioned the necessity of any time limit (due to the fact that it is inherent in the venture business to want to exit investments as soon as possible), and one suggested language stating that SBA would grant an extension if a Licensee can establish ''that the relinquishment of Control will materially impair the value'' of its investment.'' SBA rejects all three of these suggestions and is finalizing § 107.865(e)(3) as proposed. Control is prohibited under the Act and SBA believes that exceptions to this prohibition must be narrowly tailored. The Agency considers the five year period sufficient in most cases and can grant exceptions if circumstances warrant.

v. Management Fees for Services Provided to Small Businesses

Three comment letters were received regarding proposed § 107.900. While one commenter approved the liberalization of the rules governing management services provided to Small Businesses, it was suggested that greater liberalization is still needed. The other two commenters argued in favor of expanding the criteria under which a Licensee could provide management services to a Financed Small Business without SBA approval. Specifically, they focused on the requirement that the Services be provided only on an hourly fee basis. They explained that the current trend is moving away from hourly billing toward ''project fees'' and that hourly billing has been perceived as being both inefficient and unfair. They further noted that while this issue can be resolved by acquiring SBA's prior written approval pursuant to proposed § 107.900(c), this process is both time consuming and burdensome. SBA has reexamined this issue in light of the comments received and recognizes the reasonableness of this suggestion. Therefore, proposed § 107.900 is revised to allow a Licensee to charge on a project fee or other reasonable basis. However, the burden of proof will be on the licensee to demonstrate, upon request, that fees charged to not exceed prevailing rates charged for comparable services by other organizations in the geographic area of this Small Business.

Paragraph (b), concerning fees for service as a board member, is revised in the final rule in accordance with comments received, to allow for fees to be paid in the form of cash, warrants or other consideration. In addition, the following language is added at the end of the last sentence of paragraph (b): ''* * * or, in the absence of outside board members, amounts reasonable when compared to similar companies with outside board members.''

Proposed § 107.900(e)(2) discusses transaction fees which may be charged a Small Business by a Licensee's Associate 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. The comment received on this paragraph suggested that the 95 percent unrelated revenue test was too restrictive and would force Small Businesses to hire outside investment bankers who would be unfamiliar with the company, which could result in higher fees. SBA is persuaded by this argument and has deleted this provision from paragraph (e)(2).

Except for the revisions discussed above, § 107.900 has been finalized as proposed.

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

Two comments were received on proposed § 107.1000. One specifically praised the flexibility embodied in the proposal, which provides a consolidated listing of those regulatory provisions from which a non-leveraged Licensee would be exempt. The other comment listed a number of sections from which non-leveraged Licensees should be exempt, but these largely involved statutory requirements. As discussed throughout this preamble, some additional provisions have been added to this section. In addition to the exemptions in the proposed rule, the final rule exempts non-leveraged Licensees from:

(1) The recordkeeping requirements and fee limitations in § 107.825(b) and (c) for securities purchased through or from an underwriter;

(2) The requirement to obtain SBA's prior approval of initial Management expenses under § 107.140 and increases in Management Expenses under § 107.520;

(3) The prior approval requirement in § 107.815(b) for options obtained from a Small Business by the Licensee's management or employees; and

(4) The requirement to obtain post approval for new directors and new officers, other than the Licensee's chief operating officer. A notification requirement has been substituted.

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

a. Types of Leverage Available

Only one comment was received on proposed § 107.1100 which strongly supported the language clarifying that a Section 301(d) Licensee may apply for both Debenture and Participating Security Leverage. The section is therefore finalized without change.

b. General Eligibility Requirements for Leverage

One comment was received on proposed § 107.1120, objecting to the presumption that only Licensees with $5 million or more of Regulatory Capital are financially viable. The commenter stated that this represents a 300 percent increase for Section 301(d) Licensees, is not warranted and threatens the financial viability of Section 301(d) Licensees. As stated previously in this preamble, SBA considers the minimum capital requirements to be vital to the sound operation of the SBIC program.

c. Requirement To File Quarterly Financial Statements

Proposed § 107.1220 requires that Licensees file quarterly, unaudited financial statements on SBA Form 468 (short form) within 30 days of the end of the quarter, so long as any part of SBA's Leverage commitment is outstanding to the Licensee. A commenter suggested, and SBA agrees, that this section should be revised to clarify that the quarterly filing requirement does not apply at the Licensee's fiscal year end, which is covered by the annual filing of Form 468 under § 107.630. The section is revised and finalized accordingly.

d. Draw-downs by Licensee Under SBA's Leverage Commitment

All three of the comment letters received on proposed § 107.1230 objected to one of the requirements listed under the ''procedures for funding draws'' in paragraph (d). As proposed, paragraph (d)(3) would require a Licensee, when requesting a ''draw'' pursuant to SBA's Leverage commitment, to furnish a statement to SBA ''that the proceeds are needed to fund one or more particular Small Business, including the name and address of each Small Business, and the amount and anticipated closing date of each proposed financing.'' One commenter labeled this paragraph an ''unnecessary burden requiring an act of prophecy.'' All agreed that as investors, they are not motivated to draw capital and not invest it, but that they may be looking at many investments at the time of the request, expecting to make one or more investments based upon proposals outstanding or being negotiated, and not all close. It was further pointed out that some negotiations may delay closing or alter amounts actually invested.

SBA considered this issue at length. As participants in the SBIC program are aware, there is insufficient Leverage currently available to meet demand, and no change is expected in the near future. This places SBA in the position of having to allocate the limited Leverage available among all the eligible applicants. Under these conditions, SBA finds it useful to be able to review each Licensee's track record in closing its anticipated investments as part of its evaluation of the Licensee's need for Leverage in comparison with others. Thus, SBA is not willing to delete the requirement for information on specific planned Financings at this time.

Nevertheless, SBA is sympathetic to the commenters' concerns and is open to future changes in this area, particularly if Leverage ceases to be in short supply. In the final rule, the information requirements in paragraph (d)(3) are preceded by the phrase ''if required by SBA''. This language gives the Agency the flexibility to drop these requirements in the future if conditions warrant, without having to revise the regulations.

e. Participating Securities—Requirement To Make Equity Capital Investments

Under proposed § 107.1500(b)(4), which was unchanged from the existing regulations, Licensees issuing Participating Securities would have been required to make Equity Capital Investments equal to the total amount of Participating Securities issued, and also to maintain Equity Capital Investments in an amount equal to their outstanding Participating Securities. SBA received a comment arguing strongly that the requirement to maintain a certain level of Equity Capital Investments should be deleted. The commenter's concern was that it is impossible to predict when investments will be liquidated and that a Licensee might fall into violation due to circumstances largely beyond its control.

SBA appreciates the commenter's concern. However, section 303(g)(4) of the Act specifically requires Licensees to ''maintain an amount equal to the outstanding face value'' of Participating Securities in Equity Capital Investments. Therefore, this requirement cannot be abandoned, and the section is finalized as proposed. However, in considering waiver requests, the Agency will give weight to circumstances which suggest that noncompliance is the result of factors not readily controllable by the Licensee.

f. Participating Securities—Liquidity Requirement

Proposed § 107.1505(a) contained language giving SBA the right to make the final determination of a Licensee's liquidity impairment. SBA received a comment suggesting that this language be deleted. SBA is persuaded that Licensees are unlikely to be motivated to manipulate the liquidity computation in order to make distributions that would leave them without sufficient liquidity to continue their operations; therefore, this language has been deleted from the final rule.

g. Participating Securities—Computation of Earmarked Profit (Loss)

In proposed § 107.1510(d), SBA attempted to provide a simplified formula for the computation of Earmarked Profit (Loss) without changing the substance of the calculation. One comment pointed out that the revised language, which referred to ''Net Income (Loss) as reported on SBA Form 468'', created ambiguity with respect to the treatment of user fees paid to SBA and partnership syndication costs incurred by Licensees. Licensees have presented these items on Form 468 using a variety of accounting treatments, and in some cases have not made them a component of Net Income (Loss).

SBA believes that Licensees should be permitted to treat both user fees and syndication costs as expenses for the purpose of determining Earmarked Profit (Loss). Accordingly, the final rule states that for the purpose of determining Net Income (Loss) in the Earmarked Profit formula, user fees and commitment fees paid to SBA, as well as partnership syndication costs, must be capitalized and amortized on a straight-line basis over five year. In all other respects, Net Income (Loss) must be as reported on SBA Form 468.

h. Participating Securities—Base for Profit Participation

Proposed § 107.1530(c) presented the formula for the Base on which a Licensee computes SBA Profit Participation. There was no change proposed in the formula; however, SBA received one comment pointing out a situation in which the formula produces an unintended result. If a Licensee were to compute and distribute Profit Participation for an interim period, and then experience losses during the remainder of its fiscal year which partially offset the interim profit, the later losses could not be included in Unused Losses for the purpose of determining the Base going forward. SBA agrees with the need for a technical correction of the Unused Loss definition, and is finalizing § 107.1530(c) with the necessary revision.

i. Participating Securities—''PLC Ratio'' Used in Profit Participation Rate Formula

Proposed § 107.1530(e)(2) set forth the conditions under which a Licensee can reduce its PLC Ratio by increasing its Leverageable Capital. A reduction of the PLC Ratio has the effect of reducing the Licensee's Profit Participation Rate. One commenter suggested that a Licensee should be permitted to include a Leverageable Capital increase in the ratio without express SBA approval, provided the increase was the result of the takedown of commitments or the conversion to cash of non-cash assets included in Private Capital. Language to this effect was previously included in the regulations and was inadvertently dropped from the proposed rule. It has been restored in the final version of § 107.1530(e)(2).

j. Participating Securities—Adjustment of Interim Profit Participation Calculations for Changes in the Year-End Profit Participation Rate

SBA received a comment suggesting that proposed § 107.1530(h)(3) be deleted. This provision, which was unchanged from the existing regulations, stated that if a Licensee computing Profit Participation had previously made an interim computation during the same fiscal year, it would be required to adjust the interim amount to account for any subsequent increases in the Profit Participation Rate. The commenter pointed out that the provision was inconsistent with the mechanics of § 107.1530(h) (1) and (2), which resulted in automatic adjustment of interim computations for subsequent increases *or decreases* in the Licensee's Profit Participation Rate.

SBA agrees that the provisions are inconsistent; however, the preamble to the April 8, 1994 final rule concerning the Participating Securities program (59 FR 16898) makes the following statement: ''Any computation of Profit Participation made as of the close of an interim fiscal quarter is subject to adjustment whenever any subsequent interim distributions are contemplated, and at the end of the fiscal year, in order to account for any increase in the Profit Participation Rate. If the Profit Participation Rate decreases as a result of an approved increase in Leverageable Capital, Profit Participations already computed for any interim periods shall not be adjusted.''

Thus, with respect to the original intent of the regulations, the error in the proposed rule is found not in paragraph (h)(3), but in paragraphs (h)(1) and (h)(2), which incorrectly adjust interim Profit Participation computations for decreases in the Rate as well as increases. Accordingly, in the final rule, SBA has revised paragraph (h) so that an adjustment takes place only when the Profit Participation Rate increases.

k. Participating Securities—Basis for Distribution of Prioritized Payments and Adjustments

Proposed § 107.1540(a), which is essentially the same as the existing regulation, would require a Licensee to distribute the balance in its Distribution Account (consisting of Earned Prioritized Payments and earned Adjustments) annually, based on its profits as determined under § 107.1520. One commenter pointed out that ''no distinction is made in § 107.1520 between cash and non-cash earnings. Consequently, this provision effectively requires that a Licensee make an annual distribution of cumulative profits to pay Prioritized Payments even if the Licensee did not receive cash for all or a portion of these profits.'' The commenter suggested that distributions should be required only for profits earned by the Licensee in cash.

SBA appreciates the concern expressed, but has decided to finalize this section as proposed. The Agency believes that Licensees are sufficiently protected by the provision in § 107.1540(a) that makes all distributions under § 107.1540 conditional upon the satisfaction of the liquidity requirement in § 107.1505. Thus, a Licensee that had received only non-cash income likely would be precluded from making a distribution.

l. Payment of Prioritized Payments on Participating Securities in Order of Issue Date

Under proposed § 107.1540(c), Licensees would be required to pay Prioritized Payments on their Participating Securities in order of the securities' issue dates. One commenter pointed out that this would impose a substantial burden by requiring Licensees to maintain detailed sub-accounts to track the Accumulated Prioritized Payments associated with each individual Participating Security, and would not provide any benefit to the Agency. SBA agrees that this provision is unnecessary and has deleted it in the final rule.

m. Participating Securities—Computation of ''Maximum Tax Liability''

Proposed § 107.1550(b) set forth the formula used to compute a Licensee's Maximum Tax Liability, from which the Licensee calculates its permitted tax distribution. One element in the formula is ''total ordinary income'' allocated to Licensee's investors for Federal income tax purposes. One commenter sought clarification as to whether this phrase was intended to represent ordinary income less ordinary deductions. That is the interpretation intended by SBA, and the paragraph has been revised in the final rule to clarify the meaning.

With respect to the same paragraph, the commenter also suggested that ''total ordinary income'' be defined to exclude expenses that partners may not be able to deduct fully under the tax law. SBA believes this suggestion is inconsistent with the Act, which refers to ''income allocated to each partner or shareholder * * * for Federal income tax purposes'' and does not provide for any adjustment for nondeductible expenses. Furthermore, the Agency finds no compelling reason to provide all investors with an additional benefit based on the possibility that some may face limitations on their deductions.

n. Participating Securities—Payment Dates

SBA received several comments concerning the Participating Security distribution regulations (§§ 107.1540 through 107.1570) which would require Licensees to make distributions only on quarterly Payment Dates. All the commenters objected to the inflexibility of these provisions. As stated in the preamble to the proposed rule, the Payment Dates represent the dates on which Trust Certificate holders receive interest payments and any returns of principal to which they are entitled. Because Participating Securities can be redeemed only on Payment Dates, the proposed rule limited Licensees' distributions to these dates to avoid certain problems, such as the question of who is responsible for Prioritized Payments on a Participating Security during the interval between the making of a distribution and the actual redemption of the Participating Security with the proceeds of the distribution.

However, SBA recognizes that the loss of flexibility under the Payment Date structure can have a significant negative impact on both the Licensee and the Agency, particularly in the case of distributions to be made in the form of securities. In this instance, the restrictions may force the Licensee to hold securities for a substantial period of time, during which the Licensee and its investors (including SBA) would be subject to a high degree of market risk.

Because of time constraints, SBA is unable to modify the Payment Date restrictions in this final rule. However,

the Agency intends to seek a solution that will provide Licensees with greater flexibility in making distributions of securities, and to publish a proposed rule dealing with this problem as soon as possible.

One change concerning the timing of distributions is being incorporated in the final rule. In the preamble to the proposed rule, SBA indicated that it was willing to consider allowing tax distributions under § 107.1550 to be made during some window period between the February 1 and May 1 Payment Dates, in order to allow investors to receive cash before their Federal tax filing deadlines. Based on the comments received, SBA is finalizing § 107.1550(d) with revised language permitting a tax Distribution to be made between March 1 and April 15 by a Licensee with a December 31 year end. Licensees still must pay all Prioritized Payments before being eligible to make a tax distribution.

o. Trust Certificates

During the comment period, SBA reviewed proposed §§ 107.1600 through 107.1680 pertaining to Trust Certificates guaranteed by SBA to fund Leverage. Section 321 of the Act and the documentation of the Trust Certificates are very specific with respect to the terms and conditions. SBA has chosen to shorten these sections by eliminating language contained in the statute or detailed in the Trust Certificates. None of the changes made to the proposed §§ 107.1600 through 107.1680 are substantive. In the final rule, Trust Certificates are covered in renumbered §§ 107.1600 through 107.1640.

p. Miscellaneous Leverage Provisions

In the final rule, SBA has eliminated proposed § 107.1700(a) and (c) as redundant and unnecessary language. Section 321(a) of the Act is specific with respect to SBA's unconditional guarantee and the requirement for a bond. SBA will continue to provide for an unconditional guarantee. The bonding requirement has been eliminated in this section as well as in the Trust Certificate sections because the bond is required by statute.

10. Subpart J—Licensee's Noncompliance With Terms of Leverage

a. Capital Impairment

SBA received one comment on proposed § 107.1840(d)(6), which would have required a Licensee, in computing its Capital Impairment Percentage, to reduce its ''Adjusted Unrealized Gain'' by the amount of any borrowing or other obligation associated with portfolio securities that were the source of the Unrealized Appreciation used as the basis for determining the Adjusted Unrealized Gain. The commenter correctly pointed out that the reduction should be limited to the extent of the Unrealized Appreciation. SBA agrees and has finalized the provision accordingly.

11. Appendices to Part 107

The existing regulations include two appendices: Appendix I, Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies, and appendix II, Valuation Guidelines for SBICs. SBA has decided to delete the appendices from Part 107, and will publish them in a different format at a later date. Although they are no longer part of the regulations themselves, both the accounting standards and the valuation guidelines remain applicable to all Licensees.

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 final rule will not be a significant regulatory action for purposes of Executive Order 12866 because it will not have an annual effect on the economy of more than $100 million, and that it will 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 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 regulations will have some economic effect, including possible effects on small entities. First, license application fees and examination fees will be raised. An SBIC license applicant will 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 will continue to be based on the total assets of a Licensee, but at higher rates. The largest Licensees, generally those with several hundred million dollars of assets, could experience fee increases of $20,000 or more; however, the number of such Licensees is currently very small.

Second, the changes in the regulations governing ''Cost of Money'' (the maximum amount a Licensee can charge on loans and debt securities) will potentially affect the borrowing costs of small entities. Although the interest rate on loans is determined primarily by market forces, the final rule will 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 final rule contains 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 is required under § 107.610 has already been approved by OMB under Control Number 3245–0301.

For purposes of Executive Order 12612, SBA certifies that this rule does 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.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

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

BILLING CODE 8025–01–M

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

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

Subpart A—Introduction to Part 107

§ 107.20 Legal basis and applicability of this part 107.

(a) The regulations in this part implement Title III of the Small Business Investment Act of 1958, as amended. All 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 this 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 in this part 107.

(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 of this chapter.

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 on retainer 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) though (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 § 107.1620 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 means 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.

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 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 50 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.

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 § 107.825).

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 in paragraph (1) of this definition. (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 (15 U.S.C. 8a–1 *et seq.*).

(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 (Pub. L. 93–406, 88 Stat. 829), excluding plans established under section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), 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 (15 U.S.C. 77a–77aa)) 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 (17 CFR 230.144) 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 (15 U.S.C. 77b *et seq.*), 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) Has not had sales exceeding $3,000,000 or positive cash flow from operations in any of its last three full fiscal years; and

(2) Was not formed to acquire any existing business, unless the acquired business satisfies paragraphs (1) and (2) of this definition.

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 each of its 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 each of its 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.

A 1940 Act or 1980 Act Company is eligible to apply for an SBIC license, and an existing Licensee is eligible to apply for SBA's approval to convert to a 1940 Act or 1980 Act Company. In either case, the 1940 Act or 1980 Act Company may elect to be taxed as a regulated investment company under section 851 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 851). However, a Licensee making such election may make Distributions only as permitted under the applicable sections of this part (see the definition of Retained Earnings Available for Distribution, § 107.585, and §§ 107.1540 through 107.1580).

§ 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.

If you plan to obtain Leverage, 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 through 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 you are not licensed to issue participating securities and:

(1) You received your license before November 28, 1995; 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 your first issuance of 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 January 31, 1996, 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, one time only, for a term to be determined by SBA.

§ 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.

(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 including non-cash capital contributions in Private Capital.

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 Exclusion of stock options issued by Licensee from Management Expenses.

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) *Exceptions to general rule.* This § 107.460 does not apply to:

(1) Common officers, directors, managers, or owners of a Section 301(c) Licensee and its Section 301(d) subsidiary; or

(2) Common officers, directors, managers, Control Persons, or owners of two (or more) Licensees which have no Leverage.

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. Before collecting an application fee or extending Financing to a Small Business, you must obtain a written statement from the concern acknowledging its awareness that you are ''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. If SBA reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party, acceptable to SBA, to substantiate the valuations.

(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 adverse 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; and

(2) Indicate the basis for computing Management Expenses.

(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 January 31, 1996.

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; or

(6) A reasonable petty cash fund.

(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) *Definition.* In this § 107.550, ''secured third-party debt'' means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume, secured lines of credit, and secured Temporary Debt of a Licensee with outstanding Participating Securities.

(b) *General rule.* If you have outstanding Leverage, you must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *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.

(d) *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.

(e) *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 2:1;

(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 Restrictions 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 Licensee's 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 totaling at least 20 percent of your Regulatory Capital; or

(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 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 the receipt, within the previous nine months, of realized gains, repayments, additional capital contributions, or Leverage.

(2) It is necessary for you to maintain excess idle funds to conduct your operations because:

(i) Your unfunded commitments from investors are no more than 20 percent of your Regulatory Capital; 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.* (1) *General rule.* You must meet the activity requirements in this § 107.590 as of the end of your first full fiscal year beginning after January 31, 1996. Until then, you will be considered active if you meet the activity requirements in effect on January 30, 1996.

(2) *Rule for new Licensees.* If you received your license after January 31, 1996, or if you received your license less than eighteen months before the fiscal year end determined under paragraph (d)(1) of this section, you must meet the activity requirements in this § 107.590 as of the end of your second full fiscal year beginning after the date you received your license.

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 Licensees, 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 president, chief executive officer, treasurer, 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 § 107.825). 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, except for the information required under paragraph (e) of this section, which must be filed on or before the last day of the fifth 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.* Unless SBA approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(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. If you have an outstanding Leverage commitment from SBA, see the filing requirements in § 107.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's 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 adverse 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.* (1) 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 officers, directors, or Control Persons.

(2) *Exception for non-leveraged Licensees.* If you do not have outstanding Leverage or Earmarked Assets, you are not required to obtain post approval of new directors or new officers other than your chief operating officer; however, you must notify SBA of the new directors or officers within 30 days.

(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 $1,500,000.	$3,500	+0
$1,500,001 to $5,000,000.	$3,700	+.065% over $1,500,000
$5,000,001 to $10,000,000.	$6,000	+.02% over $5,000,000
$10,000,001 to $15,000,000.	$7,000	+.01% over $10,000,000
$15,000,001 to $25,000,000.	$7,700	+.015% over $15,000,000
$25,000,001 to $50,000,000.	$9,200	+.015% over $25,000,000
$50,000,001 to $100,000,000.	$13,000	+.01% over $50,000,000
$100,000,001 or more.	$18,000	+.009% over $50,000,000

(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 § 121.301(c)(1) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.301(c)(2) 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 § 121.201 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 day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; 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, for all Financings extended, it passes substantially all the proceeds through to the same 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 property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose.

(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 49 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 §§ 107.825(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, 5 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, or fund Commitments you made 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) *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 demonstrate that the change in business activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If SBA approves your request to retain an investment under paragraph (b)(2) 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) 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, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests. If the Financing agreement contains debt-type acceleration provisions or includes redemption provisions other than those permitted under § 107.850, the security will be considered a Debt Security for purposes of § 107.855.

§ 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.* If you have outstanding Leverage or plan to obtain Leverage, 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; or

(3) The options received are compensation for service as a member of the board of directors of the Small Business, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 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 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, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* If you have outstanding Leverage or plan to obtain Leverage, 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.* If you have outstanding Leverage or plan to obtain Leverage, the underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase, provided it is no more than 25 percent of the total offering. If you buy more than 25 percent of the offering, the amount you pay to the Associate underwriter must 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 § 107.825 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 of Loans and Debt Securities 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 Loan or Debt Security 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 book value); 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. Subject to lower ceilings prescribed by local law, the Cost of Money to the Small Business must 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.* You may determine your Cost of Money ceiling for a particular Financing as of the date you issue a Commitment or as of the date of the first closing of the Financing. Once determined, the Cost of Money ceiling 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.

(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 or was originally due to be repaid in full, whichever is earlier;

(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 margin.

§ 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. The application fee may be collected at the same time as the closing fee under paragraph (c) or (d) of this section, or earlier. The fee must be:

(1) 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) Agreed to in writing by the Financing applicant.

(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.

(g) *Breakup fee.* If a Small Business accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a ''breakup fee'' equal to the closing fee that you would have been permitted to charge under paragraph (c) or (d) of this section.

§ 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;

(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 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) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis; and

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business.

(b) *Fees for service as a board member.* You or your Associate may receive fees in the form of cash, warrants, or other payments, 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. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

(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) *Recordkeeping 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.

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.

(5) The recordkeeping requirements and fee limitations in § 107.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(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.

(4) Your initial Management Expenses under § 107.140 and increases in your Management Expenses under § 107.520. However, you must have your Management Expenses approved by SBA in order to become eligible for Leverage.

(5) Options obtained from a Small Business by your management or employees under § 107.815(b).

(c) You are exempt from the requirement in § 107.680 to obtain SBA's post approval of new directors and new officers, other than your chief operating officer. However, you must notify SBA of the new directors or officers within 30 days, and you must have all directors and officers approved by SBA in order to become eligible for Leverage.

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.
4% Preferred Securities .	SBA Form 1022A.
Participating 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, the regulations in this part 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:

$T = .90 \times (CA + LI)$

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 (other than your fourth fiscal quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). 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. If required by SBA, the statement must include 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) If SBA required you to provide information concerning a specific planned Financing under paragraph (d)(3) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, 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.

(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
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 Available			A
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	

CALCULATION OF LIQUIDITY RATIO—Continued

Financial account	Amount reported on SBA Form 468	Weight	Weighted amount
Total Current Funds Required			B

[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) (i) 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 except as otherwise provided in this paragraph (d)(1)
IK = Unrealized Appreciation (Depreciation) on Earmarked Assets that you are distributing as an In-Kind Distribution under § 107.1580
EME = Excess Management Expenses

(ii) For the purpose of determining Net Income (Loss), user fees and commitment fees paid to SBA and partnership syndication costs that you incur must be capitalized and amortized on a straight-line basis over five years.

(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 an outstanding 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 with the following exception: If, at the end of your last fiscal year, you computed a negative result under paragraph (h)(3) of this section, your Unused Loss equals that negative result.

(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. In addition, the increase must have been expressly provided for in a plan of operations submitted to and approved by SBA in writing, or must be the result of the takedown of commitments or the conversion of non-cash assets that were included in your Private Capital. 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 = {(.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) If your last Profit Participation computation was for an interim period during the same fiscal year and used a higher Profit Participation Rate than that used in paragraph (h)(1) of this section, multiply the Base for that period by the Profit Participation Rate used in paragraph (h)(1) of this section.

(3) Reduce the Profit Participation from paragraph (h)(1) of this section by any amounts of Profit Participation that you distributed or reserve for distribution to SBA, or its designated agent or Trustee, for any previous interim period during the fiscal year, or by the amount you computed in paragraph (h)(2) of this section, whichever is less. If the result is less than zero, SBA's Profit Participation is zero. If you obtain a negative result as of the end of your fiscal year, you must add it to your Unused Loss the next time you compute your Base under paragraph (c)(1) of this section.

(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 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.

§ 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 (less ordinary deductions) 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 or, if your fiscal year end is December 31, during the period beginning March 1 and ending April 15.

§ 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)] × 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:

$$[\text{Leverage}/(\text{Leverage} + \text{Leverageable Capital})] \times 100$$

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:

$$\text{Leverageable Capital} \times (100\% - \text{CIP})$$

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) *Authorization.* 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.

(c) *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.

(d) *Pass-through provisions.* 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.

(e) *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.

§ 107.1610 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.

§ 107.1620 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'').

(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.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with SBA, the CRA, as SBA's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures or Participating Securities:

(i) Form an SBA-approved Pool or Trust;

(ii) Issue the TCs in the form prescribed by SBA;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from Licensees;

(v) 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;

(vi) Hold, safeguard, and release all Debentures and Participating Securities constituting Trusts or Pools upon instructions from SBA;

(vii) Remain custodian of such other documentation as SBA shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs;

(ix) Perform such other functions as SBA may deem necessary to implement the provisions of this section.

(b) *Functions.* 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.

§ 107.1630 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 (d) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require.

(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, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If 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) If such broker or dealer has failed to make full disclosure of the information required by SBA in paragraph (a) of this section, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(d) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures, Participating Securities or TCs will be conducted in accordance with Part 134 of this chapter. SBA may, for any of the reasons stated in paragraphs (b)(1) through (b)(4) of this section, 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.

§ 107.1640 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 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.

§ 107.1710 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 U.S.C. 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 your 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 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
Class 1 Appreciation ≤ Net Appreciation	Class 1 Appreciation + + Class 2 Appreciation ≤ Net Appreciation.	(80% × Class 1 Appreciation) + (50% × Class 2 Appreciation).
Class 1 Appreciation ≤ Net Appreciation	Class 1 Appreciation + Class 2 Appreciation > Net Appreciation.	(80% × Class 1 Appreciation) + [(50% × (Net Appreciation − Class 1 Appreciation)].
Class 1 Appreciation > Net Appreciation		80% × 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, up to the amount of the Unrealized Appreciation on the securities.

§ 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 the regulations in this part.

§ 107.1930 Effect of changes in this part 107 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part 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: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1351 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Parts 108, 116, 120, 122, 131

Business Loan Programs

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: SBA has completed an extensive review of all of its regulations, and it has decided to eliminate some regulations and consolidate, clarify, and simplify the remainder. This final rule consolidates five current CFR parts into one Part to be known as Part 120. This surviving Part 120 covers virtually all policies and regulations, other than size standards, applicable to SBA's business (non-disaster) loan programs. Almost all provisions have been reworded, renumbered, and relocated. There are a few new or revised policies. Several sections have been deleted. However, most of the revisions merely streamline and clarify the regulations and do not represent substantive change.

DATES: This rule is effective March 1, 1996. This rule applies with respect to all applications for financial assistance filed on or after March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John R. Cox, (202) 205–6490.

SUPPLEMENTARY INFORMATION: On December 15, 1995, SBA published in the Federal Register (60 FR 64356) a notice of proposed rulemaking with respect to the consolidation of five current CFR parts into one Part to be known as Part 120. SBA received and considered 136 timely comments in response to the proposed rule. SBA has adopted many of the comments in issuing this final rule. Each of the significant comments is addressed below. In addition, SBA has made technical changes and clarifications in this final rule, where appropriate.

This final rule combines Parts 108, 116, 120, 122 and 131 of 13 CFR into one new Part to be known as Part 120. This new Part 120 will regulate all of SBA's non-disaster financial assistance to small businesses under its general business loan program (''7(a) loans''), its microloan demonstration program (''Microloans''), and its development company program (''504 loans'').

Many repetitive and overlapping sections from the current regulations are eliminated in this final rule. Formerly, provisions applicable to a business loan program were often located in different Parts. Sometimes unintended differences developed between the loan programs in the interpretation or implementation of similar program policies because of minor inconsistencies in the language of the provisions in the several Parts. These inconsistencies have been eliminated.

In this final rule, the basic requirements that apply to all of the business loan programs are located in subpart A. These include elements currently found in portions of Parts 108, 116 and 120. Policies specific to a particular program are in the separate subpart applying to that program. Rules specific to 7(a) loans are in subpart B and include elements currently in portions of Parts 116, 120, and 122. Regulations applying to SBA's special purpose loans currently in Part 122 and a portion of Part 116 are in Subpart C. Subparts D, E, and F contain rules regarding lenders, program administration, and the secondary market currently found in Part 120. The loan moratorium provisions presently in Part 131 are located in subpart E. Subpart G contains rules specific to Microloans currently in Part 122. Regulations applying to 504 loans currently located in Part 108 are in subpart H.

Definitions

Many comments were received which addressed the definition of Associate in § 120.10. Most commenters expressed the opinion that the definition was too broad and, if promulgated, would adversely affect the ability of small businesses to use SBA's lending programs. Of particular concern was the inclusion of a ''Close Relative'' of a principal of an entity in the definition of Associate of a small business, Lender or CDC. As a result of the comments, SBA re-examined this definition and modified it. An Associate of a Lender or CDC will include a holder of 20 percent or more of the value of a Lender's or CDC's stock or debt instruments, as well as an entity in which the Close Relative of an Officer, Director, key employee, or holder of at least a 20 percent interest in the Lender or CDC. The definition of an Associate of a small business was amended to include an owner of more than 20 percent of the equity of the small business, but not an entity in which a Close Relative of such an owner is also an owner.

Subpart A

Numerous commenters indicated that § 120.101, pertaining to the unavailability of credit, needed clarification with respect to the substantiation required to support a Lender's or CDC's certification. SBA is promulgating this section as proposed because it plans to provide information on how to provide the required substantiation in its Standard Operating Procedures (SOPs).

Proposed § 120.102, which imposed a requirement that the personal resources of the owners of an applicant for a business loan be injected into the applicant generated more than 80 comments from the public. The overwhelming majority of the responses objected to the application of a personal resources test to the 504 program because that program is an economic development program. After considering the responses received, SBA has revised the final rule to require an injection of personal resources at a level dependent on the amount of a total financing package which includes an SBA business loan. This means that the injection of personal resources will bear a designated correlation to the total financing package of SBA and non-SBA assistance. This regulation will ensure that applicants for SBA financial assistance will be able to ascertain the demand on their personal resources, with some certainty, before they seek SBA financial assistance.

Section 120.110 lists types of businesses which are not eligible for SBA financial assistance. Several commenters suggested SBA further explain when a business is engaged in a religious activity for purposes of ineligibility under § 120.110(k), and to eliminate the proposed requirement that a business be principally engaged in the activity. SBA has decided to retain the prohibition on providing assistance to a business principally engaged in a religious activity. SBA believes that this standard comports with Constitutional requirements. SBA intends to administer the standard in a manner which balances the needs of small businesses with applicable legal requirements. However, given the uncertainty of the state of legal precedent relative to the Establishment Clause, SBA will continue to review this issue, and may make such prospective changes in the regulation as may be required.

In addition, for purposes of consistency SBA will use a standard of no more than one-third of gross annual revenue derived from the prescribed activity to determine the eligibility of businesses engaged in legal gambling activities or packaging SBA loans for purposes of §§ 120.110 (g) and (m).

Proposed § 120.111 would permit an Eligible Passive Company to be eligible for 7(a) and 504 loan assistance if it leases real or personal property to an otherwise eligible small business. SBA received many comments suggesting that it permit a revocable or irrevocable trust to be such an entity. SBA has decided to delete the requirement that when a trust is an Eligible Passive Company it must be an irrevocable trust in favor of one permitting eligibility for revocable trusts in prescribed circumstances. In order to be eligible, the trustor must warrant and certify that the trust will not be revoked or substantially amended without SBA's consent, and the trustor's personal guarantee will be required to provide adequate assurances of continuity and financial support. SBA will monitor its experience with revocable trusts and make modification to this provision if such experience warrants it.

Under current rules, an Eligible Passive Company may not use the proceeds of a business loan for working capital. Only an active company may obtain working capital as part of a business loan. SBA recognizes that this requirement has been burdensome and has caused some applicants to obtain two separate loans for the benefit of the same Operating Company. Accordingly, § 120.120(b) will allow an Eligible Passive Company to use part of business loan funds for the working capital of the Operating Company if the Operating Company is a co-Borrower.

With respect to proposed § 120.195, which required the reporting of fees

paid in connection with obtaining business loan assistance by a Lender, CDC, Intermediary Lender, and Borrower, SBA has decided to retain only a requirement relating to the Borrower since other regulations cover the obligation by the other parties to report fees. By eliminating a reference to other parties, SBA avoids unnecessary duplication.

Subpart B

Proposed § 120.200 specified that bonding is required as collateral for a 7(a) loan in which construction is financed. Two commenters recommended that a minimum amount of construction should be designated in § 120.200 before payment and performance bonds and builder's risk insurance would be required. Another commenter expressed concern that the proposed regulation would require formal waivers of bonding and insurance requirements on a case-by-case basis. Another comment noted that the revised provision does not appear to cover direct loans approved by SBA. SBA has made minor changes in the language of the provision to clarify that the provision covers direct and guaranteed loans. SBA has decided not to establish a specific size limit on the construction project which would trigger the bonding and insurance requirements, electing instead to address the specific construction project size in an SOP.

One commenter suggested that the proposed revised language in § 120.201 was so restrictive as to disqualify any refinancing of unsecured or undersecured debt regardless of circumstances. That was not the intent of the proposal. However, the final regulation specifies that SBA will not permit 7(a) financing to be used to shift a creditor's potential loss to SBA.

SBA has decided to delete proposed § 120.203 relating to revolving credit, as unnecessary. Revolving line of credit financing is currently authorized under § 120.390 for the CapLines program, and the Agency wants the flexibility to consider special finance needs of small business, such as ''floor plan'' financing, at a later date.

With respect to proposed § 120.213, SBA carefully considered suggestions to add language to the regulation pertaining to preemptive federal interest rates and the quarterly publication by SBA of maximum allowable fixed interest rates in the Federal Register. SBA has decided that it is unnecessary to address in the regulations the legal conclusion that maximum interest rates prescribed by SBA are exempt by statute from any maximum rates established under state law. It is SBA's intent to publish on a quarterly basis in the Federal Register notice of the maximum fixed interest rate permitted on guaranteed and direct loans. The final rule retains the language in the proposed rule.

Proposed § 120.214(f) has been rewritten in order to clarify that SBA has the authority to establish higher interest for smaller loans, and that the authority applies to both variable and fixed rate loans. The proposal has been finalized at § 120.215. Proposed § 120.214(g), has been renumbered and is now § 120.214(f).

A number of commenters suggested that SBA should amend proposed § 120.220(b), claiming that the policy of terminating a guarantee for nonpayment of the guarantee fee is too harsh. SBA has considered the comments, but has decided to retain the present policy of terminating guarantees for nonpayment of guarantee fees as one means of assuring timely submission of guarantee fees. In addition, under the Lender's agreement with SBA, payment of the guarantee fee is the consideration necessary to support SBA's guarantee commitment. Minor editorial changes have been made in this section to reflect that a guarantee fee payment may be reimbursed to the Lender from funds allocated in the working capital portion of a guaranteed loan.

Two commenters suggested that SBA should clarify in § 120.220(c) that the annual fee payable by a Lender cannot be charged to a Borrower. SBA has adopted the suggestion.

SBA has deleted proposed § 120.221(b), relating to commitment fees for Export Working Capital loans. This provision was based on the former Export Revolving Line of Credit program and is no longer applicable to any program.

A commenter suggested that SBA define the term ''Extraordinary servicing'' as proposed in § 120.221(c). SBA believes that any further description of special or extraordinary servicing practices would be more appropriate for its SOPs, and therefore declines to adopt the suggestion. The suggestion to permit prepayment fees, which were prohibited under proposed § 120.221(e), has not been adopted by SBA. The Agency believes that a small business should be allowed to prepay a 7(a) loan without incurring additional costs, and the prohibition on charging prepayment fees is a positive marketing tool for making 7(a) financial assistance available to small business.

SBA has added referral fees to the list of fees in § 120.222(b) which a Lender or Associate may not charge a Borrower since such fees are not fees which relate to services normally provided by a Lender. SBA has included a Service Provider as an entity in § 120.222(d) with which a Lender or Associate cannot share a premium received from the sale of an SBA guaranteed loan in the secondary market. The inclusion of a Service Provider in the prohibition reduces further the possibility of a conflict of interest or the appearance thereof.

Subpart C

Two commenters noted that under the provisions of proposed § 120.314, SBA was precluded from requiring personal guarantees for DAL–2 financial assistance. SBA intended the prohibition for requiring personal guarantees to be applicable only to DAL–1 financial assistance, and the provision has been corrected to reflect that intent.

One commenter suggested that SBA should state in the provisions pertaining to the Export Working Capital Program (EWCP) that limits on lender fees and interest rates are not prescribed. In final § 120.344, SBA has addressed the issue of extraordinary fees and interest rates pertaining to the EWCP. SBA does not set a maximum rate of interest which may be charged for this program.

At the suggestion of a commenter, the reference to loan proceeds to develop or penetrate foreign markets has been deleted from § 120.342 and moved to § 120.347, pertaining to eligible use of proceeds for International Trade Loans. EWCP loan proceeds are to be used only to finance export transactions.

Two commenters noted that proposed § 120.348 did not address a limitation on the fixed-asset portion of International Trade Loans. The provision has been amended to specify limitations on portions of loan amounts allocated for fixed assets and non-fixed assets.

At the suggestion of one commenter, SBA has clarified § 120.377 to provide that only a manufacturing concern may use loan proceeds for working capital for this particular loan program.

Two commenters suggested SBA should address the DELTA loan program in § 120.380. While the DELTA loan program is not a permanently funded SBA program, SBA has elected to briefly describe it in § 120.381(c).

Subpart D

Although § 120.420, which allows nondepository lenders to pledge notes evidencing SBA guaranteed loans or to sell the unguaranteed portions is not new, two commenters asked that depository lenders be allowed the same

option. SBA has rejected this suggestion. This option is not available to depository lenders because they have a depository base which provides liquidity, whereas the nondepository lenders have no such base. They have only a capital base which must be left unimpaired. To provide them with some liquid assets, SBA allows them to sell the unguaranteed portions of SBA guaranteed loans.

Two commenters wrote that a conflict exists between §§ 120.420(a) and 120.453(c). SBA adopted the commenter's suggestion to include language which makes clear that nondepository lenders who are also PLP lenders may sell the entire unguaranteed portion, not just 90 percent, of SBA guaranteed loans with SBA's consent.

Section 120.420(b)(2) concerning retention of economic risk, has been revised to require a nondepository lender which has sold the unguaranteed portion of a loan, to establish a sufficient reserve fund at the time of sale. The two other options available in the current regulations have not been used and are not being retained, and SBA has only approved proposals that have included a reserve fund.

One commenter proposed that § 120.441, concerning the Certified Lenders Program, be amended to permit certification of individual loan officers rather than the lending institution. SBA has considered this idea previously. SBA relies on the capability of its lenders, not individual loan officers. Therefore, SBA has decided not to alter the present procedure at this time. The current selection criteria already permit consideration of the experience of individual loan officers in certifying lenders.

Concerning the provision at § 120.442 which sets forth grounds for suspension or revocation of eligibility to participate in the CLP program, one commenter suggested including ethics violations as a basis for suspension or revocation. SBA will consider including this in its SOP which, if violated, would fall within the language ''violations of applicable * * * published SBA policies and procedures.'' SBA will follow suit with the PLP program, which has a similar revocation and suspension provision. SBA also emphasizes that the reasons listed in § 120.442 are simply examples of causes for suspension or revocation and not an exclusive list.

One commenter requested that PLP lenders be allowed to process loans which refinance interim loans under § 120.452(a)(2). SBA has decided to permit such loans if made for other than construction purposes and if the interim loan was approved by the lender within 90 days of receipt of the PLP loan number or the refinancing.

SBA received two comments requesting clarification on whether a lender was required to be a CLP lender before being eligible to apply for PLP status. Both commenters approved of the eligibility requirement. In the final rule, SBA is eliminating this requirement. It is not necessary to develop lenders into PLP lenders in stages. If a lender does not perform well as a PLP lender, SBA can revoke its PLP status.

Several commenters suggested that SBLCs be allowed to extend credit through other programs. SBA has been considering this for some time and has decided to amend § 120.470 by allowing SBLCs to provide SBA guaranteed loans to Intermediaries participating in the SBA Microloan program.

A commenter suggested raising the minimum bond coverage a Small Business Lending Company is required to have, from $25,000 to $500,000. SBA agrees with the commenter that $25,000 is too low and is adopting the suggestion by amending § 120.470(b)(10).

Subpart E

SBA received several comments concerning § 120.524(a) which sets forth grounds under which SBA may deny liability. The commenters opposed the proposed language which would allow SBA to deny liability upon any failure of a lender to take certain actions, as compared to the current language of the regulation which allows SBA to deny liability only upon substantial failure. SBA has decided not to adopt this suggestion. The final regulation makes it clear that SBA may deny liability on the basis of any material noncompliance with SBA's regulations or the terms of applicable loan documentation.

The provisions of § 120.532 *et seq.*, which describe the loan moratorium program, have been deleted from this final rule and will be inserted into the Agency's SOPs. The requirements of this program are already provided for by statute and the regulations are therefore redundant. SBA has retained in the regulations a short description of the program, and provides notice that complete information concerning moratoriums is available at local SBA district offices.

One commenter opined that § 120.540(a) requires additional language concerning when SBA or a lender may liquidate collateral securing a loan. SBA agrees and is including language that allows liquidation if the loan is in default.

One commenter suggested that § 120.540(c)(1) be revised to allow lenders to liquidate collateral as they normally would, rather than having to attempt to sell at auction. SBA has adopted the commenter's suggestion and the section now allows a lender to use negotiated sales if consistent with its usual practice for liquidating non-SBA-related assets.

One commenter discussed the revisions to the homestead protection provisions found at § 120.550 *et* seq. Much of the details have been removed with the intention of publishing them in an SOP. The writer was concerned that persons interested in these provisions will not know what is needed to comply with the requirements of this program. With the publication of the procedures in an SOP, persons wishing to know more about this program will be able to obtain the information easily from any local SBA district office.

Subpart F

Only one comment was received on Subpart F. The commenter requested that a definition of ''Associates of a Pool Assembler'' be added to the definitional section. This comment was not adopted since ''Associate'' is defined in § 120.10 and there is no need for a different definition for this Subpart. Minor changes were made to this Subpart for clarification.

Subpart G

Only one comment was received on Subpart G. The commenter suggested that proposed § 120.707(d) be revised to require Intermediaries to assign all guarantees and liens from their Microloans to SBA. This comment was not adopted. SBA believes that it is adequately protected by the current requirement that the Intermediary pledge to SBA a first lien position in the Microloan Revolving Fund, Loan Loss Reserve Fund, and all notes receivable. Minor changes were made to this Subpart for clarification.

Subpart H

§ 120.801. SBA received several comments regarding this introductory section describing the 504 program in general terms. All pointed out that a small business must apply for 504 financing through a CDC servicing the area in which the Project is located, not in which the business is located. SBA concurs and makes the correction in this final rule. SBA also has made several other minor revisions to this section in response to comments.

§ 120.810. Several comments suggested minor changes in one or more definitions that apply to the 504 program. SBA disagrees with all of the comments, except one regarding Substantial Increase in Unemployment. The commenter questioned the need for such a definition, questioning the SBA's ability to quantify the increases mentioned in the definition. SBA concurs and has deleted the definition (see § 120.881).

§ 120.827. As a result of a comment, SBA amended this section to make it clear that a CDC may itself provide financial and technical assistance to small businesses, as well as help small businesses to obtain such assistance from other sources.

§ 120.828. SBA received 13 comments on this section. As discussed more thoroughly in the following discussion of expansion into additional Areas of Operation, small businesses in some areas of the country receive excellent 504 assistance measured, at least, by loan activity, while in other areas, few, if any, small businesses have received assistance. SBA attempted to address this fact by, among other things, designating a minimum number of loan approvals which a CDC must process in order to retain certification. The present rule requires a minimum of 2 loan approvals averaged over the preceding 2 years. In the proposed rule, SBA altered the requirement to be ''the minimum number of 504 loans set by SBA in an annual program announcement.'' The purpose of the proposed change was to give SBA the flexibility to adjust the number as required to reflect an expected increase in loan volumes.

Without exception, every comment opposed this change, believing it imposed a burden both on the industry and SBA to adjust the standard every year in a program announcement. The industry trade association recommended changing the annual language to ''from time to time.'' Most of the other comments suggested that SBA retain its existing regulation. Based upon such comments, SBA has decided to retain the standard of 2 per year. The only change from the existing regulation is that SBA feels it is no longer necessary to use an average of the previous two years.

Many of the comments confused this issue with the performance standard for expansion into another Area of Operation. SBA wishes to emphasize that the standard in § 120.828 has nothing to do with expansion or competition.

§ 120.829. Three comments were received regarding this section. Title V of the Small Business Investment Act requires a CDC's portfolio to reflect a Job Opportunity Average. At the present time, the requirement is one Job Opportunity per $35,000 of 504 funding. That figure has been in effect for many years. The current regulation permits the AA/FA to allow a CDC's average to be up to 25 percent higher in certain areas. In the proposed rule, SBA rounded the 25 percent maximum ($43,875) up to $45,000. Otherwise SBA retained the current rule.

SBA received comments suggesting that SBA increase both the base $35,000 and the exception because of inflation. In addition, one comment recommended that SBA delete all of the exceptions in § 120.829 except Alaska and Hawaii because the rule is impossible to administer. SBA rejects both suggestions, principally because it is not aware that the industry has been having any problem complying with the Job Opportunity Average requirement at its present level. However, SBA does agree that redevelopment areas as defined in 42 U.S.C. 3161 should be deleted from the provision. The purpose of the 25 percent differential was to assist distressed geographical areas needing development. However, once designated, redevelopment areas remain so designated forever. Because they have become so common, the effect would be to increase the Job Opportunity Average for entire Areas of Operations to $45,000 rather than $35,000, if the CDC and SBA followed the regulation exactly. From a review of the Job Opportunity Averages submitted by CDCs in their annual reports, it is clear that the increased average in redevelopment areas is not required by CDCs or is not being followed. Furthermore, areas that were once distressed, but no longer are, would continue to be eligible for the higher average, even though it is no longer needed. For these reasons, SBA has determined that redevelopment areas be deleted from the section.

§ 120.830. Several comments objected that the definition of ''Associates'' would cause increased and burdensome reporting requirements. SBA believes that the amended definition of Associate cures this problem.

§ 120.831. The proposed rule included a new requirement that a CDC disclose to SBA and the Borrower any referral fees or other payment made or received by the CDC from the Lender or other party to the 504 transaction. A comment from the industry trade association indicated that it understood that SBA may want this disclosure, but that it should be required of all SBA guaranteed lenders, not just CDCs. In the interest of program consistency, SBA agrees, has broadened the language to include all lenders, and has consolidated the section with § 120.195 so that it applies to all business loans.

§ 120.835. Throughout the history of the 504 program there has been a great divergence among CDCs in the number of loan approvals each year. While some CDCs have exhibited continued growth measured by their loan approvals and ability to package, process and service loans, other CDCs have lagged behind. There are many complicated reasons for this, but the net result has been a patchwork of 504 service (measured by loan approvals) across the country, with many small businesses in some areas receiving 504 assistance while in other areas few, if any, small businesses have received such assistance.

SBA attempted to address this issue by permitting CDCs to expand temporarily into adjacent areas, and, then, in 1993, by designating a minimum number of loan approvals per year which a CDC must average over the previous two fiscal year periods to retain certification as a CDC. The current number of required loan approvals is two. SBA also established the status of an Associate Development Company (''ADC''). Those CDCs unable or unwilling to meet the minimum number of loan approvals may become ADCs, thereby continuing to participate in the program goals of economic and community development without having to make loans. A number of CDCs have been decertified as a result of this policy and have opted for ADC status.

However, a focus on removal from CDC status does not address the real question of adequacy of service within an Area of Operations. What constitutes adequate service within a community? The statutory objectives of the 504 program are to provide a portion of long term fixed-asset financing for small business projects that provide jobs and result in economic development. Clearly, these goals cannot be met in an Area of Operations unless loans are being packaged, processed, approved, closed and serviced by one or more CDCs. Unfortunately, SBA is aware of too many locations across the country in which present CDCs are unable or unwilling to meet the small business demand for 504 loans. Transferring an existing CDC to ADC status does not address this inadequacy. SBA has concluded that the answer lies not in decertification, but in competition and customer service.

Therefore, SBA proposed in § 120.835 that existing CDCs be permitted to expand into Areas of Operations that are not being adequately serviced. Under

the proposed rule, the expanding CDC would have to show that the proposed Area of Operations is not being adequately served by the existing CDCs and that the expanding CDC is well-qualified to serve it. SBA did not propose any geographic or size limitation on CDCs applying to service a location, but suggested that such factors would be considered in evaluating the application. As proposed, a CDC would apply in writing to the SBA district office serving the geographic area in which the CDC proposes to expand.

In the proposed rule, SBA solicited comment on the factors to be considered in determining whether an area is being adequately serviced. As a result of many discussions with industry members, SBA had concluded that, in general, the starting point for any determination would be the number of loan approvals averaged by the existing CDCs in the Area of Operations over the last two fiscal years. Even if the number of loan approvals does not accurately represent the competence of a CDC, it does accurately reflect the market penetration of 504 financing in the proposed area of expansion.

SBA had also concluded that there is no minimum loan approval number appropriate to every CDC in every location across the country. A small CDC with a rural Area of Operations and slow economic activity may be providing adequate service at a low level of approvals while a larger CDC in a metropolitan region with much economic activity may be providing inadequate service, despite having a greater number of loan approvals. In the proposed rule, SBA advanced the population of an Area of Operations as the base factor, but indicated that industry members had suggested other possibilities such as the number of small businesses in the Area of Operations.

As a result of numerous consultations with the industry and small businesses, SBA had also concluded at the time of the proposed rule that adequate service includes other factors in addition to the number of loan approvals, including adequate servicing of loans. Thus, in the proposed rule, SBA indicated that any CDC seeking to expand will have to show that it has a history of adequate experience and expertise in both loan packaging and servicing, and that the existing CDCs in the proposed area of expansion have not been adequately packaging or servicing loans.

In the proposed rule, SBA solicited comments and recommendations regarding the factors that should be included in a determination of whether the existing CDCs are adequately servicing an Area of Operations. SBA asked commenters to particularly focus on how to incorporate a servicing component into its approach.

SBA received 35 comments in response to its solicitation. Only two opposed the policy proposed by SBA. The remainder supported SBA's efforts to assure availability of 504 financing everywhere in the country by establishing limited competition. Most of the comments discussed various factors which the commenter believed should be incorporated into SBA's decision making process upon receipt of an application for extension of one CDC into another's Area of Operations. Among the comments received was a proposal submitted by the industry's trade association, as well as many recommendations from individual CDCs and financial institutions.

As a result of the comments received, SBA has determined to amend its proposed rule in several respects. The proposed rule provided that SBA would consider an Area of Operations inadequately served if the existing CDCs in the Area of Operation have not averaged, over the last two fiscal years, sufficient loan approvals for the population in the CDCs' Area of Operation, as set by SBA in an annual program announcement. All of the comments which were addressed to the issue were concerned about the annual development of a standard. Commenters expressed the opinion that annually revisiting the standard would create a ''moving target'' for the industry to achieve and introduce uncertainty and instability into the industry. Most indicated support for a reviewable standard consistent with national performance levels.

Most comments were opposed to judging performance solely on the number of loan approvals based upon population levels as suggested by SBA in the proposed rule (along with a servicing component). The comment submitted by the industry's trade association did utilize the number of loan approvals per million of general population (and a servicing component) as the criterion for determining that the CDCs in an Area of Operations are adequately serving the area. However, many individual CDCs presented numerous other elements which they recommended be considered as part of the performance level ''formula''. In addition to the number of loan approvals per population of the Area of Operation, the various factors included: The number of small businesses in the Area of Operations; the number of deals closed, rather than approved (showing that the deals are ''real'' and the CDC is capable of following through); the density of small businesses in the Area of Operation; the character of the Area of Operations (urban, suburban, or rural); the types of small businesses; the economic conditions prevailing in the Area of Operations; amount loaned per small business population; jobs created/retained; servicing record and capabilities; currency rate; loss rates; other services provided to small businesses (technical and financial assistance); relationship with the local SBA office; ties to the local community and its resources; and knowledge of the area and its economic and business climate. In short, solely looking at loan approval volume is an inadequate measure of a CDC's service to the community.

Several commenters pointed out potential problems that could result from basing CDC performance solely on ''packaging'' and loan approval volume.

SBA agrees with several commenters that level of activity is probably an accurate barometer of past and future performance. However, SBA has determined that loan approval volume based upon general population alone should not be the sole determination of whether an area is being adequately served.

Based upon the comments received, SBA has decided to amend its proposed rule to delete the reference to any one factor determining that an Area of Operations is being inadequately served. Rather, SBA has determined that loan approval volume should be utilized only as a benchmark upon which to support the application of a CDC to expand into an Area of Operation which it presently does not serve. If the loan approval volume of the existing CDCs in the area does not reach the benchmark figure, the applying CDC will be able to proceed with its application.

The application to expand must be in writing to the SBA District Office serving the geographic area in which the CDC proposes to expand. It must demonstrate to the satisfaction of SBA that the CDC is capable of providing the additional territory the full range of services expected of a CDC, including the ability to process, close, service, and, if authorized, liquidate 504 loans. The existing CDC or CDCs in the expansion area will then have at least 30 days in which to respond to the District Office. The ''burden of proof'' shall be upon the existing CDC or CDCs to explain why the SBA should not grant the application for extension. In its deliberations, the SBA District Office may, in its discretion, consider any factor presented to it, but SBA will

consider particularly relevant information concerning the various factors suggested in the comments to the proposed rule and previously set forth in this preamble. The SBA District Office shall submit its recommendation within 30 days of the end of the comment period to the AA/FA for a final decision within 30 days of receipt of the District Office's recommendation.

Seven comments cautioned that expansion should be permitted only into contiguous areas, referencing the problems experienced by the banking industry when interstate banking was first permitted. These commenters suggested that ''leapfrogging'' financial institutions may not know their new markets, leading to potential loan losses and damage to the program. Two other commenters were concerned with ''cherry picking'' of valuable markets to the detriment of markets where business potential was less.

These are both matters which SBA will consider very carefully. The expanding CDC's application must specify the exact territory into which it proposes to expand. SBA will compare the loan approval volume of the existing CDC or CDCs in that exact territory to the benchmark figure. The expanding CDC will not be able to use an existing CDC's loan approval volume for its entire Area of Operations (presumably lower) to justify expansion into a smaller, valuable market, which is being adequately served by the existing CDC or CDCs. If the more valuable market is not being adequately served, then the expanding CDC is justified in attempting to expand into it. SBA will at all times maintain its focus on the ultimate customers, the small businesses which both SBA and the CDC industry serve. If small businesses in a ''prime'' area are not being adequately served, the existing CDC or CDCs will not be supported by SBA in any argument that the area is being ''cherry picked''. If a CDC is concerned about potential expansion into its territory, SBA believes, as do many of the commenters, that competition will cause that CDC to better serve its community.

Although sensitive to the advantages resulting from regional experience and knowledge, SBA has determined not to limit applications for expansion to contiguous areas. SBA will, however, require that an expanding CDC have a local presence in a non-contiguous territory. As part of its application, the expanding CDC must indicate how it intends to provide that local presence, and must agree to have a local presence in place before submitting any 504 loans for approval.

Finally, the comments presented to SBA several suggestions which it has considered for establishing the benchmark figure. SBA recognizes that each number suggested by any of the commenters was somewhat arbitrary. Several comments presented data on loan approval volume in the country or in specific regions. Based on the figures provided by the industry trade association in its comment, total loan approvals for FY 1993 were 2,388 resulting in an average loans per million of general population of 5.37. In FY 1994 and 1995, the corresponding figures were 3,685 (8.29 loans per million) and 4,398 (9.89 per million). The industry trade association suggested that an average of 5 loans per million of general population, for the previous two years, or 2, whichever is greater, be the standard. (In the proposed rule, the standard would have been absolute and determined that a CDC was not adequately serving its Area of Operation.)

SBA prefers to set a higher target. Unlike the performance standard in § 120.828, failure to attain the standard will not disqualify a CDC in any way or cause it to be subject to decertification. So long as a CDC provides 2 loan approvals per year, it will continue as an active CDC if it so chooses. The standard in § 120.835 is merely a benchmark to determine whether another CDC may be able to expand into the CDC's Area of Operations in order to compete with the CDC in order to better serve the small business community.

Therefore, SBA has adopted the suggestions contained in the comment of an individual CDC and has established in this final rule the benchmark standard of one approved loan per 100,000 of general population averaged over the last year 2 years. Both the industry and SBA expect the number of loans approved to grow sharply over the next several years. As discussed earlier in this preamble, the industry prefers and SBA agrees that the benchmark remain constant and not change on an annual basis so that CDCs will know that they have a constant ''target'' to attain. SBA does not want to establish a benchmark which is already outdated. The industry average is nearly 10 loan approvals per million (or one per 100,000). By adopting the comment of 1 per 100,000, SBA feels it has established a figure which may remain in effect for the foreseeable future and is already exceeded by a majority of the industry. Further, the benchmark applies to a total loan volume of all CDCs existing in an Area of Operations, not each individual CDC.

SBA will continue to work with the industry to refine the benchmark. One or more of the factors discussed previously may supplement or ultimately replace loan approvals per 100,000 of general population (such as small business population, job creation/retention, loans closed, or dollar amount of loan volume).

§ 120.838. In the proposed rule, SBA determined that all existing, temporary expansions of Areas of Operations would expire automatically 6 months after the effective date of these regulations, unless a CDC applies for permanent expansion into that Area before the expiration date. SBA believed that CDCs will best serve the small business community by making a permanent commitment to an Area of Operations. SBA received several comments in support of this provision and none in opposition. Therefore, SBA adopts the proposed provision without change in this final rule.

§ 120.839. In the proposed rule, SBA provided for a CDC, upon showing good cause, to apply to SBA to make an individual loan for a Project outside its Area of Operations in an area not being adequately served by other CDCs. The SBA also proposed to permit an applicant small business to write to the AA/FA to request the assistance of a CDC not currently serving the area. SBA added this provision to give a small business more flexibility if it had a concern about the ability of a particular CDC to provide service.

SBA received 12 comments concerning this proposal, none of which opposed the provision. Several supported the provision as proposed. Others concurred that case-by-case extensions can help to assure access to 504 financing, but should be limited to specific situations. Others felt that the proposed regulations were too vague and permitted too much discretion on the part of decision-makers. Most commenters favored more explicit directions and alternatives.

SBA has determined to adopt, in most part, the suggestions of the industry trade association in its comment. Provided that the applicant CDC can demonstrate that it can adequately service the loan, a CDC may apply to make an individual loan outside its Area of Operations if (1) the applicant CDC has previously assisted the business to obtain a 504 loan, (2) the applicant small business or CDC can document in writing to the AA/FA specific circumstances that would prevent the existing CDC or CDCs serving the area from assisting the business adequately, or (3) the existing CDC or CDCs serving the area agree to

permit the applicant CDC to make the loan. SBA has deleted from its proposed rule the reference to an area not adequately served by other CDCs. As discussed previously with respect to § 120.835, this final rule does not establish a standard of performance, but only a benchmark. Thus, it would not be possible to establish that an area is inadequately served without going through the entire process set forth in § 120.835, which is not SBA's intent in this section. Further, the focus in this section is on the particular Project in question and that is covered sufficiently by the situation (2) as recommended by the industry trade association. The second circumstance in SBA's proposed rule, Borrower initiation of the request, is also subsumed into situation (2) in this final rule.

§ 120.840. SBA received one comment regarding this section, pointing out that the section set forth only basic eligibility standards for a CDC to become an Accredited Lender, which standards did not refer to servicing or portfolio quality in any way. SBA concurs with the comment and has amended the section to include additional eligibility requirements, including that an applicant must have been a CDC for a minimum of 12 months.

§ 120.845. SBA received two comments regarding this section. One comment pointed out that the proposed language appeared to suggest that SBA approved Premier Certified Lender loans in the same manner as any other 504 loan. SBA has adopted the language of the comment, clarifying that SBA's final approval is limited to eligibility of the guarantee. The other comment requested SBA to include in the regulation the specific amounts and payment schedule of contributions to the loss reserve. SBA has concluded that this is not necessary. The schedule is in the statute and will be expounded upon in SBA's SOP, to which PCLPs will have access. Therefore, SBA declines to adopt this comment.

§ 120.862. This section sets forth community development and public policy goals, the achievement of any one of which causes a Project to be eligible for 504 financing if a CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's Job Opportunity average. Also, qualifying under a public policy goal makes a Project subject to an increased amount of funding. One comment pointed out that assisting businesses in Labor Surplus Areas had been a community development goal in the current regulation, but had been included as a public policy goal. Another comment pointed out that there must be a written revitalization plan in order to invoke revitalizing a business district as a public policy goal. A third comment pointed out that the rule should include assisting businesses located in areas affected by Federal budget reduction, not just businesses affected by such matters. SBA concurs in all three comments and has made the revisions in this final rule. A fourth comment contended that assisting manufacturing firms was a public policy goal, not a community development goal. However, assisting manufacturing firms has always been a community development goal in SBA's regulations, and SBA declines to change this long-standing placement.

§ 120.871. Both the 7(a) and 504 loan programs limit the amount of the rentable property which can be leased to a third-party, whether the loan or Project involves new construction or an existing building. Currently, there are minor differences between the programs in the amount of space permitted to be leased. The 504 limitation is currently set forth in a regulation, while the 7(a) limitations are set forth in an SOP. Several commenters noted the differences between the programs and suggested that the proposed regulation be made applicable to all SBA business loan programs. SBA concurs with the comments and has moved §§ 120.871 and 120.872 from Part H to Part A as §§ 120.131 and 120.132.

§ 120.880. SBA received five comments pointing out that the size standard for 504 eligibility set forth in the proposed rule omitted the word ''tangible'' to modify net worth. SBA concurs and adds the word ''tangible'' in this final rule.

§ 120.881. This section sets forth types of Projects ineligible only for 504 loans (as opposed to 7(a) loans). In the current regulation, a Project is ineligible, if the relocation of any of the operations of the small business will cause a substantial increase in unemployment in any area of the country or a net reduction of one-third or more in the workforce of the relocating small business. In the proposed rule, SBA attempted to limit the effect to distressed areas rather than the entire country by creating a defined term. As discussed earlier, commenters pointed out that SBA's proposed definition may have been unworkable. Therefore, SBA has dropped the proposed change and returned the relocation limitation to the language in the current regulation.

One commenter pointed out that speculative projects are ineligible in all business loan programs, not just 504. SBA concurs and has moved § 120.881(c) to § 120.110(s).

§ 120.882. In the current regulations, costs incurred by a Borrower in anticipation of receiving a 504 loan are not eligible to be included in Project costs unless the applicant has filed a written notices with the CDC and SBA within 60 days of incurring the expense and SBA gives written approval. As a result, CDCs and SBA receive notices from many potential borrowers considering 504 financing who desire to maximize potential financing. Many of these businesses never actually apply or their applications are denied. In those cases, the written notices are a useless paperwork burden on SBA, the CDC and the applicant. Therefore, SBA proposed in § 120.882(a)(2) to eliminate the requirement for written notice and allow as an eligible Project cost any expense incurred toward a Project within six months of receipt by SBA of a complete loan application.

SBA received 16 comments opposing the 6 month limit. Commenters pointed out that in actual practice the time it takes to reach the point of application is often far greater than 6 months. In many metropolitan areas, the zoning use permits, building permits, and other clearances can take 9 to 12 months. Often engineering plans and architectural drawings may need to be completed or redone, and lengthy environmental studies may be required. In states like Minnesota with long winters, the delay between site preparations and construction may span more than 6 months.

The intent of the proposed rule was to alleviate unnecessary paperwork. It was not intended to limit eligible costs. Therefore, SBA increases the limit in this final rule to 9 months and adopts a comment suggesting a waiver of the limit by the SBA District Office for good cause, which waiver should not be unreasonably withheld.

§ 120.883. This section sets forth eligible administrative costs which may be paid with the proceeds of the 504 loan, thereby allowing the small business to borrow the cost of the item so that it does not have to be paid out of the Borrower's own resources. One of the permitted costs is the CDC processing fee. Seven commenters pointed out that in streamlining the language of the regulation, SBA had deleted language in the current regulation describing at what point in time the fee is considered earned and may be collected. SBA agrees that this is important information for Borrowers to know and adds the requested language in this final rule.

Another grouping of costs traditionally allowed by SBA to be paid out of the proceeds of the 504 loan are closing costs. Currently, SBA interprets closing costs to include fees of professionals, such as engineers and attorneys, involved in the Project (see § 120.961(a)).

Typically, many of the legal services required to close the 504 financing are provided by the CDC's counsel, who is usually experienced in closing 504 loans and thus, is able to do so cost effectively. Sometimes, a Borrower will also retain an attorney. Under the current regulations, the CDC may charge the Borrower up to $2,500 to reimburse the CDC for the legal expenses resulting from services performed by the CDC counsel relating to the 504 financing. The Borrower must pay the legal fees of Borrower's counsel, if retained. If CDC counsel desires to charge the CDC more than $2,500, the CDC may only do so if SBA approves the higher fee, in which case, the CDC must pay the difference to the CDC counsel and may not be reimbursed by the Borrower. The CDC collects the fee (up to $2,500) at closing and forwards it to the closing attorney.

The $2,500 figure in the current regulation has engendered much debate within the industry. Many CDCs feel the figure establishes a minimum base for attorney fees and is, therefore, anti-competitive. On the other hand, during the past year, SBA has conducted several expedited closing training sessions for CDC counsel. Many attorneys feel that the figure establishes a ceiling for attorney services and is, therefore, anti-competitive. There appears to be a wide range of fees charged by CDC counsel for closing services.

Most CDCs try to minimize counsel fees to reduce costs to the Borrower. One of the ways is for the CDC to use in-house counsel. Another way is to use in-house paralegals and staff to prepare the closing documents, close the loan, and present a completed loan closing package after closing to outside counsel solely for review and legal opinion. However, the current regulations allow a CDC to charge the Borrower only for the legal bill of outside CDC counsel. A CDC that retains its own counsel in-house or employs paralegals and other staff to prepare and close the loan cannot recover its costs for providing that service.

In the proposed regulation, SBA omitted reference to any legal fee amount in either § 120.883(d) or § 120.961(a). Whether it is viewed as a ceiling or a base, the $2,500 reference certainly appears to have had an effect on legal fees charged. SBA believes legal fees should be determined by the competitive market. There is no reason for SBA to influence the market rate by referring to a specific fee level in its regulation.

SBA received 15 comments concerning legal fees from the industry. All but one strongly objected to the deletion of the $2,500 reference from the regulations. In addition, several comments requested SBA to allow CDCs to recover the staff and in-house counsel costs of closing a loan.

SBA concurs with the comments recommending that CDCs be allowed to charge the Borrower for the in-house costs of preparing the loan documents and closing the loan. Since both the CDCs and SBA desire to reduce the level of legal fees incurred by the Borrowers, it is self-defeating to require CDCs to utilize outside counsel in order to recover legal costs. Allowing the CDC to recover in-house costs from the Borrower will still result in a savings to the Borrower because the costs of CDC staff and in-house counsel are less than outside counsel. Therefore, proposed rule § 120.961(a) (which is § 120.971(a)(2)) in this final rule has been amended to allow the CDC to charge the Borrower an amount sufficient to reimburse it for reasonable legal expenses of outside counsel, and in-house counsel and staff related to closing the 504 financing.

Despite the near unanimous opposition to the deletion of the $2,500 reference, SBA declines to amend either § 120.883(d) or § 120.971(a)(2) (§ 120.961(a) in the proposed rule). None of the comments presented any persuasive arguments to cause SBA to change its convictions. Many of the comments referred to the $2,500 reference as a ''cap'' which kept legal fees to the Borrower in line. Whether it functioned more to inhibit or increase fees is open for discussion. But exceeding the ''cap'' certainly did not affect the Borrower. If SBA approved, the CDC paid the attorney without reimbursement. Thus, if the reference functioned as a ''cap'', it did so to benefit the CDC, not the Borrower.

As more attorneys become designated to perform expedited 504 loan closings, as more attorneys become familiar with the 504 closing process (because of the expected large increase in loan volume), and as additional CDCs use in-house counsel or paralegal staff to prepare documents and close loans, SBA expects competitive pressures to limit increases in legal fees. In any event, SBA does not belong in the business of setting or suggesting legal fees. That is a function of the competitive market.

The comment process caused SBA to review carefully the whole issue of legal fees as treated in the 504 program compared to commercial lending generally. A number of comments present information concerning CDC efforts to reduce Borrowers' legal costs. SBA has previously interpreted legal fees to be eligible costs, either as Project costs or administrative costs. Most of the legal fees for which a Borrower is responsible are eligible Project costs directly attributable and essential to the Project.

Legal fees associated with the closing of the 504 loan are not eligible as Project costs. They are not directly attributable and essential to the Project. If they are eligible at all, they would have to be eligible administrative costs.

All of the eligible administrative costs in § 120.883, with the exception of legal fees, are fees imposed upon the Borrower by the financing process itself over which the Borrower has no control. All are defined by regulation or other government entities (recording fees, for example). The only variable cost is legal fees.

Closing legal fees are not usually financed by commercial loan proceeds. Closing legal fees are current costs. Why should they be financed over 20 years? Legal fees are not usually financed over time. SBA suspects that if claims are true that closing legal fees have been maintained at an artificially high level, it is because the fees have been able to be financed over a lengthy period of time and have been ''hidden'' in the Debenture. SBA has concluded that closing legal fees should not be eligible administrative costs for 504 loans. CDCs and Borrowers will now have a real incentive to reduce fees. Therefore, in this final rule, SBA has eliminated legal fees from the eligible administrative costs for 504 loans in § 120.883(d).

Finally, several commenters recommended that the specific fees for the items in § 120.883 be identified. SBA concurs. These fees have been set forth with specific numbers in § 120.971.

§ 120.891. This section of the proposed rule required the interim lender to certify to the amount of the interim loan disbursed and the CDC to certify that the Project was completed in accordance with the plans and specifications. Three comments noted that the wording of the first requirement implied that the interim lender must certify to much more than just the amount disbursed. SBA concurs that the language could be misleading. In this final rule, SBA clarifies that the interim lender must certify only the amount disbursed.

§ 120.892. This sections deals with certifications to SBA by the CDC, interim lender, and Borrower that there has been no adverse change in the ability of the Borrower to repay the 504 loan. For over 15 years the standard phrase used was ''unremedied substantial adverse change.'' In the proposed rule, SBA substituted ''adverse change,'' believing that if there were insubstantial adverse changes or remedied changes, it did not affect whether the Borrower could repay the loan. However, after receiving seven comments requesting a return to the familiar language, SBA amends the three subsections of § 120.892 to insert in this final rule ''unremedied substantial adverse change.''

§ 120.911. The current regulations state that the Borrower's contribution to the permanent financing may be land or cash. The regulations have never permitted the value of buildings or other structures on the land to be counted toward the Borrower's contribution. SBA did not propose any change in this section in the proposed rule.

However, SBA received 10 comments suggesting that SBA consider including the value of site improvements such as buildings on contributed property if the Project is for the purpose of renovating the building or constructing an addition to the building. According to the comments, older buildings that need renovation are often not financed under the 504 program due to this restriction. SBA sees no reason why it should not agree to these suggestions. Whatever the original purpose of the restriction may have been, it appears to have no logical reason, credit or otherwise, for continuing it. Therefore, SBA adopts the comments in this final rule and allows Borrowers to contribute the value of buildings, structures and other site improvements which will be part of the Project Property, previously acquired by the Borrower or CDC.

§ 120.921. As a result of comments received, two subsections have been added to § 120.921. First, § 120.923(b) in the proposed rule has become § 120.921(d). The language of the proposed rule has been changed to clarify that a Third-Party lienholder must subordinate to the CDC/SBA lien any future advance in excess of the outstanding principal balance and accrued interest of the Third-Party Loan at the time of such advance. The new § 120.921(e) prohibits a Third-Party lender from escalating the rate of interest upon default to an amount greater than the maximum rate in § 120.921(b).

§ 120.930. SBA received five comments pointing out that the language was confusing. In the proposed rule, SBA attempted to indicate what happens if the cost of the completed Project is less than the Debenture amount. Since five commenters all felt the language was confusing, SBA returns in this final rule to the language in the present regulation.

§ 120.938. This section defines when SBA will look to the CDC for recourse in the event it defaults on a Debenture. SBA received 6 comments contending that negligence is too high a standard. SBA examined the Debenture which CDCs sign. The language in the Debenture includes fraud, negligence, or misrepresentation. Therefore, SBA has adopted the language in the Debenture.

§ 120.961(b). SBA received 4 comments contending that the referral fee which a CDC may charge a Third-Party lender is excessive. However, none of the comments presented any reasons or support for such assertions. Therefore, SBA declines to change the proposed rule. However, commenters did point out an error in the section in that the fee applies to the Third-Party loan, not the 504 loan. In addition, SBA refers to the fee in the final rule as a referral fee, rather than a finder's fee. SBA further indicates in this final rule that a CDC receiving such a fee must comply with the regulations under Part 103 of this chapter.

§ 120.971. In this final rule, SBA has consolidated into this section the fees which were previously set forth in § 120.883, so that a Borrower may find in one section all allowable fees to which it may be subject.

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 final rule involves internal administrative procedures and does not constitute a significant rule within the meaning of Executive Order 12866 and does 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. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no 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.

List of Subjects

13 CFR Part 108

Equal employment opportunity, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 116

Coastal Zone, Flood insurance, Flood plains, Lead poisoning, Small businesses, Veterans.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 122

Community development, Employee benefit plans, Energy conservation, Environmental protection, Exports, Individuals with disabilities, Loan programs-business, Loan programs-energy, Loan programs-veterans, Microloans, Reporting and recordkeeping requirements, Small businesses, Solar energy, Trusts and trustees, Veterans.

13 CFR Part 131

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5(b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636(a) and (h), SBA hereby amends Chapter I of Title 13, Code of Federal Regulations (CFR), as follows:

1. Part 120 is revised to read as follows:

PART 120—BUSINESS LOANS

General Descriptions of SBA'S Business Loan Programs

Sec.

Definitions

Authority: 15 U.S.C 634(b)(6) and 636(a) and (h).

General Descriptions of SBA's Business Loan Programs

§ 120.1 Which loan programs does this part cover?

This Part regulates SBA's financial assistance to small businesses under its general business loan programs (''7(a) loans'') authorized by section 7(a) of the Small Business Act (''the Act''), 15 U.S.C. 636(a), its microloan demonstration loan program (''Microloans'') authorized by section 7(m) of the Act, 15 U.S.C. 636(m), and its development company program (''504 loans'') authorized by Title V of the Small Business Investment Act, 15 U.S.C. 695 to 697f (''Title V''). These three programs constitute the business loan programs of the SBA.

§ 120.2 Descriptions of the business loan programs.

(a) *7(a) loans.* (1) 7(a) loans provide financing for general business purposes and may be:

(i) A direct loan by SBA;

(ii) An immediate participation loan by a Lender and SBA; or

(iii) A guaranteed loan (deferred participation) by which SBA guarantees a portion of a loan made by a Lender.

(2) A guaranteed loan is initiated by a Lender agreeing to make an SBA guaranteed loan to a small business and applying to SBA for SBA's guarantee under a blanket guarantee agreement (participation agreement) between SBA and the Lender. If SBA agrees to guarantee (authorizes) a portion of the loan, the Lender funds and services the loan. If the small business defaults on the loan, SBA's guarantee requires SBA to purchase its portion of the outstanding balance, upon demand by the Lender and subject to specific conditions. Regulations specific to 7(a) loans are found in subpart B of this part.

(b) *Microloans.* SBA makes loans and loan guarantees to non-profit Intermediaries that make short-term loans up to $25,000 to eligible small businesses for general business purposes, except payment of personal debts. SBA also makes grants to Intermediaries for use in providing management assistance and counseling to small businesses. Regulations specific to these loans are found in subpart G of this part.

(c) *504 loans.* Projects involving 504 loans require long-term fixed-asset financing for small businesses. A Certified Development Company (CDC) provides the final portion of this financing with a 504 loan made from the proceeds of a Debenture issued by the CDC, guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to investors. The regulations specific to these loans are found in subpart H of this part.

§ 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the Federal Register explaining the reasons for these actions.

Subpart A—Policies Applying to All Business Loans

Definitions

§ 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

Associate. (1) An Associate of a Lender or CDC is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraphs (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent.

(2) An Associate of a small business is:

(i) An officer, director, owner of more than 20 percent of the equity, or key employee of the small business;

(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (''SBIC'') licensed by SBA).

(3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

Authorization is SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

Borrower is the obligor of an SBA business loan.

Certified Development Company (''CDC'') is an entity authorized by SBA to deliver 504 financing to small businesses.

Close Relative is a spouse; a parent; or a child or sibling, or the spouse of any such person.

Eligible Passive Company is a small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in § 120.111.

Intermediary is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to $25,000.

Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Loan Instruments are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

Operating Company is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

Rural Area is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

Service Provider is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

Subpart A—Policies Applying to All Business Loans

Eligibility Requirements

§ 120.100 What are the basic eligibility requirements for all applicants for SBA business loans?

To be eligible for an SBA business loan, a small business applicant must:

(a) Be an operating business (except for loans to Eligible Passive Companies);

(b) Be organized for profit;

(c) Be located in the United States;

(d) Be small under the size requirements of Part 121 of this chapter (including affiliates). See subpart H of this part for the size standards of Part 121 of this chapter which apply only to 504 loans; and

(e) Be able to demonstrate a need for the desired credit.

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal sources. SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal sources without SBA assistance, taking into consideration the prevailing rates and terms in the community in or near where the applicant conducts business, for similar purposes and periods of time. Submission of an application to SBA by a Lender or CDC constitutes certification by the Lender or CDC that it has examined the availability of credit to the applicant, has based its certification upon that examination, and has substantiation in its file to support the certification.

§ 120.102 Funds not available from alternative sources, including personal resources of principals.

(a) An applicant for a business loan must show that the desired funds are not available from the personal resources of any owner of 20 percent or more of the equity of the applicant. SBA will require the use of personal resources from any such owner as an injection to reduce the SBA funded portion of the total financing package (*i.e.,* any SBA loans and any other financing, including loans from any other source) when that owner's liquid assets exceed the amounts specified in paragraphs (a)(1) through (3) of this section. When the total financing package:

(1) Is $250,000 or less, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of two times the total financing package or $100,000, whichever is greater;

(2) Is between $250,001 and $500,000, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one and one-half times the total financing package or $500,000, whichever is greater;

(3) Exceeds $500,000, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one times the total financing package or $750,000, whichever is greater.

(b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the SBA portion of the total financing package. These funds must be injected prior to the disbursement of the proceeds of any SBA financing.

(c) For purposes of this section, liquid assets means cash or cash equivalent, including savings accounts, CDs, stocks, bonds, or other similar assets. Equity in real estate holdings and other fixed assets are not to be considered liquid assets.

§ 120.103 Are farm enterprises eligible?

Federal financial assistance to agricultural enterprises is generally made by the United States Department of Agriculture (USDA), but may be made by SBA under the terms of a Memorandum of Understanding between SBA and USDA. Farm-related businesses which are not agricultural enterprises are eligible businesses under SBA's business loan programs.

§ 120.104 Are businesses financed by SBICs eligible?

SBA may make or guarantee loans to a business financed by an SBIC if SBA's collateral position will be superior to that of the SBIC. SBA may also make or guarantee a loan to an otherwise eligible small business which temporarily is owned or controlled by an SBIC under the regulations in part 107 of this chapter. SBA neither guarantees SBIC loans nor makes loans jointly with SBICs.

§ 120.105 Special consideration for veterans.

SBA will give special consideration to a small business owned by a veteran or, if the veteran chooses not to apply, to a business owned or controlled by one of the veteran's dependents. If the veteran is deceased or permanently disabled, SBA will give special consideration to one survivor or dependent. SBA will process the application of a business owned or controlled by a veteran or dependent promptly, resolve close questions in the applicant's favor, and pay particular attention to maximum loan maturity. For SBA loans, a veteran is a person honorably discharged from active military service.

Ineligible Businesses and Eligible Passive Companies

§ 120.110 What businesses are ineligible for SBA business loans?

The following types of businesses are ineligible:

(a) Non-profit businesses (for-profit subsidiaries are eligible);

(b) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);

(c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);

(d) Life insurance companies;
(e) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);
(f) Pyramid sale distribution plans;
(g) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
(h) Businesses engaged in any illegal activity;
(i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;
(j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);
(k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
(l) Consumer and marketing cooperatives (producer cooperatives are eligible);
(m) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;
(n) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;
(o) Businesses in which the Lender or CDC, or any of its Associates owns an equity interest;
(p) Businesses which:
(1) Present live performances of a prurient sexual nature; or
(2) Derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
(q) Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss;
(r) Businesses primarily engaged in political or lobbying activities; and
(s) Speculative businesses (such as oil wildcatting).

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to an Operating Company for the conduct of the Operating Company's business. Any ownership structure or legal form may qualify as an Eligible Passive Company.

(a) Conditions that apply to all legal forms:

(1) The Operating Company must be an eligible small business, and the proposed use of the proceeds must be an eligible use if the Operating Company were obtaining the financing directly;

(2) The Eligible Passive Company (with the exception of a trust) and the Operating Company each must be small under the appropriate size standards in part 121 of this chapter;

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease;

(4) The lease between the Eligible Passive Company of the Operating Company, including options to renew exercisable solely by the Operating Company, must have a remaining term at least equal to the term of the loan;

(5) The Operating Company must be a guarantor or a co-borrower (with the Eligible Passive Company) of the loan (in a 7(a) loan including working capital, the Operating Company must be a co-borrower); and

(6) Each holder of an ownership interest constituting at least 20 percent of the Eligible Passive Company and the Operating Company must guarantee the loan (the trustee shall execute the guarantee on behalf of any trust).

(b) *Additional conditions that apply to trusts.* The eligibility status of the trustor will determine trust eligibility. All donors to the trust will be deemed to have trustor status for eligibility purposes. A trust qualifying as an Eligible Passive Company may engage in other activities as authorized by its trust agreement. The trustee must warrant and certify that the trust will not be revoked or substantially amended for the term of the loan without the consent of SBA. The trustor must guarantee the loan. For purposes of this section, the trustee shall certify to SBA that:

(1) The trustee has authority to act;

(2) The trust is not regarded as a grantor trust for tax purposes;

(3) The trust has the authority to borrow funds, pledge trust assets, and lease the property to the Operating Company;

(4) The trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

(5) The trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

Uses of Proceeds

§ 120.120 What are eligible uses of proceeds?

A small business must use an SBA business loan for sound business purposes. The uses of proceeds are prescribed in each loan's Authorization.

(a) A Borrower may use loan proceeds from any SBA loan to:

(1) Acquire land (by purchase or lease);

(2) Improve a site (e.g., grading, streets, parking lots, landscaping), including up to 5 percent for community improvements such as curbs and sidewalks;

(3) Purchase one or more existing buildings;

(4) Convert, expand or renovate one or more existing buildings;

(5) Construct one or more new buildings; and/or

(6) Acquire (by purchase or lease) and install fixed assets (for a 504 loan, these assets must have a useful life of at least 10 years and be at a fixed location, although short-term financing for equipment, furniture, and furnishings may be permitted where essential to and a minor portion of the 504 Project).

(b) A Borrower may also use 7(a) and microloan proceeds for:

(1) Inventory;

(2) Supplies;

(3) Raw materials; and

(4) Working capital (if the Operating Company is a co-Borrower with an Eligible Passive Company, part of the loan proceeds may be applied for working capital if used for that purpose only by the Operating Company).

(c) A Borrower may use 7(a) loan proceeds for refinancing certain outstanding debts.

§ 120.130 Restrictions on uses of proceeds.

SBA will not authorize nor may a Borrower use loan proceeds for the following purposes (including the replacement of funds used for any such purpose):

(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company (''SBIC'');

(c) Floor plan financing or other revolving line credit, except under § 120.390;

(d) Investments in real or personal property acquired and held primarily for sale, lease, or investment (except for a loan to an Eligible Passive Company or to a small contractor under § 120.310);

(e) A purpose which does not benefit the small business; or

(f) Any use restricted by §§ 120.201 through 120.203 and 120.884 (specific to 7(a) loans and 504 loans respectively).

§ 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA business loan involves the construction of a new building, a Borrower may lease up to 33% of the square footage of rentable property (total square footage of all buildings or facilities used for business operations) for a short term to any third party if reasonable growth projections show that the Borrower will need additional space within three years and will use all of the additional space within ten years. If the Borrower is an Eligible Passive Company leasing 100 percent of the Project space to an Operating Company, the Operating Company may sublease up to 33 percent to a third party under the same conditions.

(b) If the SBA business loan involves the acquisition, renovation, or reconstruction of an existing building, the Borrower (or Operating Company, if the Borrower is an Eligible Passive Company) must occupy at least 51 percent of the Rentable Property. The balance of the Rentable Property may be leased out to any third party, if the loan proceeds were not used to remodel or convert the space to be leased out. (For 504 loans, *see also* § 120.871.)

Ethical Requirements

§ 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, CDCs, and Associate Development Companies (''ADCs'') (in this section, collectively referred to as ''Participants''), must act ethically and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

(a) Self-deal;

(b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;

(c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);

(d) Be incarcerated, on parole, or on probation;

(e) Knowingly misrepresent or make a false statement to SBA;

(f) Engage in conduct reflecting a lack of business integrity or honesty;

(g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant, and/or the lenders financing the Project of which it is aware or should be aware;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant or an Associate of the Participant;

(3) Repay or refinance a debt due a Participant or an Associate of a Participant; or

(4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);

(k) Issue a real estate forward commitment to a builder or developer; or

(l) Engage in any activity which taints its objective judgment in evaluating the loan.

Credit Criteria for SBA Loans

§ 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. SBA will consider:

(a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow, and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis;

(g) Potential for long-term success;

(h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and

(i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant.

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in part 121 of this chapter, may not exceed a guarantee amount of $750,000, except as otherwise authorized by statute for a specific loan program. The amount of any loan received by an Eligible Passive Company applies to the loan limit of both the Eligible Passive Company and the Operating Company.

§ 120.160 Loan conditions.

The following requirements are normally required by SBA for all business loans:

(a) *Personal guarantees.* Holders of at least a 20 percent ownership interest generally must guarantee the loan. SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA will not require personal guarantees from those owning less than 5% ownership.

(b) *Appraisals.* SBA may require professional appraisals of the applicant's and principals' assets, a survey, or a feasibility study.

(c) *Hazard Insurance.* SBA requires hazard insurance on all collateral.

(d) *Taxes.* The applicant may not use any of the proceeds to pay past-due Federal and state payroll taxes.

Requirements Imposed Under Other Laws and Orders

§ 120.170 Flood insurance.

Under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Pub. L. 93–234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)), a loan recipient must obtain flood insurance if any building (including

mobile homes), machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. The requirement applies also to any inventory (business loan program), fixtures or furnishings contained or to be contained in the building. Mobile homes on a foundation are buildings. SBA, Lenders, CDCs, and Intermediaries must notify Borrowers that flood insurance must be maintained.

§ 120.171 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of an SBA loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

(a) An administrative order;

(b) A court order;

(c) A repayment agreement between the holder and a custodial parent; or

(d) A repayment agreement between the holder and a State agency providing child support enforcement services.

§ 120.172 Flood-plain and wetlands management.

(a) All loans must conform to requirements of Executive Orders 11988, ''Flood Plain Management'' (3 CFR, 1977 Comp., p. 117) and 11990, ''Protection of Wetlands'' (3 CFR, 1977 Comp., p. 121). Lenders, Intermediaries, CDCs, and SBA must comply with requirements applicable to them. Applicants must show:

(1) Whether the location for which financial assistance is proposed is in a floodplain or wetland;

(2) If it is in a floodplain, that the assistance is in compliance with local land use plans; and

(3) That any necessary construction or use permits will be issued.

(b) Generally, there is an 8-step decision making process with respect to:

(1) Construction or acquisition of anything, other than a building;

(2) Repair and restoration equal to more than 50% of the market value of a building; or

(3) Replacement of destroyed structures.

(c) SBA may determine for the following types of actions, on a case-by-case basis, that the full 8-step process is not warranted and that only the first step (determining if a proposed action is in the base floodplain) need be completed:

(1) Actions located outside the base floodplain;

(2) Repairs, other than to buildings, that are less than 50% of the market value;

(3) Replacement of building contents, materials, and equipment;

(4) Hazard mitigation measures;

(5) Working capital loans; or

(6) SBA loan assistance of $1,500,000 or less.

§ 120.173 Lead-based paint.

If loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of seven years.

§ 120.174 Earthquake hazards.

When loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the ''National Earthquake Hazards Reduction Program (''NEHRP'') Recommended Provisions for the Development of Seismic Regulations for New Buildings'' (which can be obtained from the Federal Emergency Management Agency, Publications Office, Washington, D.C.) or a code identified by SBA as being substantially equivalent.

§ 120.175 Coastal barrier islands.

SBA and Intermediaries may not make or guarantee any loan within the Coastal Barrier Resource System.

§ 120.176 Compliance with other laws.

All SBA loans are subject to all applicable laws, including (without limitation) the civil rights laws (*see* Parts 112, 113, 117 and 136 of this chapter), prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age. SBA requests agreements or evidence to support or document compliance with these laws, including reports required by applicable statutes or the regulations in this chapter.

Enforceability Despite Rule Changes

§ 120.180 Are rules enforceable if they are changed later?

Regulations and contractual provisions in effect at the time of a transaction govern an SBA loan financing transaction, notwithstanding subsequent rule or contract changes. SBA may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

Loan Applications

120.190 Where does an applicant apply for a loan?

An applicant for a business loan should apply to:

(a) A Lender for a guaranteed or immediate participation loan;

(b) A CDC for a 504 loan;

(c) An Intermediary for a Microloan; or

(d) SBA for a direct loan.

§ 120.191 The contents of a business loan application.

For most business loans, SBA requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements (or tax returns if appropriate) for the past three years, IRS tax verification, and a business plan, when applicable. Personal histories and financial statements will be required from principals of the applicant (and the Operating Company, if applicable).

§ 120.192 Approval or denial.

Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued.

§ 120.193 Reconsideration after denial.

An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of denial. Applicants denied due to a size determination can appeal that determination under part 121 of this chapter. All others must be submitted to the office that denied the original request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after denial, a new application is required. If the reconsideration is denied, a second and final reconsideration may be considered by the Associate Administrator for Financial Assistance (AA/FA), whose decision is final.

Computerized SBA Forms

§ 120.194 Use of computer forms.

Any Applicant or Participant may use computer generated SBA application forms, closing forms, and other forms designated by SBA if the forms are exact reproductions of SBA forms.

Reporting of Fees

§ 120.195 Disclosure of fees.

An Applicant for a business loan must identify to SBA the name of each Agent as defined in part 103 of this chapter that helped the applicant obtain the loan, describing the services performed, and disclosing the amount of each fee paid or to be paid by the applicant to the Agent in conjunction with the performance of those services.

Subpart B—Policies Specific to 7(a) Loans

Bonding Requirements

§ 120.200 What bonding requirements exist during construction?

On 7(a) loans which finance construction, the Borrower must supply a 100 percent payment and performance bond and builder's risk insurance, unless waived by SBA.

Limitations on Use of Proceeds

§ 120.201 Refinancing unsecured or undersecured loans.

A Borrower may not use 7(a) loan proceeds to pay any creditor in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from an existing debt.

§ 120.202 Restrictions on loans for changes in ownership.

A Borrower may not use 7(a) loan proceeds to purchase a portion of a business or a portion of another owner's interest. One or more current owners may use loan proceeds to purchase the entire interest of another current owner, or a Borrower can purchase ownership of an entire business.

Maturities; Interest Rates; Loan and Guarantee Amounts

§ 120.210 What percentage of a loan may SBA guarantee?

SBA's guarantee percentage must not exceed the applicable percentage established in section 7(a) of the Act. The maximum allowable guarantee percentage on a loan will be determined by the loan amount. As of October 12, 1995, the percentages are: Loans of $100,000 or less may receive a maximum guarantee of 80 percent. All other loans may receive a maximum guarantee of 75 percent, not to exceed $750,000, unless otherwise authorized by SBA.

§ 120.211 What limits are there on the amounts of direct loans?

(a) The statutory limit for direct loans made under the authority of section 7(a)(1)-(19) of the Small Business Act is $350,000. SBA has established an administrative limit of $150,000 for direct loans. The AA/FA may authorize acceptance of an application up to the statutory limit.

(b) The statutory limit for direct loans made under the authority of section 7(a)(20) is $750,000. SBA has established an administrative limit of $150,000. The Associate Administrator for Minority Enterprise Development may authorize the acceptance of an application that exceeds the administrative limit.

(c) The statutory limit on SBA's portion of an immediate participation loan is $350,000. The administrative limit is the lesser of 75 percent of the loan or $150,000. The AA/FA may authorize exceptions to the administrative limit up to $350,000.

§ 120.212 What limits are there on loan maturities?

The term of a loan shall be:

(a) The shortest appropriate term, depending upon the Borrower's ability to repay;

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years; and

(c) A maximum of 25 years, including extensions. (A portion of a loan used to acquire or improve real property may have a term of 25 years plus an additional period needed to complete the construction or improvements.)

§ 120.213 What fixed interest rates may a Lender charge?

(a) *Fixed Rates for Guaranteed Loans.* A loan may have a reasonable fixed interest rate. SBA periodically publishes the maximum allowable rate in the Federal Register.

(b) *Direct loans.* A statutory formula based on the cost of money to the Federal government determines the interest rate on direct loans. SBA publishes the rate periodically in the Federal Register.

§ 120.214 What conditions apply for variable interest rates?

A Lender may use a variable rate of interest, upon SBA's approval. SBA's maximum allowable rates apply only to the initial rate on the date SBA received the loan application. SBA shall approve the use of a variable interest rate under the following conditions:

(a) *Frequency.* The first change may occur on the first calendar day of the month following initial disbursement, using the base rate (see paragraph (c) of this section) in effect on the first business day of the month. After that, changes may occur no more often than monthly.

(b) *Range of fluctuation.* The amount of fluctuation shall be equal to the movement in the base rate. The difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(c) *Base rate.* The base rate shall be the prime rate in effect on the first business day of the month, printed in a national financial newspaper published each business day, or the SBA Optional Peg Rate which SBA publishes quarterly in the Federal Register.

(d) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2 1/4) percentage points over the base rate.

(e) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2 3/4) percentage points over the base rate.

(f) *Amortization.* Initial amortization of principal and interest may be recomputed and reassessed as interest rates fluctuate, as directed by SBA. With prior approval of SBA, the Lender may use certain other amortization methods, except that SBA does not allow balloon payments.

§ 120.215 What interest rates apply to smaller loans?

For a loan over $25,000 but not exceeding $50,000, the interest rate may be one percent more than the maximum interest rate described above. For a variable rate loan of $25,000 or less, the maximum interest rate described above may be increased by two percentage points.

Fees for Guaranteed Loans

§ 120.220 Fees that Lender pays SBA.

(a) The Lender pays a guarantee fee to SBA for each loan as follows:

Guaranteed portion of loan	Fee measured as percentage of guaranteed portion	When payable	Lender may get fee from borrower	When SBA refunds fee from borrower
12 Months or less	25%	With Guarantee Application.	When SBA Approves Loan.	If Application Withdrawn or Denied.[1]

Guaranteed portion of loan	Fee measured as percentage of guaranteed portion	When payable	Lender may get fee from borrower	When SBA refunds fee from borrower
More Than 12 months and Total Guaranteed Portion Is $80,000 or Less.	2.0% of Guaranteed Portion	Within 90 days of SBA Approval.	After First Disbursement.	If Loan Cancelled and Never Disbursed.
More Than 12 Months and Amount of Guaranteed Portion of Loan That Is $250,000 or Less.	3%	Within 90 Days of SBA Approval.	After First Disbursement.	If Loan Cancelled and Never Disbursed.
More Than 12 Months and Amount of Guaranteed Portion of Loan Between $250,000 and $500,000.	3.0% of 1st $250,000 plus 3.5% of balance.	Within 90 Days of SBA Approval.	After First Disbursement.	If Loan Cancelled and Never Disbursed.
More Than 12 Months and Amount of Guaranteed Portion of Loan Exceeding $500,000.	3.0% of 1st $250,000 plus 3.5% of next $250,000 plus 3.875% of the Amount Exceeding $500,000.	Within 90 Days of SBA Approval.	After First Disbursement.	If Loan Cancelled and Never Disbursed.

[1] Also, if SBA substantially changes the Lender's loan terms and approves the loan, but the modified terms are unacceptable to the Borrower or Lender. (The Lender must request refund in writing within 30 calendar days of the approval).

(b) If the guarantee fee is not paid, SBA may terminate the guarantee. The Borrower may use working capital loan proceeds to reimburse the Lender for the guarantee fee. Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the Lender's misconduct or violation of any provision of this part, the guarantee agreement, the Authorization, or other loan documents.

(c) The Lender shall also pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

§ 120.221 Fees which the Lender may collect from a loan applicant.

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

(b) *Extraordinary servicing.* Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge the applicant a service fee not to exceed 2 percent per year on the outstanding balance of the part requiring special servicing.

(c) *Out-of-pocket expenses.* The Lender may collect from the applicant necessary out-of-pocket expenses such as filing or recording fees.

(d) *Late payment fee.* The Lender may charge the Borrower a late payment fee not to exceed 5 percent of the regular loan payment.

(e) *No prepayment fee.* The Lender may not charge a fee for full or partial prepayment of a loan.

§ 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.

The Lender or its Associate may not:

(a) Require the applicant or Borrower to pay the Lender, an Associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining an SBA guaranteed loan (unless permitted by this part);

(b) Charge an applicant any commitment, bonus, broker, commission, referral or similar fee;

(c) Charge points or add-on interest;

(d) Share any premium received from the sale of an SBA guaranteed loan in the secondary market with a Service Provider, packager, or other loan-referral source; or

(e) Charge the Borrower for legal services, unless they are hourly charges for requested services actually rendered.

Subpart C—Special Purpose Loans

§ 120.300 Statutory authority.

Congress has authorized several special purpose programs in various subsections of section 7(a) of the Act. Generally, 7(a) loan policies, eligibility requirements and credit criteria enumerated in Subpart B of this part apply to these programs. The sections of this subpart prescribe the special conditions applying to each special purpose program. As with other business loans, special purpose loans are available only to the extent funded by annual appropriations.

Disabled Assistance Loan Program (DAL)

§ 120.310 What assistance is available for the disabled?

Section 7(a)(10) of the Act authorizes SBA to guarantee or make direct loans to the disabled. SBA distinguishes two kinds of assistance:

(a) *DAL–1.* DAL–1 Financial Assistance is available to non-profit public or private organizations for disabled individuals that employ such individuals; or

(b) *DAL–2.* DAL–2 Financial Assistance is available to:

(1) Small businesses wholly owned by disabled individuals; and

(2) Disabled individuals to establish, acquire, or operate a small business.

§ 120.311 Definitions.

(a) *Organization for the disabled* means one which:

(1) Is organized under federal or state law to operate in the interest of disabled individuals;

(2) Is non-profit;

(3) Employs disabled individuals for seventy-five percent of the time needed to produce commodities or services for sale; and

(4) Complies with occupational and safety standards prescribed by the Department of Labor.

(b) *Disabled individual* means a person who has a permanent physical, mental or emotional impairment, defect, ailment, disease or disability which limits the type of employment for which the person would otherwise be qualified.

§ 120.312 DAL–1 use of proceeds and other program conditions.

(a) DAL–1 applicants must submit appropriate documents to establish program eligibility.

(b) Generally, applicants may use loan proceeds for any 7(a) loan purposes. Loan proceeds may not be used:

(1) To purchase or construct facilities if construction grants and mortgage assistance are available from another Federal source; or

(2) For supportive services (expenses incurred by a DAL–1 organization to subsidize wages of low producers, health and rehabilitation services, management, training, education, and housing of disabled workers).

(c) SBA does not consider a DAL–1 organization to have a conflict of interest if one or more of its Associates is an Associate of the Lender.

§ 120.313 DAL–2 use of proceeds and other program conditions.

(a) The DAL–2 loan proceeds may be used for any 7(a) loan purposes.

(b) An applicant may use DAL–2 loan proceeds to acquire an eligible small business without complying with the change of ownership conditions in § 120.202.

(c) A DAL–2 applicant must submit evidence from a physician, psychiatrist, or other qualified professional as to the permanent nature of the disability and the limitation it places on the applicant.

§ 120.314 Resolving doubts about creditworthiness.

For the purpose of the DAL Program, SBA shall resolve doubts concerning the creditworthiness of an applicant in favor of the applicant. However, the applicant must present satisfactory evidence of repayment ability. Personal guarantees of Associates are not required for purposes of DAL–1 financial assistance.

§ 120.315 Interest rate and loan limit.

The interest rate on direct DAL loans is three percent. There is an administrative limit of $150,000 on a direct DAL loan.

Businesses Owned by Low Income Individuals

§ 120.320 Policy.

Section 7(a)(11) of the Act authorizes SBA to guarantee or make direct loans to establish, preserve or strengthen small business concerns:

(a) Located in an area having high unemployment according to the Department of Labor;

(b) Located in an area in which a high percentage of individuals have a low income inadequate to satisfy basic family needs; and

(c) More than 50 percent owned by low income individuals.

Energy Conservation

§ 120.330 Who is eligible for an energy conservation loan?

SBA may make or guarantee loans to assist a small business to design, engineer, manufacture, distribute, market, install, or service energy devices or techniques designed to conserve the Nation's energy resources.

§ 120.331 What devices or techniques are eligible for a loan?

Eligible energy conservation devices or techniques include:

(a) Solar thermal equipment;

(b) Photovoltaic cells and related equipment;

(c) A product or service which increases the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy;

(d) Equipment producing energy from wood, biological waste, grain or other biomass energy sources;

(e) Equipment for cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectural, consulting, or other professional services necessary or appropriate for any of the devices or techniques in paragraphs (a) through (g) of this section.

§ 120.332 What are the eligible uses of proceeds?

(a) *Acquire property.* The Borrower may use the loan proceeds to acquire land necessary for imminent plant construction, buildings, machinery, equipment, furniture, fixtures, facilities, supplies, and material needed to accomplish any of the eligible program purposes in § 120.330.

(b) *Research and development.* Up to 30% of loan proceeds may be used for research and development:

(1) Of an existing product or service; or

(2) A new product or service.

(c) *Working capital.* The Borrower may use proceeds for working capital for entering or expanding in the energy conservation market.

§ 120.333 Are there any special credit criteria?

In addition to regular credit evaluation criteria, SBA shall weigh the greater risk associated with energy projects. SBA shall consider such factors as quality of the product or service, technical qualifications of the applicant's management, sales projections, and financial status.

Export Working Capital Program (EWCP)

§ 120.340 What is the Export Working Capital Program?

Under the EWCP, SBA guarantees short-term working capital loans made by participating lenders to exporters (section 7(a)(14) of the Act). Loan maturities may be for up to three years with annual renewals. Proceeds can be used only to finance export transactions. Loans can be for single or multiple export transactions. An export transaction is the production and payment associated with a sale of goods or services to a foreign buyer.

§ 120.341 Who is eligible?

In addition to the eligibility criteria applicable to all 7(a) loans, an applicant must be in business for one full year at the time of application, but not necessarily in the exporting business. SBA may waive this requirement if the applicant has sufficient export trade experience or other managerial experience.

§ 120.342 What are eligible uses of proceeds?

Loan proceeds may be used:

(a) To acquire inventory;

(b) To pay the manufacturing costs of goods for export;

(c) To purchase goods or services for export;

(d) To support standby letters of credit;

(e) For pre-shipment working capital; and

(f) For post-shipment foreign accounts receivable financing.

§ 120.343 Collateral.

A Borrower must give SBA a first security interest sufficient to cover 100 percent of the EWCP loan amount (such as insured accounts receivable or letters of credit). Collateral must be located in the United States, its territories or possessions.

§ 120.344 Unique requirements of the EWCP.

(a) An applicant must submit cash flow projections to support the need for the loan and the ability to repay. After the loan is made, the loan recipient must submit continual progress reports.

(b) SBA does not limit the amount of extraordinary servicing fees, as referenced in § 120.221(b), under the EWCP.

(c) SBA does not prescribe the interest rates for the EWCP, but will monitor these rates for reasonableness.

International Trade Loans

§ 120.345 Policy.

Section 7(a)(16) of the Act authorizes SBA to guarantee loans to small businesses that are:

(a) Engaged or preparing to engage in international trade; or

(b) Adversely affected by import competition.

§ 120.346 Eligibility.

(a) An applicant must establish that:

(1) The loan proceeds will significantly expand an existing export market or develop new export markets; or

(2) The applicant business is adversely affected by import competition; and

(3) Upgrading facilities or equipment will improve the applicant's competitive position.

(b) The applicant must have a business plan reasonably supporting its projected export sales.

§ 120.347 Use of proceeds.

The Borrower may use loan proceeds to acquire, construct, renovate, modernize, improve, or expand facilities and equipment to be used in the United States to produce goods or services involved in international trade, and to develop and penetrate foreign markets.

§ 120.348 Amount of guarantee.

SBA can guarantee up to $1,250,000 for a combination of fixed-asset financing and working capital, supplies and EWCP assistance. The fixed-asset portion of the loan cannot exceed $1,000,000 and the non-fixed-asset portion cannot exceed $750,000.

Qualified Employee Trusts (ESOP)

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust (''ESOP'') to:

(a) Help finance the growth of its employer's small business; or

(b) Purchase ownership or voting control of the employer.

§ 120.351 Definitions.

All terms specific to ESOPs have the same definition for purposes of this section as in the Internal Revenue Service (IRS) Code (title 26 of the United States Code) or regulations (26 CFR chapter I).

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.353 Eligibility.

SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury and Department of Labor (DOL) regulations. In addition, the following conditions apply:

(a) The small business must provide the funds needed by the trust to repay the loan; and

(b) The small business must provide adequate collateral.

§ 120.354 Creditworthiness.

In determining repayment ability, SBA shall not consider the personal assets of the employee-owners of the trust. SBA shall consider the earnings history and projected future earnings of the employer small business. SBA may consider the business and management experience of the employee-owners.

Veterans Loan Program

§ 120.360 Which veterans are eligible?

SBA may guarantee or make direct loans to a small business 51 percent owned by one or more of the following eligible veterans:

(a) Vietnam-era veterans who served for a period of more than 180 days between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably;

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or

(c) A veteran of any era who was discharged for disability.

§ 120.361 Other conditions of eligibility.

(a) Management and daily operations of the business must be directed by one or more of the veteran owners whose veteran status was used to qualify for the loan.

(b) This direct loan program is available only if private sector financing and guaranteed loans are not available.

(c) A veteran may qualify only once for this program on a direct loan basis.

Pollution Control Program

§ 120.370 Policy.

Section 7(a)(12) of the Act authorizes SBA to guarantee loans up to $1,000,000 to an eligible small business to plan, design or install a pollution control facility. An applicant must meet the eligibility requirements for 7(a) loans.

Loans to Participants in the 8(a) Program

§ 120.375 Policy.

Section 7(a)(20) of the Act authorizes SBA to provide direct (unilaterally or together with Lenders) or guaranteed loans to firms participating in the 8(a) Program.

§ 120.376 Special requirements.

The following special conditions apply (otherwise, 7(a) loan eligibility criteria apply):

(a) The Associate Administrator of Minority Enterprise Development (''MED'') may waive the direct loan administrative ceiling of $150,000, and raise it to $750,000.

(b) The SBA portion of a guaranteed loan must not exceed $750,000.

(c) The interest rate on a guaranteed loan shall be the same as on 7(a) guaranteed business loans. The interest rate on a direct loan shall be one percent less than on a regular direct loan.

(d) For a direct loan or SBA's portion of an immediate participation loan, SBA shall subordinate its security interest on all collateral to other debt of the applicant.

§ 120.377 Use of proceeds.

The loan proceeds shall not be used for debt refinancing. Only a manufacturing concern may use loan proceeds for working capital.

Defense Economic Transition Assistance

§ 120.380 Program.

Section 7(a)(21) of the Act authorizes SBA to guarantee loans to help eligible small businesses transition from defense to civilian markets, or eligible individuals adversely impacted by base closures or defense cutbacks to acquire or open and operate a small business.

§ 120.381 Eligibility.

(a) *Eligible small businesses.* A small business is eligible if it has been detrimentally impacted by the closure (or substantial reduction) of a Department of Defense installation, or the termination (or substantial reduction) of a Department of Defense Program on which the small business was a prime contractor, subcontractor, or supplier at any tier.

(b) *Eligible individual.* An eligible individual, for purposes of this program, includes the following persons involuntarily separated from their position or voluntarily terminated under a program offering inducements to encourage early retirement:

(1) A member of the Armed Forces of the United States (honorably discharged);

(2) A civilian employee of the Department of Defense; or

(3) An employee of a prime contractor, sub-contractor, or supplier at any tier of a Department of Defense program.

(c) *Defense loan and technical assistance (DELTA).* The DELTA program provides financial and technical assistance to defense dependent small businesses which have been adversely affected by defense reductions. The goal of the program is to assist these businesses to diversify into the commercial market while remaining part of the defense industrial base. Complete information on eligibility and other rules is available from each SBA district office.

§ 120.382 Repayment ability.

SBA shall resolve reasonable doubts concerning the small business' proposed business plan for transition to non-defense-related markets in favor of the loan applicant in determining the sound value of the proposed loan.

§ 120.383 Restrictions on loan processing.

Since greater risk may be associated with a loan to an applicant under this program, a Certified Lender or Preferred Lender shall not make a defense economic assistance loan under the PLP or CLP programs.

CapLines Program

§ 120.390 Revolving credit.

(a) CapLines finances eligible small businesses' short-term, revolving and non-revolving working-capital needs. SBA regulations governing the 7(a) loan program govern business loans made under this program. Under CapLines, SBA generally can guarantee up to $750,000.

(b) CapLines proceeds can be used to finance the cyclical, recurring, or other identifiable short-term operating capital needs of small businesses. Proceeds can be used to create current assets or used to provide financing against the current assets that already exist.

Builders Loan Program

§ 120.391 What is the Builders Loan Program?

Under section 7(a)(9) of the Act, SBA may make or guarantee loans to finance small general contractors to construct or rehabilitate residential or commercial property for resale. This program provides an exception under specified conditions to the general rule against financing investment property. ''Construct'' and ''rehabilitate'' mean only work done on-site to the structure, utility connections and landscaping.

§ 120.392 Who may apply?

A construction contractor or home-builder with a past history of profitable construction or rehabilitation projects of comparable type and size may apply. An applicant may subcontract the work. Subcontracts in excess of $25,000 may require 100 percent payment and performance bonds.

§ 120.393 Are there special application requirements?

(a) An applicant must submit documentation from:

(1) A mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;

(2) A real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and

(3) An architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.

(b) The Borrower may substitute a letter from a qualified Lender for one or more of the letters.

§ 120.394 What are the eligible uses of proceeds?

A Borrower must use the loan proceeds solely to acquire, construct or substantially rehabilitate an individual residential or commercial building for sale. ''Substantial'' means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application. A Borrower may use up to 20 percent of the proceeds to acquire land, and up to 5 percent for community improvements such as curbs and sidewalks.

§ 120.395 What is SBA's collateral position?

SBA will require a lien on the building which must be in no less than a second position.

§ 120.396 What is the term of the loan?

The loan must not exceed sixty (60) months plus the estimated time to complete construction or rehabilitation.

§ 120.397 Are there any special restrictions?

The borrower must not use loan proceeds to purchase vacant land for possible future construction or to operate or hold rental property for future rehabilitation. SBA may allow rental of the property only if the rental will improve the ability to sell the property. The sale must be a legitimate change of ownership.

Subpart D—Lenders

§ 120.400 Loan Guarantee Agreements.

SBA may enter into a Loan Guarantee Agreement with a Lender to make deferred participation (guaranteed) loans. Such an agreement does not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a Loan Guarantee Agreement does not limit SBA's rights to deny a specific loan or establish general policies. *See also* §§ 120.441(b) and 120.451(d) concerning Supplemental Guarantee Agreements.

Participation Criteria

§ 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans;

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140; and

(d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA.

§ 120.411 Preferences.

An agreement to participate under the Act may not establish any Preferences in favor of the Lender.

§ 120.412 Other services Lenders may provide Borrowers.

Subject to § 120.140 Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Fees cannot exceed those charged by established professional consultants providing similar services. *See also* § 120.195.

§ 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

(a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;

(b) Be false or misleading; or
(c) Make use of SBA's seal.

Pledging Notes or Transferring Unguaranteed Portion

§ 120.420 Financings by Nondepository Lenders.

(a) A Small Business Lending Company regulated by SBA or a Business and Industrial Development Company (''Nondepository Lender'') may pledge the notes evidencing SBA guaranteed loans or sell the unguaranteed portions of such loans if SBA, notwithstanding the provisions of § 120.453(c), in its sole discretion, gives its prior written consent. The Lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements.

(b) The Nondepository Lender, SBA, and any third party involved in the transaction, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA acknowledging SBA's interest as guarantor of the subject loans and accepting that all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's Loan Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) The Nondepository Lender, SBA, or a third party custodian agreeable to SBA, will hold all pertinent Loan Instruments, and the Nondepository Lender will continue to service the loans after the pledge or transfer is made; and

(2) The Nondepository Lender must retain an economic risk in and bear the ultimate risk of loss on the unguaranteed portions. This must be demonstrated to SBA's satisfaction by establishing a sufficient reserve fund at the time of sale of the unguaranteed portions and, in the case of pledging notes, by retaining all of the economic interest in the unguaranteed portion of any loan which a note evidences.

(c) The Nondepository Lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for any borrowing not related to financing of the guaranteed or unguaranteed portion of SBA loans.

Miscellaneous Provisions

§ 120.430 SBA access to Lender files.

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

§ 120.431 Suspension or revocation of eligibility to participate.

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

Certified Lenders Program (CLP)

§ 120.440 What is the Certified Lenders Program?

Under the Certified Lenders Program (CLP), designated Lenders process, close, service, and may liquidate, SBA guaranteed loans. SBA gives priority to applications and servicing actions submitted by Lenders under this program, and attempts to respond within three days of submission to SBA. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

§ 120.441 How does a Lender become a CLP Lender?

(a) An SBA field office may nominate a Lender or a Lender may request a field office to consider it for CLP status. SBA district directors may approve and renew a Lender's CLP status. The district director will consider whether the Lender:

(1) Has the ability to process, close, service and liquidate loans;

(2) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guarantee application packages;

(3) Has an acceptable SBA purchase rate; and

(4) Has shown the ability to work well with the local SBA office.

(b) If the district director does not approve a request for CLP status, the Lender may appeal to the AA/FA, whose decision will be final. If SBA grants CLP status, it applies only in the field office that processed the CLP designation. A CLP Lender must execute a Supplemental Guarantee Agreement that will specify a term not to exceed two years.

§ 120.442 Suspension or revocation of CLP status.

The AA/FA may suspend or revoke CLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include a loan performance record unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A CLP Lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA remains in effect pending resolution of the appeal.

Preferred Lenders Program (PLP)

§ 120.450 What is the Preferred Lenders Program?

Under the Preferred Lenders Program (PLP), designated Lenders process, close, service, and liquidate SBA guaranteed loans with reduced requirements for documentation to and prior approval by SBA.

§ 120.451 How does a Lender become a PLP Lender?

(a) An SBA field office serving the area in which a Lender's office is located can nominate the Lender, or a Lender can request a field office to consider it for PLP status. The SBA field office will forward its recommendation to an SBA centralized loan processing center which will submit its recommendation and supporting documentation to the AA/FA for final decision.

(b) In making its decision, SBA considers whether the Lender:

(1) Has the required ability to process, close, service and liquidate loans;

(2) Has the ability to develop and analyze complete loan packages; and

(3) Has a satisfactory performance history with SBA.

(c) If the Lender is approved, the AA/FA will designate the area in which it can make PLP loans.

(d) Before it can operate as a PLP Lender, the approved Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years.

(e) When a PLP's Supplemental Guarantee Agreement expires, SBA may recertify it as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies and procedures. The recertification decision of the AA/FA is final.

(f) A PLP Lender may request an expansion of the territory in which it can process PLP loans by submitting its request to a loan processing center. The center will obtain the recommendation of each SBA office in the area into which the PLP Lender would like to expand its PLP operations. The center

will forward the recommendations to the AA/FA for final decision. If a PLP Lender is not a CLP Lender in a territory into which it seeks to expand its PLP status, it automatically obtains CLP status in that territory when it is granted PLP status for the territory.

§ 120.452 What are the requirements of PLP loan processing?

(a) Subparts A and B of this part govern the making of PLP loans, except for the following:

(1) Certain types of businesses, loans, and loan programs are not eligible for PLP, as detailed in published SBA policy and procedures.

(2) A Lender may not make a PLP business loan which reduces its existing credit exposure for any Borrower, except in cases where an interim loan(s) has been made for other than real estate construction purposes to the Borrower which was approved by the Lender within 90 days of receipt of the issuance fo a subsequent PLP loan number.

(3) SBA will not guarantee more than the specified statutory percentage of any PLP loan.

(b) A PLP Lender notifies SBA of its approval of a PLP loan by submitting to SBA's loan processing center appropriate documentation signed by two of the PLP's authorized representatives. SBA will attach the SBA guarantee and notify the PLP Lender of the SBA loan number (if it does not identify a problem with eligibility, and funds are available).

(c) The PLP Lender is responsible for all PLP loan decisions regarding eligibility (including size) and creditworthiness. The PLP Lender is also responsible for confirming that all PLP loan closing decisions are correct, and that it has complied with all requirements of law and SBA regulations.

§ 120.453 What are the requirements of a PLP Lender in servicing and liquidating SBA guaranteed loans?

The PLP Lender must service and liquidate its SBA guaranteed loan portfolio (including its non-PLP loans) using generally accepted commercial banking standards employed by prudent lenders. The PLP Lender must liquidate any defaulted SBA guaranteed loan in its portfolio unless SBA advises in writing that SBA will liquidate the loan. The PLP Lender must submit a liquidation plan to SBA prior to commencing liquidation action. The PLP Lender may take any necessary servicing action, or liquidation action consistent with a plan, for any SBA guaranteed loan in its portfolio, except it may not:

(a) Take any action that confers a Preference on the Lender;

(b) Accept a compromise settlement without prior written SBA consent; and

(c) Sell or pledge more than 90 percent of a PLP loan.

§ 120.454 PLP performance review.

SBA may review the performance of a PLP Lender. SBA may charge the PLP Lender a fee to cover the costs of this review.

§ 120.455 Suspension or revocation of PLP status.

The AA/FA may suspend or revoke PLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A PLP Lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA remains in effect pending resolution of the appeal.

Small Business Lending Companies (SBLC)

§ 120.470 What is an SBLC?

A Small Business Lending Company (SBLC) is a nondepository lending institution licensed by SBA. SBA supervises, examines, and regulates SBLCs. An SBLC is subject to all applicable SBA regulations, including those governing Lenders. SBA has imposed a moritorium on licensing new SBLC's since January, 1982.

(a) An SBLC may only make:

(1) Loans under section 7(a) (except section 7(a)(13)) of the Act in participation with SBA; and/or

(2) SBA guaranteed loans to micro-Lenders in the SBA Microloan program (see subpart G of this part). Such loans are subject to the same conditions as guaranteed loans made to SBA-designated microlenders by SBA participating Lenders.

(b) In addition to complying with §§ 120.400 through 120.413, an SBLC must meet the following requirements:

(1) *Business structure.* It must be a corporation (profit or non-profit).

(2) *Written agreement.* It must sign a written agreement with SBA.

(3) *Capital structure.* It must have unencumbered paid-in capital and paid-in surplus of at least $1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is more.

(4) *Capital impairment.* It must avoid capital impairment at all times. Impairment exists if the retained earnings deficit of an SBLC exceeds 50 percent of combined paid-in capital and paid-in-surplus, excluding treasury stock. An SBLC must give SBA prompt written notice of any capital impairment within 30 calendar days of the month-end financial report that first reflects the impairment. Until the impairment is cured, an SBLC may not present any loans to SBA for guarantee.

(5) *Issuance of securities.* Without prior written SBA approval, it must not issue any securities (including stock options and debt securities) except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(6) *Voluntary capital reduction.* Without prior written SBA approval, it must not voluntarily reduce its capital, or purchase and hold more than 2 percent of any class or combination of classes of its stock.

(7) *Reserves for losses.* It must maintain a reserve in the amount of anticipated losses on loans and receivables.

(8) *Internal control.* It must adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and to maintain the accuracy of its financial data.

(9) *Dual control.* It must maintain dual control over disbursement of funds and withdrawal of securities. An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer. There must be two or more bonded officers, or one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing these control procedures.

(10) *Fidelity insurance.* It must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $500,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304–9308.

(11) *Common control.* It must not control, be controlled by, or be under common control with, another SBLC. Without prior written SBA approval, an

Associate of one SBLC shall not be an Associate of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(12) *Management.* An SBLC must employ full time professional management.

(13) *Borrowed funds.* Without SBA's prior written approval, it must not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock shall not use borrowed funds to purchase the stock unless the net worth of the shareholders is at least twice the amount borrowed or unless the shareholders receive SBA's prior written approval for a lower ratio.

§ 120.471 Records.

Each SBLC must comply with the following requirements concerning records:

(a) *Maintenance of Records.* It must maintain accurate and current financial records, including books of account, minutes of stockholder, directors, and executive committee meetings, and all documents and supporting materials relating to the SBLC's transactions at its principal business office. Securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) *Preservation of records.* (1) It must preserve in a manner permitting immediate retrieval the following documentation for the financial statements required by § 120.472 (and of the accompanying certified public accountant's opinion), for the following specified periods:

(i) Preserve permanently:

(A) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(B) All general and special journals (or other records forming the basis for entries in such ledgers); and

(C) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers;

(ii) Preserve for at least 6 years following final disposition of the related loan:

(A) All applications for financing;

(B) Lending, participation, and escrow agreements;

(C) Financing instruments; and

(D) All other documents and supporting material relating to such loans, including correspondence.

(2) Records and other documents referred to in this section may be preserved electronically if the original is available for retrieval within a reasonable period.

§ 120.472 Reports to SBA.

An SBLC must submit the following to the AA/FA:

(a) An audited financial statement prepared by a certified public accountant within three months after the close of each fiscal year, and interim financial reports when requested by SBA;

(b) A report of any legal or administrative proceeding, by or against the SBLC, or against an officer, director, or employee of the SBLC for an alleged breach of official duty, within 10 days after initiating or learning of the proceeding, as well as notification of the terms of any settlement or final judgment (in addition to any reporting under applicable SBA Forms);

(c) Copies of any report furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of the SBLC);

(d) A summary of any changes in the SBLC's organization or financing, such as:

(1) Any change in its name, address or telephone number;

(2) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on an approved SBA form);

(3) Any changes in capitalization (including those identified in § 120.470);

(4) Any changes affecting the eligibility of the SBLC to continue to participate as an SBLC; and

(5) Notice of a pledge of stock within 30 calendar days of the transaction if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve a transfer for which prior written approval of SBA is required under § 120.473;

(e) Such other reports as SBA may require from time to time by written directive.

§ 120.473 Change of ownership or control.

(a) Any change of ownership or control without prior written approval of SBA is prohibited. An SBLC must request approval of any such change from the AA/FA. Pending the approval, the SBLC may not register the proposed new owners on its transfer books nor permit them to participate in any manner in the conduct of the SBLC's affairs. Change of ownership or control includes:

(1) Any transfer of 10 percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that transfers control of the SBLC.

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the AA/FA.

§ 120.474 Prohibited financing.

An SBLC may not make a loan to a small business that has received financing (or a commitment for financing) from an SBIC that is an Associate of the SBLC.

§ 120.475 Audits.

Every SBLC is subject to periodic audits by SBA's Office of Inspector General, Auditing Division, and the cost of such audits will be assessed against the SBLC, except for the first audit. Fees are structured based on the SBLC's assets as of the date of the latest audited financial statement submitted to SBA before the audit. The fee schedule is set forth in SBA's Standard Operating Procedures manual.

§ 120.476 Suspension or revocation.

SBA may revoke or suspend an SBLC for a violation of law, these regulations, or any agreement with SBA. An appeal can be made following the procedures set forth in part 134 of this chapter.

Subpart E—Loan Administration

§ 120.500 General.

This subpart outlines the general loan administration policies applicable to loan servicing and liquidation.

Servicing

§ 120.510 Servicing direct and immediate participation loans.

SBA services the direct loans that it makes. Generally, the Lender services immediate participation loans that it makes and in which SBA participates.

§ 120.511 Servicing guaranteed loans.

The Lender services guaranteed loans, holds the Loan Instruments and receives the Borrower's payments of principal and interest.

§ 120.512 Who services the loan after SBA honors its guarantee?

Generally, after SBA honors its guarantee, the Lender must continue to hold the Loan Instruments and service and liquidate the loan. The Lender must execute a Certificate of Interest showing SBA's percentage of the loan, and must submit a liquidation plan to SBA for each loan to be liquidated. If SBA elects to service or liquidate the loan, the Lender must assign the Loan Instruments to SBA.

§ 120.513 What servicing actions require the prior written consent of SBA?

Except as otherwise provided in a Supplemental Guarantee Agreement with the Lender, SBA must give its prior written consent before the Lender takes any of the following actions:

(a) Alters substantially the terms or conditions of any Loan Instrument (for example, any increase in the principal amount or change in the interest rate, or action conferring a Preference on the Lender);

(b) Releases collateral having a cumulative value in excess of 20 percent of the original loan amount;

(c) Accelerates the maturity of the note;

(d) Sues upon any Loan Instrument;

(e) Compromises or waives any claim against any Borrower, guarantor, obligor or standby creditor arising out of any Loan Instrument; or

(f) Increases the amount of any prior lien held by the Lender on the collateral securing the loan.

SBA'S Purchase of a Guaranteed Portion

§ 120.520 When does SBA honor its guarantee?

(a) SBA, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses.

(b) Purchase by SBA of the guaranteed portion does not waive any of SBA's rights to recover money paid on the guarantee, based upon the Lender's negligence, misconduct, or violation of this part, including those actions listed in § 120.524(a), the Loan Guarantee Agreement or the Loan Instruments.

§ 120.521 What interest rate applies after SBA purchases its guaranteed portion?

When SBA purchases the guaranteed portion of a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured payment default, or the rate in effect at the time of purchase (where no default has occurred).

§ 120.522 How much accrued interest does SBA pay to the Lender or Registered Holder when SBA purchases the guaranteed portion?

(a) *Rate of interest.* If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary Market), it will pay accrued interest at:

(1) The rate in the note if it is a fixed rate loan; or

(2) The rate in effect on the date of the earliest uncured payment default, or of SBA's purchase (if there has been no default).

(b) *Payment to Lender.* If the Lender submits a complete purchase request to SBA within 120 days of the earliest uncured payment default, SBA will pay accrued interest to the Lender from the last interest paid-to-date up to the date of payment. If the Lender requests SBA to purchase after 120 days from the date of the earliest uncured payment default date, SBA will pay only 120 days of interest. For LowDoc loans, the interest paid to the Lender will be governed by the Supplemental Guarantee Agreement.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

(d) *Extension of the 120 day period.* Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only the AA/FA or designee can extend the period.

§ 120.523 What is the ''earliest uncured payment default''?

The earliest uncured payment default is the date of the earliest failure by a Borrower to pay a regular installment of principal and/or interest when due. Payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured payment default. If the installment is paid in full, the earliest uncured payment default date will advance to the next unpaid installment date. If a Borrower makes any payment after the Lender makes its request to SBA to purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

§ 120.524 When is SBA released from liability on its guarantee?

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender's improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guarantee;

(7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guarantee plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA prior to Lender's request for SBA to honor its guarantee shall not prejudice SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing ad liquidation actions until SBA honors its guarantee in full.

Deferment, Extension of Maturity and Loan Moratorium

§ 120.530 Deferment of payment.

SBA may agree to defer payments on a business loan for a stated period of time, and use such other methods as it considers necessary and appropriate to help in the successful operation of the Borrower. This policy applies to all business loan programs, including 504 loans.

§ 120.531 Extension of maturity.

SBA may agree to extend the maturity of a loan for up to 10 years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

§ 120.532 What is a loan Moratorium?

SBA may assume a Borrower's obligation to repay principal and interest on a loan by agreeing to make the payments to the Lender on behalf of the Borrower under terms and conditions set by SBA. This relief is called a ''Moratorium.'' Complete information concerning this program may be obtained from local SBA offices.

Liquidation of Collateral

§ 120.540 What are SBA's policies concerning liquidation of collateral?

(a) *Liquidation policy.* SBA or the Lender may liquidate collateral securing a loan if the loan is in default or there is no reasonable prospect that the loan can be repaid within a reasonable period.

(b) *Sale and conversion of loans.* Without the consent of the Borrower, SBA may:

(1) Sell a direct loan;

(2) Convert a guaranteed or immediate participation loan to a direct loan; or

(3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

(c) *Disposal of collateral and assets acquired through foreclosure or conveyance.* SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan that is in default in accordance with the provisions of the related security instrument (*see* § 120.550 for Homestead Protection for Farmers).

(1) *Competitive bids or negotiated sales.* Generally, SBA will offer loan collateral and acquired assets for public sale through competitive bids at auctions or sealed bid sales. The Lender may use negotiated sales if consistent with its usual practice for similar non-SBA assets.

(2) *Lease of acquired property.* Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA and the Lender will consider proposals for a lease if it appears a property cannot be sold advantageously and the lease may be terminated on reasonable notice upon receipt of a favorable purchase offer.

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

(e) *Guarantors.* Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

Homestead Protection for Farmers

§ 120.550 What is homestead protection for farmers?

SBA may lease to a farmer-Borrower the farm residence occupied by the Borrower and a reasonable amount of adjoining property (no more than 10 acres and seven farm buildings), if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA (*see* the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, for qualifying loan purposes).

§ 120.551 Who is eligible for homestead protection?

SBA must notify the Borrower in possession of the availability of these homestead protection rights within 30 days after SBA acquires the property. A farmer-Borrower must:

(a) Apply for the homestead occupancy to the SBA field office which serviced the loan within 90 days after SBA acquires the property;

(b) Provide evidence that the farm produces farm income reasonable for the area and economic conditions;

(c) Show that at least 60 percent of the Borrower and spouse's gross annual income came from farm or ranch operations in at least any two out of the last six calendar years;

(d) Have resided on the property during the previous six years; and

(e) Be personally liable for the debt.

§ 120.552 Lease.

If approved, the applicant must personally occupy the residence during the term of the lease and pay a reasonable rent to SBA. The lease will be for a period of at least 3 years, but no more than 5 years. A lease of less than 5 years may be renewed, but not beyond 5 years from the original lease date. During or at the end of the lease period, the lessee has a right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser.

§ 120.553 Appeal.

If the application is denied, the Borrower may appeal the decision to the AA/FA. Until the conclusion of any appeal, the Borrower may retain possession of the homestead property.

§ 120.554 Conflict of laws.

In the event of a conflict between the homestead provisions at §§ 120.550 through 120.553 of this part, and any state law relating to the right of a Borrower to designate for separate sale or to redeem part or all of the real property securing a loan foreclosed by the Lender, state law shall prevail.

Subpart F—Secondary Market

Fiscal and Transfer Agent (FTA)

§ 120.600 Definitions.

(a) *Certificate* is the document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

(b) *Current* means that no repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

(c) *FTA* is the SBA's fiscal and transfer agent.

(d) *Note Rate* is the interest rate on the Borrower's note.

(e) *Net Rate* is the interest rate on an individual guaranteed portion of a loan in a Pool.

(f) *Pool* is an aggregation of SBA guaranteed portions of loans made by Lenders.

(g) *Pool Assembler* is a financial institution that:

(1) Organizes and packages a Pool by acquiring the SBA guaranteed portions of loans from Lenders;

(2) Resells fractional interests in the Pool to Registered Holders; and

(3) Directs the FTA to issue Certificates.

(h) *Pool Rate* is the interest rate on a Pool Certificate.

(i) *Registered Holder* is the Certificate owner listed in FTA's records.

(j) *SBA's Secondary Market Program Guide* is an issuance from SBA which

describes the characteristics of Secondary Market transactions.

§ 120.601 SBA Secondary Market.

The SBA secondary market (''Secondary Market'') consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. By the terms of such Certificate, SBA guarantees a Registered Holder timely payment of principal and interest from the loan or loans underlying the Certificate. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5 (f), (g), and (h) of the Small Business Act (15 U.S.C. 634 (f), (g) and (h)).

Certificates

§ 120.610 Form and terms of Certificates.

(a) *General form and content.* Each Certificate must be registered with the FTA. SBA must approve the terms of the Certificate.

(b) *Face amount of Pool Certificate.* The face amount of a Pool Certificate cannot be less than a minimum amount as specified in the Program Guide, and the dollar amount of Certificates must be in increments which SBA will specify in the Program Guide (except for one Certificate in each Pool). SBA may change these requirements based upon an analysis of market conditions and program experience, and will publish any such change in the Federal Register.

(c) *Basis of payment for Pool Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the portion of the Pool represented by a Pool Certificate. All prepayments on loans in the Pool must be passed through to the appropriate Registered Holders with the regularly scheduled payments to such Holders.

(d) *Basis of payment for Individual Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the SBA guaranteed portion of the loan supporting an Individual Certificate. The Certificate must provide for a pass through to the Registered Holder of payments which the FTA receives from a Lender or any entity servicing the loan, less applicable fees.

(e) *Interest rate on Pool Certificate.* The interest rate on a Pool Certificate must be equal to the lowest Net Rate on any individual guaranteed portion of a loan in the Pool.

§ 120.611 Pools backing Pool Certificates.

(a) *Pool characteristics.* As set forth in the Program Guide, each Pool must have:

(1) A minimum number of guaranteed portions of loans;

(2) A minimum aggregate principal balance of the guaranteed portions;

(3) A maximum percentage of the Pool which an individual guaranteed portion may constitute;

(4) A maximum allowable difference between the highest and lowest note interest rates;

(5) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool; and

(6) A minimum weighted average maturity at Pool formation.

(b) *Adjustment of Pool characteristics.* SBA may adjust the Pool characteristics periodically based upon program experience and market conditions.

§ 120.612 Loans eligible to back Certificates.

(a) Pool Certificates are backed by the SBA guaranteed portions of loans comprising the Pool. An Individual Certificate is backed by the SBA guaranteed portion of a single loan. Any such loan must:

(1) Be current as of the date the Pool is formed or the individual guaranteed portion of a loan is initially sold in the Secondary Market;

(2) Be guaranteed under the Act; and

(3) Meet such other standards as SBA may determine to be necessary for the successful operation of the Secondary Market program.

(b) The loans that back a Pool must meet the SBA requirements in effect at the time the Pool is formed.

§ 120.613 Secondary Participation Guarantee Agreement.

When a Lender wants to sell the guaranteed portion of a loan, it enters into a Secondary Participation Guarantee Agreement (''SPGA'') with SBA and the prospective purchaser. The terms of sale between the Lender and the purchaser cannot require the Lender or SBA to repurchase the guaranteed portion of the loan except in accordance with the terms of the SPGA. Before execution of the SPGA, the Lender must:

(a) Submit to FTA a copy of the proposed SPGA, the note, and such other documents as SBA may require;

(b) Disburse to the Borrower the full amount of the loan; and

(c) Pay SBA all guarantee fees relevant to the loan in full.

The SBA Guarantee of a Certificate

§ 120.620 SBA guarantee of a Pool Certificate.

(a) *Extent of Guarantee.* SBA guarantees to a Registered Holder the timely payment of principal and interest installments and any prepayment or other recovery of principal to which the Registered Holder is entitled. If the Borrower of a loan in a Pool backing the Certificates does not make a required installment payment, SBA, through the FTA, will make advances to maintain the schedule of interest and principal payments to the Registered Holders.

(b) *SBA guarantee backed by full faith and credit.* SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

§ 120.621 SBA guarantee of an Individual Certificate.

(a) *Extent of SBA guarantee.* With respect to Individual Certificates, SBA guarantees to purchase from the Registered Holder the guaranteed portion of the loan for an amount equal to the unpaid principal and accrued interest due as of the date of SBA's purchase, less deductions for applicable fees. Unlike the SBA guarantee with respect to pooled loans, SBA does not guarantee timely payment on Individual Certificates.

(b) *What triggers the SBA guarantee.* SBA's guarantee to the Registered Holder may be called upon when:

(1) The Borrower remains in uncured default for 60 days on payments of principal or interest due on the note;

(2) The Lender fails to send to the FTA on a timely basis payments it received from the Borrower; or

(3) The FTA fails to send to the Registered Holder on a timely basis any payments it has received from the Lender.

(c) *Full faith and credit.* SBA's guarantee to the Registered Holder is backed by the full faith and credit of the United States.

Pool Assemblers

§ 120.630 Qualifications to be a Pool Assembler.

(a) *Application to become Pool Assembler.* The application to become a Pool Assembler is available from the AA/FA. In order to qualify as a Pool Assembler, an entity must send the application to the AA/FA, with an application fee, and certify that it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory

authority and the Government Securities Act of 1986, as amended (Pub. L. 99–571, 100 Stat. 3208);

(3) Has the financial capability to assemble acceptable and eligible guaranteed loan portions in sufficient quantity to support the issuance of Pool Certificates; and

(4) Is in good standing with SBA (as the AA/FA determines), the Office of the Comptroller of the Currency (''OCC'') if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, or the National Association of Securities Dealers if it is a member.

(b) *Approval by SBA.* An entity may not submit Pool applications to the FTA until SBA has approved the application to become a Pool Assembler.

(c) *Conduct of business by Pool Assembler.* An entity continues to qualify as a Pool Assembler so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards; and

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities.

§ 120.631 Suspension or termination of Pool Assembler.

(a) *Suspension or termination.* The AA/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its status as a Pool Assembler, if the Pool Assembler (and/or its Associates):

(1) Does not comply with any of the requirements in § 120.630 (a) and (c);

(2) Has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony;

(3) Has received an adverse civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;

(4) Has not formed a Pool for at least three years; or

(5) Is under investigation by its regulating authority for activities which may affect its fitness to participate in the Secondary Market.

(b) *Suspension procedures.* The AA/FA shall notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend and the reasons therefore at least 10 business days prior to the effective date of the suspension. The Pool Assembler may appeal the suspension made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(c) *Notice of termination.* In order to terminate a Pool Assembler, the AA/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler's participation in the Secondary Market. The Pool Assembler may appeal the termination made under this section pursuant to procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Miscellaneous Provisions

§ 120.640 Administration of the Pool and Individual Certificates.

(a) *FTA responsibility.* The FTA has the responsibility to administer each Pool or Individual Certificate. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) *Self-liquidating.* Each Pool or individual guaranteed portion of a loan in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *SBA's right to subrogation.* If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) *SBA ownership rights not limited.* No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

§ 120.641 Disclosure to purchasers.

(a) *Information to purchaser.* Prior to any sale, the Pool Assembler, Registered Holder of an Individual Certificate, or any subsequent seller must disclose to the purchaser, verbally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) *Information on transfer document.* The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an Individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) *Information in prospectus.* If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information in paragraph (a) of this section to investors through a prospectus and other promotional material if an Individual Certificate or Pool Certificate is placed into or used as the backing for the investment vehicle.

§ 120.642 Requirements before the FTA issues Pool Certificates.

Before the FTA issues any Pool Certificate, the Pool Assembler must deliver to it the following documents:

(a) A properly completed Pool application form;

(b) Either:

(1) Individual Certificates evidencing the guaranteed portions comprising the Pool; or

(2) An executed SPGA and related documentation for the loans whose guaranteed portions are to be part of the Pool; and

(c) Any other documentation which SBA may require.

§ 120.643 Requirements before the FTA issues Individual Certificates.

(a) *FTA issuance of initial Certificate.* Before the FTA can issue the Individual Certificate for a guaranteed portion of a loan, the original seller must provide the following documents to the FTA:

(1) An executed SPGA;

(2) A copy of the note representing the guaranteed loan; and

(3) Any other documentation which SBA may require.

(b) Review of documentation. SBA may review or require the FTA to review any documentation before the FTA issues a Certificate.

§ 120.644 Transfers of Certificates.

(a) *General rule.* Certificates are transferable. Transfers in the Secondary Market must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller must use the detached form of assignment (SBA Form 1088), unless the seller and purchaser choose to use another form which the SBA approves. The FTA may refuse to issue a Certificate until it is satisfied that the documents of transfer are complete.

(b) *Transfer on FTA records.* In order for the transfer of a Certificate to be effective the FTA must reflect it on its records.

(c) *Contents of letter of transmittal accompanying the transfer of Certificates.* (1) A letter of transmittal must accompany each Certificate which a Registered Holder submits to the FTA for transfer. The Registered Holder must supply the following information in the letter:

(i) Pool number, if applicable;

(ii) Certificate number;

(iii) Name of purchaser of Certificate;

(iv) Address and tax identification number of the purchaser;

(v) Name and telephone number of the person handling or facilitating the transfer;

(vi) Instructions for the delivery of the new Certificate.

(2) The Registered Holder must also send the fee which the FTA charges for this service. The FTA will supply fee information to the Registered Holder.

(d) *Lender cannot purchase guaranteed portion of loan it made.* The Lender (or its Associate) that made a 7(a) guaranteed loan cannot purchase the guaranteed portion of that loan in the Secondary Market. If a Lender does purchase the guaranteed portion of one of its own loans, it shall not have the unconditional guarantee of SBA.

§ 120.645 Redemption of Certificates.

(a) *Redemption of Individual Certificate.* The prepayment of the underlying loan or a default on such loan will trigger the redemption of the Certificate by FTA/SBA in accordance with the procedures prescribed in the SPGA.

(b) *Redemption of Pool Certificate.* The FTA and SBA may redeem a Pool Certificate because of prepayment or default of all loans in a Pool.

§ 120.650 Registration duties of FTA in Secondary Market.

The FTA registers all Certificates. This means it issues, transfers title to, and redeems them. All financial transactions relating to a guaranteed portion of a loan flow through the FTA. In fulfilling its obligation to keep the central registry current, the FTA may, with SBA's approval, obtain any necessary information from the parties involved in the Secondary Market.

§ 120.651 Claim to FTA by Registered Holder to replace Certificate.

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and

(4) Use an affidavit of loss (form available from the FTA) to report:

(i) The name and address of the Registered Holder (and the name and capacity of any representative actually filing the claim);

(ii) The Certificate by Pool number, if applicable;

(iii) The Certificate number;

(iv) The original principal amount;

(v) The name in which the Certificate was registered;

(vi) Any assignment, endorsement or other writing on the Certificate; and

(vii) A statement of the circumstances of the theft or loss.

(b) When the FTA receives notice of the theft or loss, it will stop any transfer of the Certificate. The Registered Holder must send to the FTA all available portions of a mutilated or defaced Certificate. When the Registered Holder completes these steps, the FTA will replace the Certificate.

§ 120.652 FTA fees.

The FTA may charge reasonable servicing fees, transfer fees, and other fees as the SBA and FTA may negotiate under contract.

Suspension or Revocation of Participant in Secondary Market

§ 120.660 Suspension or revocation.

(a) *Suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The AA/FA may suspend or revoke the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) Committing a serious violation, in SBA's discretion, of:

(i) The regulations governing the Secondary Market; or

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1085, 1086, 1088 and 1454; or

(2) Knowingly submitting false or fraudulent information to the SBA or FTA.

(b) *Additional rules for suspension or revocation of broker or dealer.* In addition to acting under paragraph (a) of this section, the AA/FA may suspend or revoke the privilege of any broker or dealer to sell or otherwise deal in Certificates in the Secondary Market if:

(1) Its supervisory agency has revoked or suspended the broker or dealer from engaging in the securities business, or is investigating the firm or broker for a practice which SBA considers, in its sole discretion, to be relevant to the broker's or dealer's fitness to participate in the Secondary Market;

(2) The broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony which bears on its fitness to participate in the Secondary Market; or

(3) A civil judgment is entered holding that the broker or dealer has committed a breach of trust or a violation of any law or regulation protecting the integrity of business transactions or relationships.

(c) *Notice to suspend or revoke.* The AA/FA shall notify the affected party in writing, providing the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA will remain in effect pending resolution of the appeal. Revocation will last a minimum of five years.

Subpart G—Microloan Demonstration Program

§ 120.700 What is the Microloan Program?

The Microloan Demonstration Program assists women, low income individuals, minority entrepreneurs, and other small businesses which need small amounts of financial assistance. Under this program, SBA makes direct and guaranteed loans to Intermediaries (as defined below) who use the proceeds to make loans to eligible borrowers. SBA may also make grants under the program to Intermediaries and other qualified nonprofit entities to be used for marketing, management, and technical assistance to the program's target population.

§ 120.701 Definitions.

(a) *Deposit account* is a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

(b) *Economically Distressed Area* is a county or equivalent division of local government of a state in which, according to the most recent available data from the United States Bureau of the Census, 40 percent or more of the residents have an annual income that is at or below the poverty level.

(c) *Grant* is a Federal award of money, or property in lieu of money (including cooperative agreements) to an eligible grantee that must account for its use. The term does not include the provision of technical assistance, revenue sharing, loans, loan guarantees, interest subsidies, insurance, direct appropriations, or any fellowship or other lump sum award.

(d) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(e) *Intermediary* is an entity participating in the Microloan Demonstration Program which makes and services Microloans to eligible small businesses and which provides

marketing, management, and technical assistance to its borrowers. It may be:

(1) A private, nonprofit community development corporation or other entity;

(2) A consortium of private, nonprofit community development corporations or other entities;

(3) A quasi-governmental economic development entity, other than a state, county, municipal government or any agency thereof; or

(4) An agency of or a nonprofit entity established by a Native American Tribal Government.

(f) *Microloan* is a short-term, fixed interest rate loan of not more than $25,000 made by an Intermediary to an eligible small business.

(g) *Non-Federal sources* are sources of funds other than the Federal Government and may include indirect costs or in-kind contributions paid for under non-Federal programs. Community Block Development Grants are considered non-Federal sources.

(h) *Specialized Intermediary* is an Intermediary which maintains a portfolio of Microloans averaging $7,500 or less.

§ 120.702 Are there limitations on who can be an Intermediary or on where an Intermediary may operate?

(a) *Prior experience requirement.* To be eligible to be an Intermediary, an organization must:

(1) Have made and serviced short-term fixed rate loans of not more than $25,000 to newly established or growing small businesses for at least one year; and

(2) Have at least one year of experience providing technical assistance to its borrowers.

(b) *Limitation to one state.* An Intermediary may not operate in more than one state unless the AA/FA determines that it would be in the best interests of the small business community for it to operate across state lines.

§ 120.703 How does an organization apply to become an Intermediary?

(a) *Application Process.* Organizations interested in becoming Intermediaries should contact SBA for information on the application process.

(b) *Documentation in support of application.* The application must include a detailed narrative statement describing:

(1) The types of businesses assisted in the past and those the applicant intends to assist with Microloans;

(2) The average size of the loans made in the past and the average size of intended Microloans;

(3) The extent to which the applicant will make Microloans to small businesses in rural areas;

(4) The geographic area in which the applicant intends to operate, including a description of the economic and demographic conditions existing in the intended area of operations;

(5) The availability and cost of obtaining credit for small businesses in the area;

(6) The applicant's experience and qualifications in providing marketing, management, and technical assistance to small businesses; and

(7) Any plan to use other technical assistance resources (such as counselors from the Service Corps of Retired Executives) to help Microloan borrowers.

§ 120.704 How are applications evaluated?

(a) *Evaluation criteria.* In selecting Intermediaries, SBA will attempt to insure that Microloans are available to small businesses in all industries and particularly to small businesses located in urban and rural areas.

(b) *Preference for organizations which make very small loans.* In selecting Intermediaries, SBA will give priority to applicants which maintain a portfolio of loans averaging $7,500 or less.

(c) *Consideration of quasi-governmental organizations.* Generally, SBA will consider applications by quasi-governmental organizations only when it determines that program services for a particular geographic area would be best provided by such organization.

§ 120.705 What is a Specialized Intermediary?

At the end of an Intermediary's first year of participation in the program, SBA will determine whether it qualifies as a Specialized Intermediary. An Intermediary qualifies as a Specialized Intermediary if it maintains a portfolio of Microloans averaging $7,500 or less. Specialized Intermediaries qualify for more favorable interest rates on SBA loans. If, after the first year, an Intermediary qualifies as a Specialized Intermediary, the special interest rate is applied retroactively to SBA loans made to the Intermediary. After the first year SBA will determine an Intermediary's qualifications as a Specialized Intermediary annually, based on its lending practices during the term of its participation in the program. Specialized Intermediaries also qualify for a greater amount of technical assistance grant funding.

§ 120.706 What are the terms and conditions of an Intermediary SBA loan?

(a) *Loan Amount.* An Intermediary may not borrow more than $750,000 in the first year of participation in the program. In subsequent years, the Intermediary's obligations to SBA may not exceed an aggregate of $2.5 million, subject to statutory limitations on the total amount of funds available per state.

(b) *Repayment terms.* During the first year of the loan, an Intermediary is not required to make any payments, but interest accrues from the date that SBA disburses the loan proceeds to the Intermediary. After that, SBA will determine the periodic payments. The loan must be repaid within 10 years.

(c) *Interest rate.* The interest rate is equal to the rate applicable to five-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 1.25 percent. However, the interest rate for Specialized Intermediaries is equal to the rate applicable to five-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less two percent.

(d) *Collateral.* As security for repayment of the SBA loan, an Intermediary must pledge to SBA a first lien position in the MRF (described below), LLRF (described below), and all notes receivable from Microloans.

(e) *Default.* If for any reason an Intermediary is unable to make payment to SBA when due, SBA may accelerate maturity of the loan and demand payment in full. In this event, or if an Intermediary violates this part or the terms of its loan agreement, it must surrender possession of all collateral described in paragraph (d) of this section to SBA. The Intermediary is not obligated to pay SBA any loss or deficiency which may remain after liquidation of the collateral unless the loss was caused by fraud, negligence, violation of any of the ethical requirements of § 120.140, or violation of any other provision of this part.

(f) *Fees.* SBA does not charge Intermediaries any fees for loans under this Program. An Intermediary may, however, pay minimal closing costs to third parties, such as filing and recording fees.

§ 120.707 What conditions apply to loans by Intermediaries to Microloan Borrowers?

(a) *General.* An Intermediary may make Microloans to any small business eligible to receive financial assistance under this part. Proceeds from Microloans may be used only for working capital and acquisition of materials, supplies, furniture, fixtures,

and equipment. SBA does not review Microloans for creditworthiness.

(b) *Amount and maturity.* Generally, Intermediaries should not make a Microloan of more than $10,000 to any borrower. An Intermediary may not make a Microloan of more than $15,000 unless the borrower demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. An Intermediary may not make a loan of more than $25,000, and no borrower may owe an Intermediary more than $25,000 at any one time. Each Microloan must be repaid within six years.

(c) *Interest rate.* The maximum interest rate that can be charged a Microloan borrower is:

(1) On loans of more than $7,500, the interest rate charged on the SBA loan to the Intermediary, plus 7.75 percentage points; and

(2) On loans of $7,500 or less, the interest rate charged on the SBA loan to the Intermediary, plus 8.5 percentage points.

§ 120.708 What is the Intermediary's financial contribution?

The Intermediary must contribute from non-Federal sources an amount equal to 15 percent of any loan that it receives from SBA. The contribution may not be borrowed. For purposes of this program, Community Development Block Grants are considered non-Federal sources.

§ 120.709 What is the Microloan Revolving Fund?

The Microloan Revolving Fund (''MRF'') is an interest-bearing Deposit Account into which an Intermediary must deposit the proceeds from SBA loans, its contributions from non-Federal sources, and payments from its Microloan borrowers. An Intermediary may only withdraw from this account the money needed to establish the Loan Loss Reserve Fund (§ 120.710), proceeds for each Microloan it makes, and any payments to be made to SBA.

§ 120.710 What is the Loan Loss Reserve Fund?

(a) *General.* The Loan Loss Reserve Fund (''LLRF'') is an interest-bearing Deposit Account which an Intermediary must establish to pay any shortage in the MRF caused by delinquencies or losses on Microloans. An Intermediary must maintain the LLRF until it has repaid all obligations it owes SBA.

(b) *Level of Loan Loss Reserve Fund in first year.* In an Intermediary's first year, the balance on deposit in the LLRF must equal not less than 15 percent of the total outstanding balance of all notes receivable owed by its Microloan borrowers.

(c) *Level of Loan Loss Reserve Fund in subsequent years.* In all subsequent years, an Intermediary must maintain a balance on deposit in the LLRF at a level which, at a minimum, reflects its loss experience as determined by SBA. However, the maximum amount required in the LLRF will not exceed 15 percent of the total outstanding balance owed by an Intermediary's Microloan borrowers.

§ 120.711 What rules govern Intermediaries?

Intermediaries must operate in accordance with applicable statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in the application.

§ 120.712 How does an Intermediary get a grant to assist Microloan Borrowers?

(a) *General.* An Intermediary is eligible to receive grant funding from SBA of not more than 25 percent of the outstanding balance of all SBA loans to the Intermediary. The Intermediary must contribute, solely from non-Federal sources, an amount equal to 25 percent of the grant. Contributions may be made in cash or in kind.

(b) *Limitations on grant funds.* An Intermediary may not borrow its contribution. It may only use grant funds to provide Microloan borrowers with marketing, management, and technical assistance, except that:

(1) Up to 15 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; and

(2) Grant monies may be used to attend training required by SBA. Intermediaries may not enter into third party contracts for the provision of technical assistance to program clients.

(c) *Exception to contribution requirement.* Intermediaries which make at least 50 percent of their loans to small businesses located in or owned by residents of Economically Distressed Areas are not subject to the contribution requirement in paragraph (a) of this section.

(d) *Intermediaries eligible to receive additional grant monies.* An Intermediary may receive an additional SBA grant equal to five percent of the outstanding balance of all loans received from SBA (with no obligation to contribute additional matching funds) if:

(1) The Intermediary makes at least 25 percent of its loans to small businesses located in or owned by residents of an Economically Distressed Area; or

(2) The Intermediary is a Specialized Intermediary.

(e) SBA will determine an Intermediary's eligibility for all grants under this section separately for each loanmaking office or site.

§ 120.713 Does SBA provide technical assistance to Intermediaries?

SBA may procure technical assistance for an Intermediary to improve its knowledge, skill, and understanding of microlending by awarding a grant to a more experienced Intermediary. SBA may also obtain such assistance for prospective Intermediaries in areas of the country that are either not served or underserved by an existing Intermediary.

§ 120.714 How does a non-Intermediary get a grant?

(a) *Grant procedure for non-Intermediaries.* Any nonprofit entity that is not an Intermediary may apply to SBA for a grant to provide marketing, management and technical assistance to low-income individuals for the purpose of assisting them in obtaining private sector financing in amounts of $25,000 or less. To qualify, it must submit information regarding its ability to provide this assistance. If approved, the grant agreement will establish the terms and conditions for the grant.

(b) *Number and amounts of grants.* In each year of the Microloan Program, SBA may make no more than 25 grants to non-Intermediaries for terms of up to five years. A grant may not exceed $125,000.

(c) *Contribution by nonprofit entity.* The nonprofit entity must contribute an amount equal to 20 percent of the grant. The contribution from the nonprofit entity must come solely from non-Federal sources, and may include direct costs or in-kind contributions paid for under non-Federal programs.

§ 120.715 Does SBA guarantee any loans an Intermediary obtains from another source?

(a) SBA may guarantee not less than 90 percent of no more than 10 loans by for-profit or nonprofit entities (or an alliance of such entities) to Intermediaries located in urban areas and no more than 10 loans by such entities to Intermediaries located in Rural Areas (as defined in § 120.10).

(b) Any loan guaranteed by SBA under this section will have a term of 10 years. If an Intermediary receives such a loan, it will not need to repay any principal or interest during the first year, although the interest will accrue. During the second through fifth years, the Intermediary will pay interest only. During the sixth through tenth years, it will pay interest and fully amortize the principal.

(c) The interest rate on any loan under this section shall be calculated as described in § 120.706.

Subpart H—Development Company Loan Program (504)

§ 120.800 What is the purpose of the 504 program?

As authorized by Congress, SBA has established this program to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses.
§ 120.801 How is a 504 Project financed?

(a) A small business may apply for 504 financing through the CDC serving the area in which the 504 Project is located. SBA issues an Authorization if it agrees to guarantee part of the funding for a Project.

(b) Usually, a Project requires interim financing from an interim lender (often the same lender that later provides a portion of the permanent financing).

(c) Generally, permanent financing of the Project consists of:

(1) A contribution by the small business in an amount of at least 10 percent of the Project costs;

(2) A loan made with the proceeds of a CDC Debenture for up to 40 percent of the Project costs and certain administrative costs, collateralized by a second lien on the Project Property; and

(3) A private sector loan comprising the balance of the financing, collateralized by a first lien on the Project property.

(d) The Debenture is guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to Underwriters who form Debenture Pools. Investors purchase interests in Debenture Pools and receive Certificates representing ownership of all or part of a Debenture Pool. SBA and CDCs use various agents to facilitate the sale and service of the Certificates and the orderly flow of funds among the parties.

§ 120.802 Definitions.

The following terms have the same meaning wherever they are used in this subpart. Defined terms are capitalized wherever they appear.

Area of Operations is a geographic area in which a CDC conducts its activities.

Associate Development Company (ADC) is an entity approved by SBA to assist CDCs to deliver 504 financing.

Central Servicing Agent (CSA) is an entity that receives and disburses funds among the various parties involved in 504 financing under a master servicing agent agreement with SBA.

Certificate is a document issued by SBA or its agent representing ownership of all or part of a Debenture Pool.

Debenture is an obligation issued by a CDC and guaranteed 100 percent by SBA, the proceeds of which are used to fund a 504 loan.

Debenture Pool is an aggregation of Debentures.

Investor is an owner of a beneficial interest in a Debenture Pool.

Job Opportunity is a full time (or equivalent) permanent job created within two years of receipt of 504 funds, or retained in the community because of a 504 loan.

Net Debenture Proceeds are the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).

Project is the purchase or lease, and/or improvement or renovation of long-term fixed assets by a small business, with 504 financing, for use in its business operations.

Project Property is one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved by a small business, with 504 financing, for use in its business operations.

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source as part of the Project financing.

Underwriter is an entity approved by SBA to form Debenture Pools and arrange for the sale of Certificates.

Certification Procedures To Become a CDC

§ 120.810 Applications for certification as a CDC.

(a) Applicants for certification as a CDC must apply to the SBA District Office serving a proposed Area of Operations. An applicant must demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829, as well as:

(1) The need for 504 services (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap);

(2) A budget, approved by its Board of Directors; and

(3) A plan to meet CDC operating requirements (without specializing in a particular industry).

(b) The AA/FA, with the recommendation of each District Office in the applicant's proposed Area of Operations, shall make the certification decision.

§ 120.811 Public notice of CDC certification application.

(a) As part of the application process, the applicant must publish a notice in a general circulation newspaper in the proposed Area of Operations, including the name and location of the proposed CDC, its purpose and Area of Operations, and the names and addresses of its officers and directors. The applicant shall send a copy of the notice to SBA. The notice shall provide the public at least 30 days to submit written comments to the District Office. The SBA shall consider the comments in making its decision on the application.

(b) CDCs serving the proposed Area of Operations shall be directly notified and given at least 30 days to comment.

§ 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years, at the end of which the CDC must petition for:

(1) Permanent CDC status;

(2) A single, one-year extension of probation; or

(3) ADC status.

(b) SBA will consider failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects ADC status or withdrawal, it must transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

Requirements for CDC Certification and Operation

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation (or limited liability company) in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

§ 120.821 CDC Area of Operations.

A CDC must have a designated Area of Operations, specified by the CDC and approved by SBA. There can be only one statewide CDC in each state, which must foster economic development throughout the state and provide 504 assistance to areas not adequately served by other CDCs.

§ 120.822 CDC membership.

A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area

of Operations. Members must be from each of the following groups:

(a) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(b) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(c) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(d) Businesses in the Area of Operations.

§ 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors. If there is a vote on loan approval or servicing actions, at least one Board member with commercial loan experience approved by SBA must be present and vote. As an alternative, the Board may obtain the recommendation of another person approved by SBA and possessing commercial lending experience.

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations.

(a) *Contracting out to third parties.* CDCs may obtain, under contract, marketing, packaging, processing, and servicing services from qualified Lender Service Providers, as that term is defined in part 103 of this chapter, located in the Area of Operations, subject to SBA's prior written approval. CDCs may contract for outside legal and accounting services without SBA approval. Compensation under all such contracts must be reasonable and customary for similar services in the Area of Operations. SBA may audit the contracts.

(b) *Contracting out to other CDCs.* CDCs may contract with other CDCs for specific services, subject to SBA's prior written approval.

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors).

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with applicable statutes, regulations, policy notices, SBA's SOPs, and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

§ 120.827 Services a CDC provides to small businesses.

(a) A CDC must operate in and adequately service its Area of Operations. It must market the 504 program, package and process 504 loan applications, and close and service 504 loans. A CDC's loan portfolio must be diversified by business sector.

(b) A CDC may provide small businesses with financial and technical assistance, or may help small businesses obtain such assistance from other sources, including preparing, closing, and servicing loans under contract with Lenders in SBA's 7(a) program.

(c) A CDC also may loan amounts to the Borrower equal to the value of all or part of the Borrower's contribution to a Project in the form of cash or land, including site improvements, previously acquired by the CDC.

§ 120.828 Minimum level of CDC lending activity.

A CDC must provide at least two 504 loan approvals each full fiscal year.

§ 120.829 Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must reflect an average of one Job Opportunity per $35,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per $45,000 for good cause in:

(1) Alaska;

(2) Hawaii;

(3) State-designated urban or rural jobs and enterprise zones;

(4) Empowerment Zones and Enterprise Communities; and

(5) Labor Surplus Areas listed in the Department of Labor's publication ''Area Trends.''

(b) A CDC must indicate in its annual report the Job Opportunities actually or estimated to be provided by each Project.

(c) If a CDC does not maintain the required average, it may retain its certification if it justifies to SBA's satisfaction its failure to do so in its annual report and shows how it intends to attain the required average.

§ 120.830 Reports a CDC must submit.

A CDC must submit the following reports to SBA:

(a) An annual report within 90 days after the end of the CDC's fiscal year, and such interim reports as SBA may require;

(b) Resumes for all new Associates and staff;

(c) Reports of involvement in any legal proceeding;

(d) Changes in organizational status;

(e) Changes in any condition that affects its eligibility to continue to participate in the 504 program; and

(f) Quarterly service reports on each loan in its portfolio which is 60 days or more past due (and interim reports upon request by SBA).

Extending a CDC'S Area of Operations

§ 120.835 Application to extend an Area of Operations.

SBA may expand a CDC's Area of Operations if the proposed Area of Operation is not being adequately served by existing CDC(s) and the expanding CDC is well-qualified to serve it. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office serving the geographic area in which the CDC proposes to expand.

(a) A CDC may submit an application to expand its Area of Operations if the existing CDCs serving the area have not averaged, over the last two years, at least one loan approval per 100,000 of general population in the Area of Operation. The one loan per 100,000 population requirement applies only to the area proposed for expansion, not the entire Area of Operations of the existing CDC or CDCs serving the expanded area.

Example to paragraph (a) of this section. CDC A averages 0.8 loans per 100,000 of general population state-wide, but 1.2 loans per 100,000 in city X. CDC B seeks to expand its Area of Operations only into city X. CDC B's application will be denied without further review because CDC A meets the 1 loan per 100,000 population requirement in the proposed expanded Area of Operation.

(b) The application to expand must demonstrate to the satisfaction of SBA the expanding CDC's ability to provide full service to small businesses in the expanded territory, including processing, closing, servicing, and, if authorized, liquidating 504 loans. The

expanding CDC must also demonstrate in its application that it will have a local presence and representation in the expanded Area of Operations before submitting any 504 loans for approval.

§ 120.836 Public notice and opportunity for response.

SBA will notify all CDCs servicing the proposed area of expansion, allowing at least 30 days for the existing CDCs to respond to the District Office. The expanding CDC also must publish a notice in a general circulation newspaper in the proposed area of expansion, advising of its intent to expand and giving the public at least 30 days to comment to SBA. The burden of proof in opposing the application will be upon the existing CDC or CDCs to show why SBA should not grant the application for extension.

§ 120.837 SBA decision on application for extension.

(a) The SBA District Office may consider any factor presented to it concerning the proposed area of expansion, the expanding CDC and its Area of Operations, and the existing CDC or CDCs serving the area, including the following: number of loan approvals per 100,000 of general population; number of loan approvals per 100,000 of small businesses; the density of small businesses; jobs created and retained; the number of 504 loan closings; the average 504 loan amount; urban, suburban, or rural character of the expanding area; the mix of small businesses; the prevailing economic conditions; servicing record and capabilities; currency rates; loss rates; other services provided to small businesses (technical and financial assistance); relationship with the local SBA office; and ties to and knowledge of the local community and its resources.

(b) The SBA District Office will submit a recommendation, with any supporting materials, within 30 days of the end of the comment period to the AA/FA, who will make the final decision within 30 days of his or her receipt of the District Office's recommendation. In making its decision, SBA will consider all information submitted to it, as well as the currency of the expanding CDC's portfolio, including the default rate.

§ 120.838 Expiration of existing, temporary expansions.

All existing, temporary expansions of Areas of Operation shall expire 6 months after March 1, 1996, unless a CDC applies for permanent expansion before the expiration date.

§ 120.839 Case-by-case extensions.

(a) A CDC may apply to make an individual loan for a Project outside its Area of Operations to the District Office serving the area in which the Project will be located if:

(1) The applicant CDC has previously assisted the business to obtain a 504 loan;

(2) The applicant small business or CDC can document in writing to the AA/FA specific circumstances that would prevent the existing CDC or CDCs serving the area from assisting the business adequately; and

(3) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the loan.

(b) The applicant CDC must demonstrate that it adequately can service the loan.

(c) The AA/FA may approve the request for good cause shown.

Accredited Lenders Program (ALP)

§ 120.840 Accredited Lenders Program.

The SBA may designate a CDC as an Accredited Lender. SBA will provide an Accredited Lender with expedited loan processing or servicing action.

(a) *Applications.* CDCs may apply to the SBA field office with which it is most active. The SBA office will send its recommendation and the application to the AA/FA for final decision.

(b) *Eligibility.* In order to be eligible to receive Accredited Lender status, a CDC must have been an active participant in the 504 loan program for not less than the preceding 12 months. In evaluating an application to be an Accredited Lender, SBA will consider all relevant factors, including:

(1) The CDC's ability to work with the local SBA office;

(2) The quality of past performance; and

(3) The quality of the loan portfolio, including the default rate.

(c) *Term of designation.* CDCs will be designated as ALPs for a two year period, and are eligible to renew the designation for additional two year periods.

(d) *Suspension and revocation.* The AA/FA may suspend or revoke ALP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA or violations of applicable statutes, regulations or published SBA policies and procedures. An ALP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Premier Certified Lenders Program

§ 120.845 Premier Certified Lenders Program.

The SBA has established a pilot program to designate a number of CDCs as Premier Certified Lenders (''PCLPs''), which will be able to process, approve, close and service 504 loans.

(a) *Characteristics.* Loans processed through the PCL Program will be subject to the same loan terms and conditions as other 504 loans, but final approval by SBA will be limited to eligibility of the guarantee.

(b) *Applications.* A CDC may obtain information concerning this program from SBA's Office of Pilot Operations in Washington, D.C. A CDC may apply to the SBA field office with which it is most active. The SBA office will send the application with a recommendation to the AA/FA for final decision.

(c) *Eligibility.* SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(d) *Loss reserve.* A PCLP must establish a loss reserve for its financings under this program, secured by its segregated assets in favor of SBA, in the amount of the PCLP's historic loss rate or 10 percent of its exposure under the PCLP program, whichever is greater. The PCLP must contribute to the loss reserve for each such financing at the times and in the amounts established by law.

(e) *Review.* The SBA shall review a PCLP's financings at least annually.

(f) *Suspension and revocation.* The AA/FA may suspend or revoke PCLP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to meet loss reserve or eligibility criteria, or violations of applicable statutes, regulations or published SBA policies and procedures. A PCLP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(g) *Program period.* On October 1, 1997, the PCLP pilot program ends.

Associate Development Companies (ADCs)

§ 120.850 ADC functions.

(a) An ADC must support local economic development efforts. An ADC

may package, close, and service loans for a CDC under a written contract approved by SBA. Such contracts must meet Service Provider criteria, and specify the rights and responsibilities of the parties (including payment terms). The CDC remains solely responsible to SBA for the processing, closing, and servicing of the loan. It may not charge the Borrower a higher fee because it is using the ADC's services.

(b) An ADC must operate in accordance with statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records required by SBA.

§ 120.851 ADC eligibility and operating requirements.

(a) An ADC must demonstrate to SBA and maintain the following:

(1) Adequate management ability;

(2) A Board of Directors meeting at least quarterly and chosen from the membership by the members;

(3) A professional staff, including at least one qualified full-time professional with small business lending experience available during regular business hours; and

(4) A budget or financial statements showing the financial capability and funding to sustain continuing operations.

(b) An ADC may contract out for staff services only if SBA gives prior approval. The contract, subject to SBA audit, may not be self-serving, and compensation must be reasonable and customary.

§ 120.852 Suspension and revocation of ADCs.

SBA may require corrective action, or the AA/FA may suspend or revoke ADC status upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include violations of applicable statutes, regulations or published SBA policies and procedures. An ADC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Ethical Requirements

§ 120.855 CDC and ADC ethical requirements.

CDCs, ADCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to an Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from engaging in a business relationship with the CDC and/or the Borrower in the regular course of business, including providing interim financing or Third-Party loans); and

(b) Unless waived by SBA for good cause, an Associate may not be an officer, director, or manager of more than one CDC or ADC (except that the membership or Board of Directors of a broader-based CDC may include a member or director of a local CDC within its Area of Operations).

Project Economic Development Goals

§ 120.860 Required objectives.

A Project must achieve at least one of the economic development objectives set forth in § 120.861 or § 120.862.

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity for every $35,000 guaranteed by SBA.

§ 120.862 Other economic development objectives.

A Project that achieves any of the following community development or public policy goals is eligible if the CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required Job Opportunity average. Loan applications must indicate how the Project will meet the specified economic development objective.

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community;

(4) Assisting manufacturing firms (Standard Industrial Classification Manual (SIC) Codes 20–49); or

(5) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written revitalization or redevelopment plan;

(2) Expanding exports;

(3) Expanding Minority Enterprise development (*See* § 124.103(b) of this chapter);

(4) Aiding rural development;

(5) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(6) Modernizing or upgrading facilities to meet health, safety, and environmental requirements; or

(7) Assisting businesses affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts or the reduction in revenues due to a decreased Federal presence.

Leasing Policies Specific to 504 Loans

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by the CDC or an unrelated lessor if:

(1) The remaining term of the lease, including options to renew, exercisable solely by the lessee, equals or exceeds the term of the Debenture, or, in the case of machinery or equipment, equals or exceeds the useful life of the property or the term of the Debenture, whichever is lesser;

(2) The Borrower assigns its interest in the lease to the CDC with right of reassignment to SBA; and

(3) The 504 loan is secured by a recorded lien against the leasehold estate and other collateral as necessary.

(b) If a CDC leases property to a small business, the rent paid by the small business during the term of the Debenture must be enough to pay principal and interest on all debt incurred by the CDC to finance the Project, and all related expenses. The rent also may include a reasonable return on the CDC's investment.

§ 120.871 Leasing part of an existing building to another business.

(a) The costs of interior finishing of space to be leased out to another business are not eligible Project costs.

(b) Third-party loan proceeds used to renovate the leased space do not count towards the 504 first mortgage requirement or the Borrower's contribution.

Loan-Making Policies Specific to 504 Loans

§ 120.880 Basic eligibility requirements.

In addition to the eligibility requirements specified in subpart A, to be an eligible Borrower for a 504 loan, a small business must:

(a) Use the Project Property (except that an Eligible Passive Company may lease to an Operating Company); and

(b) Together with its affiliates, meet one of the following size standards:

(1) It does not have a tangible net worth in excess of $6 million, and does not have an average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2 million; or

(2) It meets the size standards in Part 121 of this chapter for the industry in which it is primarily engaged.

§ 120.881 Ineligible Projects for 504 loans.

In addition to the ineligible businesses and uses of proceeds specified in subpart A of this part, the following Projects are ineligible for 504 financing:

(a) Relocation of any of the operations of a small business which will cause a net reduction of one-third or more in the workforce of a relocating small business or a substantial increase in unemployment in any area of the country, unless the CDC can justify the loan because:

(1) The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

(2) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving; and

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions).

§ 120.882 Eligible Project costs for 504 loans.

Eligible Project costs which may be paid with the proceeds of 504 loans are:

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan):

(1) To acquire land used in the Project prior to applying to SBA for the 504 loan; or

(2) For any other expense toward a Project within nine months prior to receipt by SBA of a complete loan application, unless the time limit is extended or waived by SBA for good cause;

(b) In Projects involving construction, a contingency reserve for cost overruns not to exceed 10 percent of construction cost;

(c) Professional fees directly attributable and essential to the Project, such as title insurance, architecture, engineering, accounting, environmental studies, and legal fees (other than legal fees associated with the closing); and

(d) Repayment of interim financing including points, fees and interest.

§ 120.883 Eligible administrative costs for 504 loans.

The following costs and fees are not part of Project costs but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

(a) SBA guarantee fee;

(b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);

(c) CDC processing fee;

(d) Closing costs, other than legal fees; and

(e) Underwriters fee.

§ 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

(a) Debt refinancing (other than interim financing).

(b) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing).

(c) Ancillary business expenses, such as:

(1) Working capital;

(2) Counseling or management services fees;

(3) Incorporation/organization costs;

(4) Franchise fees; and

(5) Advertising.

(d) Fixed-asset Project components, such as:

(1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);

(2) Automobiles, trucks, and airplanes; and

(3) Construction equipment (except for heavy duty construction equipment integral to a business' operations and meeting the IRS definition of capital equipment).

(e) Closing legal fees.

Interim Financing

§ 120.890 Source of interim financing.

A Project may use interim financing for all Project costs except the Borrower's contribution. Any source (including a CDC) may supply interim financing provided:

(a) The financing is not derived from any SBA program, directly or indirectly;

(b) The terms and conditions of the financing are acceptable to SBA;

(c) The source is not the Borrower or an Associate of the Borrower; and

(d) The source has the experience and qualifications to monitor properly all Project construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

§ 120.891 Certifications of disbursement and completion.

Before the Debenture is issued, the interim lender must certify the amount disbursed. The CDC must certify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.961).

§ 120.892 Certifications of no adverse change.

Following completion of the Project, the following certifications must be made before the 504 loan closing:

(a) The interim lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the interim lender;

(b) The Borrower (or Operating Company) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 90 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA.

Permanent Financing

§ 120.900 What are the sources of permanent financing?

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party Loans 50 percent and the 504 loan 40 percent.

The Borrower's Contribution

§ 120.910 How much must the Borrower contribute?

The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property) valued at 10 percent or more of the Project cost (exclusive of administrative cost). The source of the contribution may be a CDC or any other source except an SBA business loan program (*see* § 120.913 for SBIC exception).

§ 120.911 Land contributions.

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property)

previously acquired by the Borrower or the CDC.

§ 120.912 Borrowed contributions.

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

§ 120.913 May an SBIC provide the contribution?

Subject to part 107 of this chapter, SBIC's may provide financing for all or part of the Borrower's contribution to the project. SBA shall consider SBIC funds to be derived from federal sources if the SBIC has leverage (as defined in part 107 of this chapter). If the SBIC does not have leverage, the investment will be considered to be from private funds. SBIC financing must be subordinated to the 504 loan and may not be repaid at a faster rate than the Debenture.

Third Party Loans

§ 120.920 The first lien position.

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

§ 120.921 Terms of Third Party loans.

(a) Maturity. A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the Federal Register a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

(d) *Subordination.* A Third-Party Loan lienholder must subordinate to the CDC/SBA lien any future advance in excess of the outstanding principal balance and accrued interest of the Third Party Loan at the time of such advance except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(e) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to an amount greater than the maximum rate set forth in paragraph (b) of this section.

§ 120.922 Pre-existing debt on the Project Property.

In addition to its share of Project cost, a Third-Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third-Party Loan.

§ 120.923 What are the policies on subordination?

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as ''other real estate owned'' by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made from the proceeds of the tax-exempt obligation.

§ 120.924 Prepayment of subordinate financing.

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

§ 120.925 Preferences.

No Third Party Lender shall establish a Preference.

§ 120.926 Referral fee.

The CDC may receive a referral fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. The Borrower cannot pay this fee. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

504 Loans and Debentures

§ 120.930 Amount.

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) Generally, the minimum 504 loan must be $50,000, although, upon good cause shown, SBA may permit a 504 loan as small as $25,000. The amount of the Debenture must equal the amount of the 504 Loan plus administrative costs.

(c) Upon completion of the Project, the Debenture amount will be reduced by the amount that the unused contingency reserve exceeds 2 percent of the anticipated Debenture.

§ 120.931 504 lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this Part must not exceed $750,000 ($1,000,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

§ 120.932 Interest rate.

The interest rate of the 504 Loan and the Debenture which funds it is set by the SBA and approved by the Secretary of the Treasury.

§ 120.933 Maturity.

The term of a 504 Loan and the Debenture which funds it shall be either 10 or 20 years.

§ 120.934 Collateral.

The CDC/SBA takes a junior lien position (usually a second lien) on the Project collateral. In rare circumstances, collateral other than the Project collateral may be accepted by SBA. Sometimes secondary collateral is required. All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

§ 120.935 Deposit.

At the time of application for a 504 loan, the CDC may require a deposit from the Borrower of $2,500 or 1 percent of the Net Debenture Proceeds, whichever is less. The deposit may be

applied to the loan processing fee if the application is accepted, but must be refunded if the application is denied. If the small business withdraws its application, the CDC may deduct from the deposit reasonable costs incurred in packaging and processing the application.

§ 120.936 Subordination to CDC.

SBA, in its sole discretion, may permit subordination of the Debenture to any other obligation of the CDC, except debt incurred by the CDC to obtain funds to loan to the Borrower for the Borrower's required contribution to the Project financing.

§ 120.937 Assumption.

A 504 loan may be assumed with SBA's prior written approval. § 120.938 Default.

(a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

(b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC.

§ 120.939 Borrower prohibition.

Neither a Borrower nor an Associate of the Borrower may purchase an interest in a Debenture Pool in which the Debenture that funded its 504 loan has been placed.

§ 120.940 Prepayment of the 504 loan or Debenture.

The Borrower may prepay its 504 loan, if it pays the entire principal balance, unpaid interest, any unpaid fees, and any prepayment premium established in the note. If the Borrower prepays, the CDC must prepay the corresponding Debenture with interest and premium. If one of the Debentures in a Debenture Pool is prepaid, the Investors in that Debenture Pool must be paid pro rata, and SBA's guarantee on the entire Debenture Pool must be proportionately reduced. If the entire Debenture Pool is paid off, SBA may call all Certificates backed by the Pool for redemption.

§ 120.941 Certificates.

(a) The face value of a Certificate must be at least $25,000. Certificates are issued in registered form and transferred only by entry on the central registry maintained by the Trustee. SBA guarantees the timely payment of principal and interest on the Certificates.

(b) Before the sale of a Certificate, the seller, or the broker or dealer acting as the seller's agent, must disclose to the purchaser the terms, conditions, yield, and premium and other characteristics not guaranteed by SBA.

Debenture Sales and Service Agents

§ 120.950 SBA and CDC must appoint agents.

SBA and the CDC must appoint the following agents to facilitate the sale and service of the Certificates and disbursement of the proceeds.

§ 120.951 Selling agent.

The CDC, with SBA approval, shall appoint a Selling Agent to select underwriters, negotiate the terms and conditions of Debenture offerings with the underwriters, and direct and coordinate Debenture sales.

§ 120.952 Fiscal agent.

SBA shall appoint a Fiscal Agent to assess the financial markets, minimize the cost of sales, arrange for the production of the Offering Circular, Debenture Certificates, and other required documents, and monitor the performance of the Trustee and the underwriters.

§ 120.953 Trustee.

SBA must appoint a Trustee to:

(a) Issue Certificates;

(b) Transfer the Certificates upon resale in the secondary market;

(c) Maintain physical possession of the Debentures for SBA and the Certificate holders;

(d) Establish and maintain a central registry of:

(1) Debenture Pools, including the CDC obligors and the interest rate payable on the Debentures in each Pool;

(2) Certificates issued or transferred, including the Debenture Pool backing the Certificate, name and address of the purchaser, price paid, the interest rate on the Certificate, and fees or charges assessed by the transferror; and

(3) Brokers and dealers in Certificates, and the commissions, fees or discounts granted to the brokers and dealers;

(e) Receive semi-annual Debenture payments and prepayments;

(f) Make regularly scheduled and prepayment payments to Investors; and

(g) Assure before any resale of a Debenture or Certificate is recorded in the registry that the seller has provided the purchaser a written disclosure statement approved by SBA.

§ 120.954 Central Servicing Agent.

(a) SBA has entered into a Master Servicing Agreement designating a Central Servicing Agent (CSA) to support the orderly flow of funds among Borrowers, CDCs, and SBA. The CDC and Borrower must enter into an individual Servicing Agent Agreement with the CSA for each 504 loan, constituting acceptance by the CDC and the Borrower of the terms of the Master Servicing Agreement.

(b) The CSA has established a master reserve account. All funds related to the 504 loans and Debentures flow through the master reserve account under the provisions of the Master Servicing Agreement. The master reserve account will be funded by a guarantee fee, a funding fee to be published from time to time in the Federal Register, and by principal and interest payments of 504 loans. At SBA's direction, the CSA may use funds in the master reserve account to defray program expenses. In the event a Borrower defaults and its 504 note is accelerated, SBA shall add funds under its guarantee to ensure the full and timely payment of the Debenture which funded the 504 loan. At SBA's direction, the CSA must pay to the CDC servicing each loan the interest accruing in the master reserve account on loan payments made by each Borrower between the date of receipt of each monthly payment and the date of disbursement to investors. The CSA may disburse such interest periodically to CDCs on a pro rata basis. SBA may use interest accruals in the master reserve account earned prior to October 1991 (not previously distributed to the CDCs) for the costs of 504 program administration.

§ 120.955 Agent bonds and records.

(a) Each agent (in §§ 120.951 through 120.954) must provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(b) SBA must have access at the agent's place of business to all books, records and other documents relating to Debenture activities.

§ 120.956 Suspension or revocation of brokers and dealers.

The AA/FA may suspend or revoke the privilege of any broker or dealer to

participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA will remain in effect pending resolution of the appeal. SBA may suspend or revoke the opportunity for a hearing under part 134 of this chapter.

Closings

§ 120.960 Responsibility for closing.

The CDC is responsible for the 504 Loan closing. The Debenture closing is the joint responsibility of the CDC and SBA.

§ 120.961 Construction escrow accounts.

The CSA, title company, CDC attorney, or bank may hold Debenture proceeds in escrow to complete Project components such as landscaping and parking lots, and acquire machinery and equipment if the component or acquisition is a minor portion of the total Project and has been contracted for completion or delivery at a specified price and specific future date. The escrow agent must disburse funds upon approval by the CDC and the SBA, supported by invoices and payable jointly to the small business and the designated contractor.

Servicing and Fees

§ 120.970 Servicing of 504 loans and Debentures.

The CDC must service the 504 loan in accordance with the Loan Authorization, these regulations, SBA policies and procedures, and prudent lending standards until paid in full, including review of the small business's financial statements, tax filings, insurance, and security filings. In doing so, CDCs must comply with the provisions of § 120.513. In addition, CDCs must comply with the servicing requirements set forth in SBA's SOP. CDCs must report promptly to SBA any adverse trend, condition or information relevant to a Borrower. Upon request by a CDC, SBA may agree to defer a Borrower's monthly payment. SBA may negotiate agreements with CDCs to liquidate loans.

§ 120.971 Allowable fees paid by Borrower.

(a) *CDC fees.* CDCs may charge the following fees to the Borrower:

(1) *Processing fee.* The CDC may charge up to 1.5 percent of the net Debenture proceeds to process the financing. Two-thirds of this fee will be considered earned and may be collected by the CDC when the Authorization for the Debenture is issued by SBA. The portion of the processing fee paid by the Borrower may be reimbursed from the Debenture proceeds;

(2) *Closing fee.* The CDC may charge a fee to cover an amount sufficient to reimburse it for reasonable legal expenses of in-house or outside legal counsel. The CDC may also charge a fee to cover reasonable miscellaneous closing costs. Closing costs, other than legal fees, may be funded out of the Debenture proceeds;

(3) *Servicing fee.* The CDC will charge a monthly servicing fee of not less than 0.5 percent per annum nor more than 2 percent per annum on the unpaid balance of the loan as determined at five-year anniversary intervals. A servicing fee in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made;

(4) *Late fees.* Loan payments received after the 15th of each month may be subject to a late payment fee of 5 percent of the late payment or $100, whichever is greater. These fees will be collected by the CSA on behalf of the CDC; and

(5) *Assumption fee.* Upon SBA's written approval, a CDC may charge an assumption fee not to exceed 1 percent of the outstanding principal balance of the loan being assumed.

(b) *CSA fees.* The CSA may charge an initiation fee on each loan and a monthly servicing fee under the terms of the Master Servicing Agreement.

(c) *Other agent fees.* Agent fees and charges necessary to market and service Debentures and Certificates may be assessed to the Borrower or the investor. The fees must be approved by SBA and published periodically in the Federal Register.

(d) *SBA fees.* (1) SBA charges a 0.5 percent guarantee fee on the Debenture.

(2) For those loans approved after October 1, 1995, SBA charges a fee of 0.125 per annum on the unpaid principal balance of the loan as determined at five-year anniversary intervals.

(e) *Miscellaneous fees.* A funding fee not to exceed 0.25 percent of the Debenture may be charged to cover costs incurred by the trustee, fiscal agent, transfer agent.

§ 120.972 Oversight and evaluation of CDCs and ADCs.

SBA may conduct an operational review of a CDC or ADC. The SBA Office of Inspector General may conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC or ADC must cooperate and make its staff, records, and facilities available.

CDC Transfer, Suspension and Revocation

§ 120.980 Transfer of CDC to ADC status.

SBA shall transfer to ADC status any CDC that fails to meet the activity level required by SBA, on average over two consecutive fiscal years. SBA shall notify the CDC in writing of the action and of the opportunity for a hearing pursuant to part 134 of this chapter at least 10 business days prior to the transfer. During the pendency of a hearing, SBA's action will remain in effect.

§ 120.981 Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

§ 120.982 Correcting CDC servicing deficiencies.

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the CDC up to $250 per day for expenses incurred by SBA to correct the deficiencies. If non-compliance continues for 90 days, SBA may take the fees as compensation for its efforts to obtain compliance.

§ 120.983 Transfer of CDC servicing to SBA or another CDC.

If a CDC fails to correct servicing deficiencies, or is unable or unwilling to service its portfolio, SBA may assume the servicing or require the transfer of all or part of the CDC's portfolio to

another CDC within or adjoining the deficient CDC's Area of Operations. If there is no suitable CDC, SBA may approve a transfer to another entity. Future service fees from transferred loans will be paid to the transferee. In addition, the CDC's processing authority will be temporarily suspended.

§ 120.984 Suspension or revocation of CDC certification.

(a) *Suspend or revoke.* The AA/FA may suspend or revoke the CDC's certification if a CDC:

(1) Violates a statute, an SBA regulation, or the terms of a Debenture, authorization, or agreement with SBA;

(2) Makes a material false statement, knowingly misrepresents, or fails to state a material fact;

(3) Fails to maintain good character;

(4) Fails to operate according to prudent lending standards;

(5) Fails to correct servicing, collection, reporting, or other deficiencies; or

(6) Is unable or unwilling to operate in accordance with the requirements of this part.

(b) *Transfer portfolio.* Upon suspension or revocation, the CDC must transfer its remaining portfolio and any 504 applications or financings in process to another CDC designated or approved by SBA. If a pending 504 financing is completed after a transfer, any deposit must also be transferred. Any fees must be apportioned by SBA between the two CDCs in proportion to services performed.

(c) *Provide written notice.* SBA must give written notice to the CDC at least 10 business days prior to the effective date of a suspension or revocation, informing the CDC of the opportunity for a hearing pursuant to part 134 of this chapter.

Enforceability of 501, 502 and 503 Loans and Other Laws

§ 120.990 501, 502, and 503 loans.

SBA has discontinued loan programs for 501, 502, and 503 loans. Outstanding loans remain under these programs, and Borrowers, CDCs, and SBA must comply with the terms and conditions of the corresponding notes and Debentures, and the regulations in this part in effect when the obligations were undertaken or last in effect, if applicable.

§ 120.991 Effect of other laws.

No State or local law may preclude or limit SBA's exercise of its rights with respect to notes, guarantees, Debentures and Debenture Pools, or of its enforcement rights to foreclose on collateral.

PARTS 108, 116, 122, and 131—[REMOVED]

2. Parts 108, 116, 122, and 131 are removed.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1432 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule revises the regulations found at 13 CFR Part 115, governing the Surety Bond Guarantee (SBG) Program. It eliminates inconsistencies, clarifies procedures, accommodates program experience and industry changes, and provides for more efficient program operation. It also clarifies and shortens regulations where appropriate, eliminates redundant provisions, consolidates and reorganizes sections, and clarifies ambiguous language.

EFFECTIVE DATE: This final rule is effective March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: In response to a Memorandum from President Clinton for all federal agencies to simplify their regulations, SBA published a proposed rule on November 27, 1995, to revise the regulations governing the Surety Bond Guarantee Program. See 60 FR 58263 (November 27, 1995). The public was afforded a thirty-day period in which to submit comments on the proposed rule to SBA. During that period, SBA received 12 comment letters. After giving careful consideration to the concerns raised in those letters, SBA is today finalizing the proposed rule with certain modifications discussed below.

General Comments

Those comment letters that addressed the proposed renumbering and reorganization of Part 115 commended the rewrite for its clarity and comprehensibility. Those aspects of the proposed rule are being finalized as proposed. In this final rule, SBA has continued its effort to simplify Part 115 by creating smaller sections out of the largest proposed section (§ 115.60). Subsequent sections (§§ 115.61 through 115.64) have been renumbered to accommodate this change.

Definitions—Contract, etc.

All three of the comments received on the proposed change to the definition of ''contract'' objected to the exclusion of maintenance agreements covering defective materials. Under the proposal, a maintenance agreement covering defective workmanship would be considered a contract, but a maintenance agreement covering defective materials would not. It was argued in the comments that the typical maintenance agreement in use today covers both defective workmanship and defective materials. On reconsideration, SBA agrees that the definition of contract should permit coverage of defective materials since that accords with standard practice in the industry today. The definition is finalized accordingly. The final version also clarifies that maintenance agreements of longer than two years duration can be considered contracts if they meet the requirements set forth in the definition.

A new defined term has also been added to the final rule: ''final bond''. The term means a performance bond and/or a payment bond. This is one of several non-substantive changes SBA is making in the final rule to make the regulations clearer.

Eligibility of Payment Bonds

Proposed § 115.12(b) would have allowed payment bonds to be guaranteed by SBA only if performance bonds were issued at the same time. As four comment letters pointed out, recent amendments to the Miller Act eliminate the bonding requirement for federal contracts of less than $100,000, but allow for certain alternatives to protect subcontractors and suppliers against non-payment by the general contractor. As one alternative, the contracting officer may require a payment bond on the contract. Under SBA's proposed change to § 115.12(b), contractors in the SBG Program would have been unable to bid on those small public contracts that require payment bonds only.

Given the recent Miller Act changes, SBA agrees that payment bonds should not automatically be considered ineligible for guaranteed bonding when no performance bond is issued. The final version of § 115.12(b), therefore, does not restrict the eligibility of payment bonds. However, SBA does not intend to guarantee payment bonds that are essentially forfeiture bonds. If a payment bond allows the claimant to receive the full amount of the bond from the surety regardless of the amount of the damage or loss the claimant has

actually suffered, the bond is a forfeiture bond. The definition of payment bond has been changed in this final rule to clarify that no forfeiture bonds will be guaranteed by SBA.

In response to a comment from the Surety Association of America, a technical change to proposed § 115.12(b) is also being adopted. The reference in the current and proposed regulation to the Surety Association's ''Rating Manual'' has been changed to its ''Manual of Rules, Procedures and Classifications'' to conform to the Association's current name for its publication.

Transfer of Surety's Files

SBA's proposal to prohibit the transfer or sale of surety files and accounts is finalized with certain changes to clarify SBA's intent. As the commenters surmised, the provision (proposed § 115.12(f)) was not intended to apply to the sale of a surety's entire property and casualty operations. SBA does not want to restrict the sale of a surety's entire book of business. In addition to this clarification, the final rule now provides that when the prohibition against the transfer or sale of files and accounts does apply, it can be overridden with SBA's prior approval.

Principal's Eligibility

Several comment letters expressed concern regarding SBA's proposal to exclude from participation in the SBG Program those principals who are primarily brokers or construction managers. SBA recognizes that many small general contractors subcontract out a high percentage of the work under a contract. This is not necessarily objectionable. Rather, SBA is trying to weed out those principals whose subcontracting results in the principal losing control over the project. In the most egregious cases, the principal may be fronting for the subcontractor. This objectionable activity may not be discernible solely from the percentage of work subcontracted on a project, although that is often a good indicator. To clarify SBA's position, proposed § 115.13(e) has been rewritten to delete the reference to ''construction managers''. Instead, the final version excludes from participation in the SBG Program principals who are brokers or who, through subcontracting out work under the contract, have effectively lost control over the project. The final version (now designated § 115.13(a)(5)) still requires principals to specify the percentage of work under the contract to be subcontracted.

Proposed § 115.13(g) seems to have created a misunderstanding. It was not SBA's intent to prohibit a contractor whose spouse works for a surety company from obtaining bonds through the SBG Program. Such ''conflicts of interest'' would not preclude contractors from participating in the program, but they might bar contractors from obtaining guaranteed bonds through the ''affiliated'' surety. For example, if the spouse of a contractor (1) is ''empowered to act on behalf of the surety'' (and is therefore included under the definition of ''surety'') and (2) is considered to own at least 10% of the contractor business, then that surety company can not issue a guaranteed bond for that contractor. Any other surety company in the SBG Program, however, could issue a guaranteed bond for that principal. The final version of the subsection (now designated § 115.13(b)) clarifies that it addresses the eligibility of a principal to receive guaranteed bonds issued by a particular surety, not by all sureties in the SBG Program. The other paragraphs in the section have been relettered accordingly.

Loss of Principal's Eligibility

Subsections (1) and (2) of proposed § 115.14(a) provided that principals would lose eligibility for further SBA bond guarantees if legal action under the bond had been initiated or if the principal had been declared in default under the contract. The comments received on these two paragraphs questioned the wisdom of an automatic loss of eligibility under these two situations. It was argued that taking such action could cause financial hardship to the contractor and might even put the contractor out of business. The suggestion was made that the surety company's underwriter or claims department should make the determination as to loss of a principal's eligibility in these two cases.

SBA believes that the subsections governing a principal's loss of eligibility must be read in conjunction with the section on reinstating the principal's eligibility (proposed § 115.36(b)). SBA is rewording proposed § 115.36(b) to allow for reinstatement of the principal's eligibility in the event SBA and the surety agree to reinstate. With that change, if legal action is initiated under the bond, or if any of the other events in § 115.14(a) occurs, the principal still loses eligibility for further guaranteed bonding, but reinstatement of eligibility can occur almost immediately if both SBA and the surety agree it is appropriate. SBA expects that, with that mechanism in place, frivolous lawsuits and baseless claims under the bond will not stand in the way of further guaranteed bonding of an otherwise eligible principal. Subsections (1) and (2) of proposed § 115.14(a) are therefore unchanged in the final rule.

Subsection (3) of proposed § 115.14(a) provided that a principal's eligibility would be lost if the surety established a claim reserve for the bond in excess of $100. All five of the comments received on this subsection objected to the $100 threshold as too low. The argument was made that some sureties routinely set up a claim reserve in excess of $100 every time a trouble notice is received on a project, and that claim reserves do not necessarily reflect actual loss potential. Two of the comments recommended a $500 claim reserve as the minimum level which indicated the potential for serious loss.

SBA's proposal had been intended as a liberalization of the current regulation (§ 115.34(a)), which provides that a claim reserve of any amount results in automatic loss of the principal's eligibility. SBA believes, though, that with the other triggers for loss of eligibility in place in § 115.14(a), it is appropriate to increase the minimum claim reserve threshold. SBA has concluded that claim reserves below $1000 should not result in the loss of the principal's eligibility. The rule is finalized accordingly.

A new provision has been added to § 115.14(b) to clarify that in the PSB Program a principal's eligibility is reinstated upon the surety's own determination that reinstatement is appropriate.

Underwriting and Servicing Standards

Four comments were received on the proposed rewrite of the program's underwriting standards (proposed § 115.15(a)). All were opposed to the proposed 150% limit on contracts for contractors new to the SBG Program. SBA had intended the 150% limit as general guidance for underwriting decisions, not as an absolute requirement. Upon reconsideration, SBA believes that underwriting guidelines need not appear in the regulations. Accordingly, the guidance on limits for contractors new to the SBG Program is being moved to an SBA Standard Operating Procedure (SOP) for the SBG Program. Also moved to the SOP are SBA's recommendations as to type and size of contract for guaranteed bonding and other general underwriting guidelines. SBA expects that sureties will follow the recommendations in the SOP when making their underwriting determinations. The balance of § 115.15(a) is finalized as proposed.

Four comments were also received on the proposed rewrite of the program's

servicing standards (proposed § 115.15(b)). All four addressed the requirement for sureties to obtain job status reports from obligees on final bonds guaranteed by SBA. The comments pointed out the difficulty in obtaining job status reports from an obligee who refuses to respond to job status inquiries. SBA agrees that sureties should not be held to a requirement that is outside of their control. Instead of requiring sureties to obtain job status reports, therefore, the final rule provides that sureties must request job status reports and document the request in their files.

Determination of Loss

Two comment letters asked for clarification of the terms ''mark-up on expenses'' and ''overhead,'' as used in the computation of the surety's ''loss'' in proposed § 115.16(f)(1). The proposal would have prohibited reimbursement from SBA for any mark-up on expenses or any overhead of ''the surety, its attorney or any other party.'' SBA believes the terms in question are generally understood business terms, but that some confusion may have been generated by the words ''or any other party.'' SBA is remedying that problem by changing the words to ''or any other party hired by the Surety or the attorney.'' In particular, consultants hired by either the surety or the surety's counsel cannot indirectly charge SBA for their overhead or for anything over their actual costs.

Using photocopying costs as an example, the restriction on mark-up on expenses would mean that if the surety's attorney copies documents on its office xerox machine and charges the surety for its actual per copy cost, plus 20%, the surety cannot include in ''loss'' the 20% excess over the attorney's actual cost of making those copies. The same would be true of photocopying by the surety itself; only the actual per copy cost could be included in loss. If the surety or the attorney has documents copied at a photocopying store, however, the amount of the copying expense included in the surety's loss is the full amount the store charges the surety or the attorney, regardless of the actual cost to the store of that job. The retailer's markup is a permitted expense because the retailer has not been ''hired'' by the surety.

In general, SBA would consider ''mark-up on expenses'' to include any add-on to the actual cost of an expense item. ''Overhead'' means the general costs of running a business. Some examples of overhead include rent, electricity, and heating and air conditioning costs.

Salvage and Recovery

SBA received three comments on proposed § 115.17(b)(2), the subsection establishing SBA's share of the salvage and recovery received by a surety when a principal defaults on a bonded contract that SBA has guaranteed. The three comments opposed SBA's proposal that it share not only in any recovery received by the surety in connection with the guaranteed bond for the principal, but also in any recovery received in connection with any other bond issued by the surety on behalf of that principal. The commenters suggested that the surety be allowed to apply contract funds from the defaulted non-guaranteed project to that project's losses first, and then give SBA any excess it receives. Ordinarily, the excess would be paid over to the principal.

Upon reconsideration, SBA believes its proposal was overly broad. Under the final rule, SBA will not share in contract proceeds and other forms of salvage and recovery that are clearly identifiable as related solely to a bonded contract that SBA has not guaranteed. On the other hand, if the surety's recovery could apply to both a contract without a guaranteed bond and a contract with a guaranteed bond, SBA will be entitled to its share of the entire amount of that recovery. For example, if the surety collects from an individual who has indemnified the surety for its losses under both a guaranteed bond and a non-guaranteed bond, the entire recovery from that party will be assumed to relate to the guaranteed bond for purposes of determining SBA's share.

Renegotiation of guarantee percentage

Several comment letters requested clarification of SBA's ability under proposed § 115.18(a)(3) to renegotiate a surety's guarantee percentage in the event the surety experiences excessive losses. In response to those requests, SBA assures the participants in the SBG Program that the guarantee percentage for bonds already written by a surety cannot be renegotiated. In the event a surety's losses are determined to be excessive by SBA, the surety may be required to renegotiate the guarantee percentage for bonds issued after that date. The final version of proposed § 115.18(a)(3), now designated § 115.18(a)(4), clarifies this point.

Denial of Liability—Excess Bond Amount

Under proposed § 115.19(a), SBA would not be liable under its guarantee if the bond amount at any time exceeded the total contract amount determined at the time of the bond's execution. The four comments received on this subsection made two points. The first point was that certain public (government) projects require bonding in excess of 100% of the contract amount. An exception for such projects was requested. SBA's proposal limiting bonds to 100% of the contract amount, while new to the regulations, has long been a policy of the SBG Program. The restriction has been a part of the Program's Standard Operating Procedure for over ten years. See SOP 50 45, Revision 1, page 22. The reason for the restriction is that SBA has determined that any situation in which the surety and SBA have a greater liability than the obligee is inherently not reasonable in light of the risks involved. It would be statutorily impermissible for SBA to issue a guarantee under those circumstances. See 15 USC 694b(a)(4)(D). Public projects requiring bonding in excess of 100% will have to continue to be bonded outside of the SBG Program.

The second point raised in the comment letters was that as contract amounts increase by change order, bond amounts may increase as well. If the bond can never exceed the original contract amount, there is no possibility for increases in the bond amount when the contract amount is increased. SBA has reconsidered its position on this issue. The final rule permits the bond amount to exceed the original contract amount but, as discussed in the preceding paragraph, the bond amount must never exceed the contract amount measured at the same time.

Denial of Liability—Substantial Regulatory Violation

Under proposed § 115.19(d), SBA would not be liable under its guarantee if the surety committed a substantial violation. A substantial violation was proposed to include a violation which caused an increase in the contract or bond amount of 25% or $50,000. Upon consideration of the one comment received on this paragraph, SBA has concluded that it is extremely unlikely that a regulatory violation could cause an increase in the contract amount. SBA's real concern is with increases in the bond amount. The final rule deletes the reference to the contract amount in § 115.19(d).

Denial of Liability—Alteration

Under proposed § 115.19(e), SBA would not be liable under its guarantee if the surety agreed to or acquiesced in any material alteration of the contract or bond without SBA's prior written approval. This differs from the current regulation, § 115.13(e), which does not include alterations in the contract as a basis for SBA to deny liability. The single comment received on proposed § 115.19(e) pointed out that the standard bond form in the surety industry provides that the surety waives notice of changes to the contract. Changes to the contract frequently occur without any approval from the surety. Accordingly, SBA has decided to remove contract alterations as a basis for denial of liability in the final rule.

Denial of Liability—Timeliness

Under proposed § 115.19(f), SBA would not be liable under its guarantee if the surety executed the bond before SBA's guarantee was executed. This provision complies with the statutory requirement that an SBA bond guarantee may be issued only if the principal is not able to obtain the bond on reasonable terms and conditions without the guarantee. See 15 USC 694b(a)(4)(C). A bond dated prior to SBA's guarantee is a bond that is obtainable without such guarantee.

The two comments received on this subsection expressed concern that the current industry practice of back-dating the bond at the request of the obligee could result in an SBA determination to deny liability under the guarantee. Apparently, many obligees require that the bond be dated the same date as the contract, regardless of the actual execution date of the bond. SBA does not object to a bond carrying an ''effective date'' (e.g., ''dated as of July 1, 1996'') that is earlier than its execution date (e.g., ''signed July 20, 1996'') as long as there is proper documentation of the actual date of execution of the bond and such execution date is no earlier than the date of SBA's guarantee. SBA does not believe that any change to the proposed language in § 115.19(f) is necessary, as the proposal speaks only of execution of the bond. The provision is finalized as proposed.

Denial of Liability—Other Regulatory Violations

In accordance with the suggestion in the one comment received on proposed § 115.19(h)(6), SBA is correcting the language of the proposed subsection to clarify that sureties are permitted to make payments under payment bonds even though such payments may not result from the principal's breach of the bonded contract. SBA had not intended for the proposal to be interpreted any other way. The final version of § 115.19(h)(6) makes this technical correction.

Audits and Investigations

In connection with the requirement under the final version of § 115.15(b) for sureties to document the job status inquiries they make, SBA is including such documentation, together with any job status reports received by the surety, in the list of records required to be maintained by the surety under the final version of § 115.21(b).

Prior Approval Program—SBA Approval

SBA is finalizing proposed § 115.30(b) without change. The proposal, which provided that SBA's written approval of a guarantee application would control over any conflicting verbal approval, was not different substantively from the current regulation (§ 115.31(a)). Nevertheless, SBA appreciates the concern of the two commenters who requested some protection for sureties relying on a verbal approval from an SBA officer, only to learn that the guarantee agreement was not signed until the following day. SBA intends to make clear to all SBG Program personnel that no verbal approval of a guarantee application may be communicated unless the guarantee application has already been executed by an authorized official. Sureties requiring greater certainty than the regulation affords are advised to request a telecopy of the signed guarantee form as confirmation.

Prior Approval Program—Principal's and Surety's Fees

Ten of the eleven comments received on the proposed increase in the principal's fee (proposed § 115.32(b)) were opposed to the increase. The eleventh comment commended SBA's attempt to make the program self-financing and recommended an even greater increase in the principal's fee than had been proposed by SBA. The vast majority of the comments on this topic, however, cited the adverse impact on the contractors and on the SBG Program. In particular, there was concern that the increase would impose a financial burden on the contractors in the program and would result in a dramatic cut-back in program participation. Only the higher risk contractors—those without collateral or other alternatives to the SBG Program—were predicted to remain in the program.

Ten comments were also received on the proposed increase in SBA's charge to the surety (proposed § 115.32(c))—all opposed. According to several sureties, writing bonds in the SBG Program already costs the surety more than writing equivalent bonds with standard reinsurance. It was predicted that some sureties would leave the program and that sureties remaining in the program would attempt to pass the increase on to the contractor by raising premium rates.

SBA has given careful consideration to the concerns surrounding the proposed increases in the principal's fee and the surety's fee. SBA continues to believe that the long-term goals of the SBG Program will be best served if the program can become self-financing. However, the costs of any transition to a self-funding program should not outweigh the benefits to be derived from the change.

To allow time for further consideration, SBA has decided to keep the fees at their current levels (.06% of the contract amount for the principal fee; 20% of the bond premium for the surety fee) at this time. Future changes in the fee percentages will be published by SBA in the form of a Notice in the Federal Register. SBA is completing an analysis of the performance of the SBG Program and evaluating whether changes in the fees are warranted, and will publish a Notice within 30 days of the date of publication.

Prior Approval Program—Contract Increases/Decreases

Proposed § 115.32(d) elicited nine comments from readers, none of which supported the proposal. The proposal contained several components. First, sureties would be required to notify SBA of all increases or decreases in the contract or bond amount as soon as the surety learned of the change. All notifications of increases would have to be accompanied by the associated increase in the principal's fee. The increase in the surety's fee would be payable in the ordinary course of business. Under the current regulation, by contrast, notification is required only when the changes in the contract or bond amount aggregate at least $10,000 (current § 115.35(c)). No increase in the principal's or the surety's fee is computed at that time.

Second, under the proposal, any single change in the contract or bond amount of at least 25% or $50,000 would require prior SBA approval. Under the current regulation, changes in the bond amount aggregating at least

25% or $50,000 require SBA's approval and simultaneous payment of any increase in the principal's fee. The increase in the surety's fee is payable in the normal course of business.

Third, under the proposal, payment for the increased fees would be due and payable regardless of the size of the check. No exception would be made for small sums. Under the current regulation, if the increase in the principal's or the surety's fee is less than $40, the amount is ''disregarded''.

Fourth, under both the proposal and the current regulation, decreases in the contract or bond amount are treated the same as increases of an equivalent amount would be treated. Decreases resulting in refunds from SBA of a portion of the principal's fee, however, are paid directly to the principal under the proposal, but are paid to the surety (who then transmits the refund to the principal) under the current regulation.

The comment letters uniformly registered objections to the greater administrative burden considered to be imposed by the proposed notification and payment requirements. Opposition to the removal of the $40 threshold was also expressed consistently, although some commenters suggested a $100 threshold in its place. No objection was raised to the proposed mechanism for refunding the excess principal's fee.

SBA has reconsidered its proposal in light of the comments received. Instead of requiring notification of all increases and decreases in the contract or bond amount, and the payment of associated fees, the final rule requires notification of increases or decreases only when they aggregate 25% of the contract or bond amount or $50,000. Such notification must be accompanied by the increase in the principal's fee; however, increases (or decreases) in the principal's or the surety's fee will not be due and payable until they aggregate at least $40. Increases in the surety's fee will be payable in the ordinary course of business, as they are presently. Any single change order that increases the bond amount by 25% or $50,000 will require the prior approval of SBA. Except for the changes discussed in this paragraph, § 115.32(d) is finalized as proposed.

Prior Approval Program—Events Requiring Notification

Under proposed § 115.35(a)(1)(iv), SBA would require sureties in the Prior Approval Program to notify SBA if the surety were to receive any adverse information concerning the principal's financial condition or possible inability to complete the project or to pay laborers or suppliers. One commenter expressed concern that if such notification were to be the cause of a principal's loss of eligibility for the program, lawsuits against the surety by the principal could follow. SBA believes such concern to be unfounded. Section 115.14 of this final rule details the grounds for a principal's loss of eligibility to participate in the program; adverse information, absent anything else, is not among the permitted grounds. SBA's proposal to require notification of adverse information is adopted without change.

PSB Program—Premium Rates

The Surety Association of America has advised SBA that it no longer keeps advisory premium rates for the surety industry. Proposed § 115.60(a)(2), as well as current § 115.10(d)(2), require that PSB Sureties charge principals no more than the Association's advisory premium rates. The Association suggested using their advisory premium rates in effect on August 1, 1987, as the standard. SBA considers that a satisfactory solution for now, but will continue to explore alternatives. The final version of § 115.60(a)(2) incorporates that change.

PSB Program—Retention of Information

SBA agrees with the two comment letters received on proposed § 115.60(g)(1). PSB Sureties should not be required to keep a record of the time of execution of each bond. A record of the date of execution of the bond is sufficient. The final version of the subsection, redesignated § 115.65(a), reflects this correction.

PSB Program—Principal's and Surety's Fees

The proposal to increase the principal's and surety's fees in the PSB Program (§ 115.60(g)(4)) is being revised in the same manner as the equivalent provisions in the Prior Approval Program. See the discussion above under ''Prior Approval Program—Principal's and Surety's fees.''

PSB Program—Contract Increases/Decreases

The final version of § 115.60(g)(5), redesignated § 115.67, mirrors the changes made to the equivalent provision in the Prior Approval Program (§ 115.32 (b) and (c)), as discussed above under ''Prior Approval Program—Contract increases/decreases.''

Miscellaneous

A comment from one of the surety trade associations was received on the substitution of SBA form names for SBA form numbers in the proposed rule. According to the comment, sureties refer to SBA documents by their respective SBA form numbers, not names. SBA recognizes that the names of its forms are not as familiar to program participants as its form numbers. In order to avoid confusion, SBA has retained the form numbers in the final rule.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, SBA discussed the proposed deletion of current § 115.30(b), including the requirement for the principal to file SBA Form 1624 (Lower Tier Certification form) with its initial guarantee application. As SBA explained, the requirement would be removed from the regulations and would be issued as internal guidance, with the following change: the Lower Tier Certification would have to be submitted with each application for a principal, not simply the principal's first application. One commenter objected to the change as overly burdensome. Nevertheless, as was explained in the proposed rule, SBA believes the change is necessary to comply with Part 146 of Title 13 of the Code of Federal Regulations and that it is consistent with current practice in SBA field offices.

Except as discussed above, SBA adopts as final its proposal to amend Part 115.

Compliance With Executive Orders 12778, 12612 and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA certifies that this final rule will *not* constitute a significant regulatory action for purposes of Executive Order 12866, since it is not likely to result in an annual effect on the economy of $100 million or more.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that this rule will not have a significant impact on a substantial number of small entities. Final action on the proposed increases in the principal's and the surety's fees has been deferred until further study of the issue has been completed. There are no fee increases in this final rule.

There are no reporting, recordkeeping and other compliance requirements not approved by the Office of Management and Budget which would come under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

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

SBA certifies that this regulation does not warrant the preparation of a Federal

Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 115

Small business, Surety bonds.

For the above reasons, SBA is revising part 115, title 13 of the Code of Federal Regulations, to read as follows:

PART 115—SURETY BOND GUARANTEE

Authority: 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b; Pub. L. 101–574, 104 Stat. 2823 (1990).

§ 115.1 Overview of regulations.

The regulations in this part cover the SBA's Surety Bond Guarantee Programs under Part B of Title IV of the Small Business Investment Act of 1958, as amended. Subpart A of this part contains regulations common to both the program requiring prior SBA approval of each bond guarantee (the Prior Approval Program) and the program not requiring prior approval (the PSB Program). Subpart B of this part contains the regulations applicable only to the Prior Approval Program. Subpart C of this part contains the regulations applicable only to the PSB Program.

§ 115.2 Savings clause.

Transactions affected by this part 115 are governed by the regulations in effect at the time they occur.

Subpart A—Provisions for All Surety Bond Guarantees

§ 115.10 Definitions.

AA/SG means SBA's Associate Administrator for Surety Guarantees.

Affiliate is defined in part 121 of this chapter.

Ancillary Bond means a bond incidental and essential to the performance of a Contract for which there is a guaranteed Final Bond.

Bid Bond means a bond conditioned upon the bidder on a Contract entering into the Contract, and furnishing the required Payment and Performance Bonds. The term does not include a forfeiture bond unless it is issued for a jurisdiction where statute or settled decisional law requires forfeiture bonds for public works.

Contract means a written obligation of the Principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. A Contract must not prohibit a Surety from performing the Contract upon default of the Principal. A Contract does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (e.g., a contract requiring any payment by the Principal to the Obligee), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). It includes a maintenance agreement of 2 years or less which covers defective workmanship or materials only. With SBA's written approval, it can also include a longer maintenance agreement covering defective workmanship or materials, or a maintenance agreement covering something other than defective workmanship or materials. To qualify for such approval, the agreement must be ancillary to the Contract for which SBA is guaranteeing a bond, must be required to be performed by the same Principal, and must be customarily required in the relevant trade or industry.

Execution means signing by a representative or agent of the Surety with the authority and power to bind the Surety.

Final Bond means a Performance Bond and/or a Payment Bond.

Imminent Breach means a threat to the successful completion of a bonded Contract which, unless remedied by the Surety, makes a default under the bond appear to be inevitable.

Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 661), as amended.

Loss has the meaning set forth in § 115.16.

Obligee means:

(1)(i) In the case of a Bid Bond, the Person requesting bids for the performance of a Contract; or

(ii) In the case of a Final Bond, the Person who has contracted with a Principal for the completion of the Contract and to whom the primary obligation of the Surety runs in the event of a breach by the Principal.

(2) In either case, no Person (other than a Federal department or agency) may be named co-Obligee or Obligee on a bond or on a rider to the bond unless that Person is bound by the Contract to the Principal (or to the Surety, if the Surety has arranged completion of the Contract) to the same extent as the original Obligee. In no event may the addition of one or more co-Obligees increase the aggregate liability of the Surety under the bond.

OSG means SBA's Office of Surety Guarantees.

Payment Bond means a bond which is conditioned upon the payment by the Principal of money to persons who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies for use in the performance of the Contract. A Payment Bond can not require the Surety to pay an amount which exceeds the claimant's actual loss or damage.

Performance Bond means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms.

Person means a natural person or a legal entity.

Premium means the amount charged by a Surety to issue bonds. The Premium is determined by applying an approved rate (see §§ 115.32(a) and 115.60(a)(2)) to the bond or contract amount. The Premium does not include surcharges for extra services, whether or not considered part of the ''premium'' under local law.

Principal means, in the case of a Bid Bond, the Person bidding for the award of a Contract. In the case of Final Bonds and Ancillary Bonds, Principal means the Person primarily liable to complete the Contract, or to make Contract-related payments to other persons, and is the Person whose performance or payment is bonded by the Surety. A Principal may be a prime contractor or a subcontractor.

Prior Approval Agreement means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

Prior Approval Surety means a Surety which must obtain SBA's prior approval on each guarantee and which has entered into one or more Prior Approval Agreements with SBA.

PSB Agreement means the Preferred Surety Bond Guarantee Agreement entered into between a PSB Surety and SBA.

PSB Surety means a Surety that has been admitted to the Preferred Surety Bond (PSB) Program.

Surety means a company which:

(1)(i) Under the terms of a Bid Bond, agrees to pay a sum of money to the Obligee if the Principal breaches the conditions of the bond;

(ii) Under the terms of a Performance Bond, agrees to pay a sum of money or to incur the cost of fulfilling the terms of a Contract if the Principal breaches the conditions of the Contract; and

(iii) Under the terms of a Payment or an Ancillary Bond, agrees to make payment to all who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies in the performance of the Contract.

(2) The term Surety includes an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of the Surety.

§ 115.11 Applying to participate in the Surety Bond Guarantee Program.

Sureties interested in participating as Prior Approval Sureties or PSB Sureties should apply in writing to the AA/SG at 409 3rd Street, SW., Washington, DC 20416. OSG will determine the eligibility of the applicant considering its standards and procedures for underwriting, administration, claims and recovery. Each applicant must be a corporation listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts.

§ 115.12 General program policies and provisions.

(a) *Description of Surety Bond Guarantee Programs.* SBA guarantees Sureties participating in the Surety Bond Guarantee Programs against a portion of their Losses incurred and paid as a result of a Principal's breach of the terms of a Bid Bond, Final Bond or Ancillary Bond, on any eligible Contract. In the Prior Approval Program, the Surety must obtain SBA's approval before a guaranteed bond can be issued. In the PSB Program, selected Sureties may issue, monitor, and service SBA guaranteed bonds without further SBA approval.

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract and are of a type listed in the ''Contract Bonds'' section of the current Manual of Rules, Procedures and Classifications of the Surety Association of America (100 Wood Avenue South, Iselin, New Jersey 08830). Ancillary Bonds may also be eligible for SBA's guarantee. A Performance Bond must not prohibit a Surety from performing the Contract upon default of the Principal.

(c) *Expiration of Bid Bond Guarantee.* A Bid Bond guarantee expires 120 days after Execution of the Bid Bond, unless the Surety notifies SBA in writing before the 120th day that a later expiration date is required. The notification must include the new expiration date.

(d) *Guarantee agreement.* The terms and conditions of SBA's bond guarantee agreements, including the guarantee percentage, may vary from Surety to Surety, depending on past experience with SBA. If the guarantee percentage is not fixed by the Investment Act, it is determined by OSG after considering, among other things, the rating or ranking assigned to the Surety by recognized authority, and the Surety's Loss rate, average Contract amount, average bond penalty per guaranteed bond, and ratio of Bid Bonds to Final Bonds, all in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program (Prior Approval or PSB) to a comparable degree. Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights (such as a right of action against SBA) or benefits on any other party.

(e) *Amount of Contract.*—(1) *Statutory ceiling.* The amount of the Contract to be bonded must not exceed $1,250,000 in face value at the time of the bond's Execution.

(2) *Aggregation of Contract amounts.* The amounts of two or more Contracts for a ''single project'' are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a ''single project'' means one represented by two or more Contracts of one Principal or its Affiliates with one Obligee or its Affiliates for performance at the same location, regardless of job title or nature of the work to be performed.

(3) *Service and supply contracts.* A service or supply Contract covering more than a 1 year period is eligible for an SBA guaranteed bond if neither the annual Contract amount nor the penal sum of the bond exceeds $1,250,000 at any time.

(f) *Transfers or sales by Surety.* Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred, without the prior written approval of SBA. A violation of this provision is grounds for termination from participation in the program. This provision does not apply to the sale of an entire business division, subsidiary or operation of the Surety.

§ 115.13 Eligibility of Principal.

(a) *General eligibility.* In order to be eligible for a bond guaranteed by SBA, the Principal must comply with the following requirements:

(1) *Size.* Together with its Affiliates, it must qualify as a small business under part 121 of this title.

(2) *Character.* It must possess good character and reputation. A Principal meets this standard if each owner of 20% or more of its equity, and each of its officers, directors, or general partners, possesses good character and reputation. A Person's good character and reputation is presumed absent when:

(i) The Person is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships; or

(ii) A regulatory authority has revoked, canceled, or suspended a license of the Person which is necessary to perform the Contract; or

(iii) The Person has obtained a bond guarantee by fraud or material misrepresentation (as described in § 115.19(b)), or has failed to keep the Surety informed of unbonded contracts or of a contract bonded by another Surety, as required by a bonding line commitment under § 115.33.

(3) *Need for bond.* It must certify that a bond is expressly required by the bid solicitation or the original Contract in order to bid on the Contract or to serve as a prime contractor or subcontractor.

(4) *Availability of bond.* It must certify that a bond is not obtainable on reasonable terms and conditions without SBA's guarantee.

(5) *Partial subcontract.* It must certify the percentage of work under the Contract to be subcontracted. SBA will not guarantee bonds for Principals who are primarily brokers or who have effectively transferred control over the project to one or more subcontractors.

(6) *Debarment.* It must certify that the Principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, under governmentwide debarment and suspension rules.

(b) *Conflict of interest.* A Principal is not eligible for an SBA-guaranteed bond issued by a particular Surety if that Surety, or an Affiliate of that Surety, or a close relative or member of the household of that Surety or Affiliate owns, directly or indirectly, 10% or more of the Principal. This prohibition also applies to ownership interests in any of the Principal's Affiliates.

§ 115.14 Loss of Principal's eligibility for future assistance.

(a) *Ineligibility.* A Principal and its Affiliates lose eligibility for further SBA bond guarantees if any of the following occurs under an SBA-guaranteed bond issued on behalf of the Principal:

(1) Legal action under the guaranteed bond has been initiated.

(2) The Obligee has declared the Principal to be in default under the Contract.

(3) The Surety has established a claim reserve for the bond of at least $1000.

(4) The Surety has requested reimbursement for Losses incurred under the bond.

(5) The guarantee fee has not been paid by the Principal.

(6) The Principal committed fraud or material misrepresentation in obtaining the guaranteed bond.

(b) *Reinstatement of Principal's eligibility.* Prior Approval Sureties should refer to § 115.36(b) for provisions on reinstatement of the Principal's eligibility. A PSB Surety may reinstate a Principal's eligibility upon the Surety's determination that reinstatement is appropriate.

§ 115.15 Underwriting and servicing standards.

(a) *Underwriting.* (1) Sureties must evaluate the credit, capacity, and character of a Principal using standards generally accepted by the surety industry and in accordance with SBA's Standard Operating Procedures on underwriting and the Surety's principles and practices on unguaranteed bonds. The Principal must satisfy the eligibility requirements set forth in § 115.13. The Surety must reasonably expect that the Principal will successfully perform the Contract to be bonded.

(2) The terms and conditions of the bond and the Contract must be reasonable in light of the risks involved and the extent of the Surety's participation. The bond must satisfy the eligibility requirements set forth in § 115.12(b). The Surety must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the Contract.

(b) *Servicing.* The Surety must ensure that the Principal remains viable and eligible for SBA's Surety Bond Guarantee Program, must monitor the Principal's progress on bonded Contracts guaranteed by SBA, and must request job status reports from Obligees of Final Bonds guaranteed by SBA. Documentation of the job status requests must be maintained by the Surety.

§ 115.16 Determination of Surety's Loss.

Loss is determined as follows:

(a) *Loss under a Bid Bond* is the lesser of the penal sum or the amount which is the difference between the bonded bid and the next higher responsive bid. In either case, the Loss is reduced by any amounts the Surety recovers by reason of the Principal's defenses against the Obligee's demand for performance by the Principal and any sums the Surety recovers from indemnitors and other salvage.

(b) *Loss under a Payment Bond* is, at the Surety's option, the sum necessary to pay all just and timely claims against the Principal for the value of labor, materials, equipment and supplies furnished for use in the performance of the bonded Contract and other covered debts, or the penal sum of the Payment Bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's claims against laborers, materialmen, subcontractors, suppliers, or other rightful claimants, and by any amounts recovered from indemnitors and other salvage.

(c) *Loss under a Performance Bond* is, at the Surety's option, the sum necessary to meet the cost of fulfilling the terms of a bonded Contract or the penal sum of the bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's defenses or causes of action against the Obligee, and by any amounts recovered from indemnitors and other salvage.

(d) *Loss under an Ancillary Bond* is the amount covered by such bond which is attributable to the Contract for which guaranteed Final Bonds were Executed.

(e) *Loss includes* the following expenses if they are itemized, documented and attributable solely to the Loss under the guaranteed bond:

(1) Amounts actually paid by the Surety which are specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of, or resistance to a claim for Loss resulting from the breach of the terms of the bonded Contract. Any cost allocation method must be reasonable and must comply with generally accepted accounting principles; and

(2) Amounts actually paid by the Surety for court costs and reasonable attorney's fees incurred to mitigate any Loss under paragraphs (a) through (e)(1) of this section including suits to obtain sums due from Obligees, indemnitors, Principals and others.

(f) *Loss does not include* the following expenses:

(1) Any unallocated expenses, or any clear mark-up on expenses or any overhead, of the Surety, its attorney, or any other party hired by the Surety or the attorney;

(2) Expenses paid for any suits, cross-claims, or counterclaims filed against the United States of America or any of its agencies, officers, or employees unless the Surety has received, prior to filing such suit or claim, written concurrence from SBA that the suit may be filed;

(3) Attorney's fees and court costs incurred by the Surety in a suit by or against SBA or its Administrator; and

(4) Fees, costs, or other payments, including tort damages, arising from a successful tort suit or claim by a Principal or any other Person against the Surety.

§ 115.17 Minimization of Surety's Loss.

(a) *Indemnity agreements and collateral.*—(1) *Requirements.* The Surety must take all reasonable action to minimize risk of Loss including, but not limited to, obtaining from each Principal a written indemnity agreement which covers actual Losses under the Contract and Imminent Breach payments under § 115.34(a) or § 115.69. The indemnity agreement must be secured by such collateral as the Surety or SBA finds appropriate. Indemnity

agreements from other Persons, secured or unsecured, may also be required by the Surety or SBA.

(2) *Prohibitions.* No indemnity agreement may be obtained from the Surety, its agent or any other representative of the Surety. The Surety must not separately collateralize the portion of its bond which is not guaranteed by SBA.

(b) *Salvage and recovery.*—(1) *General.* The Surety must pursue all possible sources of salvage and recovery. Salvage and recovery includes all payments made in settlement of the Surety's claim, even though the Surety has incurred other losses as a result of that Principal which are not reimbursable by SBA.

(2) *SBA's share.* SBA is entitled to its guaranteed percentage of all salvage and recovery from a defaulted Principal, its guarantors and indemnitors, and any other party, received by the Surety in connection with the guaranteed bond or any other bond issued by the Surety on behalf of the Principal unless such recovery is unquestionably identifiable as related solely to the non-guaranteed bond. The Surety must reimburse or credit SBA (in the same proportion as SBA's share of Loss) within 90 days of receipt of any recovery by the Surety.

(3) *Multiple Sureties.* In any dispute between two or more Sureties concerning recovery under SBA guaranteed bonds, the dispute must first be brought to the attention of OSG for an attempt at mediation and settlement.

§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.

(a) *Improper surety bond guarantee practices.*—(1) *Imprudent practices.* SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety, by written notice stating all reasons for such decision and the effective date. Reasons for such a decision include, but are not limited to, a determination that the Surety (in its underwriting, its efforts to minimize Loss, its claims or recovery practices, or its documentation related to SBA guaranteed bonds) has failed to adhere to prudent standards or practices, including any standards or practices required by SBA, as compared to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(2) *Regulatory violations, fraud.* Acts of wrongdoing such as fraud, material misrepresentation, breach of the Prior Approval or PSB Agreement, or regulatory violations (as defined in §§ 115.19(d) and 115.19(h)) also constitute sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status.

1(3) *Audit; records.* The failure of a Surety to consent to SBA's audit or to maintain and produce records constitutes grounds for SBA to refuse to issue further guarantees for a Prior Approval Surety, to suspend a PSB Surety from participation, and to refuse to honor claims submitted by a Prior Approval or PSB Surety until the Surety consents to the audit.

(4) *Excessive Losses.* If a Surety experiences excessive Losses on SBA guaranteed bonds relative to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree, SBA may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety for bonds executed thereafter.

(b) *Lack of business integrity.* A Surety's participation in the Surety Bond Guarantee Programs may be denied, suspended, or terminated upon the occurrence of any event in paragraphs (b) (1) through (5) of this section involving any of the following Persons: The Surety or any of its officers, directors, partners, or other individuals holding at least 20% of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of any of the preceding Persons.

(1) If a State or other authority has revoked, canceled, or suspended the license required of such Person to engage in the surety business, the right of such Person to participate in the SBA Surety Bond Guarantee Program may be denied, terminated, or suspended, as applicable, in that jurisdiction or in other jurisdictions. Ineligibility or suspension from the Surety Bond Guarantee Programs is for at least the duration of the license suspension.

(2) If such Person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such Person's fitness to participate in the Surety Bond Guarantee Programs, the participation of such Person may be suspended pending disposition of the charge. Upon conviction, participation may be denied or terminated.

(3) If a final civil judgment is entered holding that such Person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) If such Person has made a material misrepresentation or willfully false statement in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim, or committed a material breach of the Prior Approval or PSB Agreement or a material violation of the regulations (all as described in § 115.19), participation may be denied or terminated.

(5) If such Person is debarred, suspended, voluntarily excluded from, or declared ineligible for participation in Federal programs, participation may be denied or terminated.

(c) *Notification requirement.* The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) of this section does not, or ceases to, qualify as a Surety. SBA may require submission of a Statement of Personal History (SBA Form 912) from any of these Persons.

(d) *SBA proceedings.* Decisions to suspend, terminate, deny participation in, or deny reinstatement in the Surety Bond Guarantee program are made by the AA/SG. A Surety may file a petition for review of suspensions and terminations with the SBA Office of Hearings and Appeals (OHA) under part 134 of this chapter. SBA's Administrator may, pending a decision pursuant to Part 134 of this chapter, suspend the participation of any Surety for any of the causes listed in paragraphs (b) (1) through (5) of this section.

(e) *Effect on guarantee.* A guarantee issued by SBA before a suspension or termination under this section remains in effect, subject to SBA's right to deny liability under the guarantee.

§ 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act and the regulations in this part, SBA is not liable under a Prior Approval or PSB Agreement if any of the circumstances in paragraphs (a) through (h) of this section exist.

(a) *Excess Contract or bond amount.* The total Contract amount at the time of Execution of the bond exceeds $1,250,000 in face value (see § 115.12(e)), or the bond amount at any time exceeds the total Contract amount.

(b) *Misrepresentation or fraud.* The Surety obtained the Prior Approval or PSB Agreement, or applied for reimbursement for losses, by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not

misleading in light of the circumstances in which it was made. Material misrepresentation also includes the adoption by the Surety of a material misstatement made by others which the Surety knew or under generally accepted underwriting standards should have known to be false or misleading. The Surety's failure to disclose its ownership (or the ownership by any owner of at least 20% of the Surety's equity) of an interest in a Principal or an Obligee is considered the omission of a statement of material fact.

(c) *Material breach.* The Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement. A material breach is considered to have occurred if:

(1) Such breach (or such breaches in the aggregate) causes an increase in the Contract amount or in the bond amount of at least 25% or $50,000; or

(2) One of the conditions under Part B of Title IV of the Investment Act is not met.

(d) *Substantial regulatory violation.* The Surety has committed a ''substantial violation'' of SBA regulations. For purposes of this paragraph, a ''substantial violation'' is a violation which causes an increase in the bond amount of at least 25% or $50,000 in the aggregate, or is contrary to the purposes of the Surety Bond Guarantee Programs.

(e) *Alteration.* Without obtaining prior written approval from SBA (which may be conditioned upon payment of additional fees), the Surety agrees to or acquiesces in any material alteration in the terms, conditions, or provisions of the bond, including but not limited to the following acts:

(1) Naming as an Obligee or co-Obligee any Person that does not qualify as an Obligee under § 115.10; or

(2) In the case of a Prior Approval Surety, acquiescing in any alteration to the bond which would increase the bond amount by at least 25% or $50,000.

(f) *Timeliness.* (1) Either:

(i) The bond was Executed prior to the date of SBA's guarantee; or

(ii) The bond was Executed (or approved, if the Surety is legally bound by such approval) after the work under the Contract had begun, unless SBA executes a ''Surety Bond Guarantee Agreement Addendum'' (SBA Form 991) after receiving all of the following from the Surety:

(A) Satisfactory evidence, including a certified copy of the Contract (or a sworn affidavit from the Principal), showing that the bond requirement was contained in the original Contract, or other documentation satisfactory to SBA, showing why a bond was not previously obtained and is now being required;

(B) Certification by the Principal that all taxes and labor costs are current, and listing all suppliers and subcontractors, indicating that they are all paid to date, and attaching a waiver of lien from each; or an explanation satisfactory to SBA why such documentation cannot be produced; and

(C) Certification by the Obligee that all payments due under the Contract to date have been made and that the job has been satisfactorily completed to date.

(2)(i) For purposes of paragraph (f)(1)(ii) of this section, work under a Contract is considered to have begun when a Principal takes any action at the job site which would have exposed its Surety to liability under applicable law had a bond been Executed (or approved, if the Surety is legally bound by such approval) at the time.

(ii) For purposes of this paragraph (f), the Surety must maintain a contemporaneous record of the Execution and approval of each bond.

(g) *Principal fee.* The Surety has not remitted to SBA the Principal's payment for the full amount of the guarantee fee within the time period required under § 115.30(d) for Prior Approval Sureties or § 115.66 for PSB Sureties. SBA may reinstate the guarantee upon a showing that the Contract is not in default and that a valid reason exists why a timely submission was not made.

(h) *Other regulatory violations.* The occurrence of any of the following:

(1) The Principal on the bonded Contract is not a small business;

(2) The bond was not required under the bid solicitation or the original Contract;

(3) The bond was not eligible for guarantee by SBA because the bonded contract was not a Contract as defined in § 115.10;

(4) The loss occurred under a bond that was not guaranteed by SBA;

(5) The loss incurred by the Surety was not a Loss as determined under § 115.16; or

(6) The Surety's loss under a Performance Bond did not result from the Principal's breach or Imminent Breach of the Contract.

§ 115.20 Insolvency of Surety.

(a) *Successor in interest.* If a Surety becomes insolvent, all rights or benefits conferred on the Surety under a valid and binding Prior Approval or PSB Agreement will accrue only to the trustee or receiver of the Surety. SBA will not be liable to the trustee or receiver of the insolvent Surety except for the guaranteed portion of any Loss incurred and actually paid by such Surety or its trustee or receiver under the guaranteed bonds.

(b) *Filing requirement.* The trustee or receiver must submit to SBA quarterly status reports accounting for all funds received and all settlements being considered.

§ 115.21 Audits and investigations.

(a) *Audits.*—(1) *Scope of audit.* SBA may audit in the office of a Prior Approval or PSB Surety, the Surety's attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify the Prior Approval or PSB Surety. See § 115.18(a)(3) for consequences of failure to comply with this section.

(2) *Frequency of PSB audits.* Each PSB Surety is subject to audit at least once each year by examiners selected and approved by SBA.

(b) *Records.* The Surety must maintain the records listed in this paragraph (b) for the term of each bond, plus any additional time required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related records until the findings are resolved. The records to be maintained include the following:

(1) A copy of the bond;

(2) A copy of the bonded Contract;

(3) All documentation submitted by the Principal in applying for the bond;

(4) All information gathered by the Surety in reviewing the Principal's application;

(5) All documentation of any of the events set forth in § 115.35(a) or § 115.65(c)(2);

(6) All records of any transaction for which the Surety makes payment under or in connection with the bond, including but not limited to claims, bills (including lawyers' and consultants' bills), judgments, settlement agreements and court or arbitration decisions, consultants' reports, Contracts and receipts;

(7) All documentation relating to efforts to mitigate Losses, including documentation required by § 115.34(a) or § 115.69 concerning Imminent Breach;

(8) All records of any accounts into which fees and funds obtained in mitigation of Losses were paid and from which payments were made under the

bond, and any other trust accounts, and any reconciliations of such accounts;

(9) Job status reports received from Obligees and documentation of each unanswered request for a job status report; and

(10) All documentation relating to any collateral held by or available to the Surety.

(c) *Purpose of audit.* SBA's audit will determine, but not be limited to:

(1) The adequacy and sufficiency of the Surety's underwriting and credit analysis, its documentation of claims and claims settlement procedures and activities, and its recovery procedures and practices;

(2) The Surety's minimization of Loss, including the exercise of bond options upon Contract default; and

(3) The Surety's loss ratio in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(d) *Investigations.* SBA may conduct investigations to inquire into the possible violation by any Person of the Small Business Act or the Investment Act, or of any rule or regulation under those Acts, or of any order issued under those Acts, or of any Federal law relating to programs and operations of SBA.

Subpart B—Guarantees Subject to Prior Approval

§ 115.30 Submission of Surety's guarantee application.

(a) *Legal effect of application.* By submitting an application to SBA for a bond guarantee, the Prior Approval Surety certifies that the Principal meets the eligibility requirements set forth in § 115.13 and that the underwriting standards set forth in § 115.15 have been met.

(b) *SBA's determination.* SBA's approval or decline of a guarantee application is made in writing by an authorized SBA officer. The officer may provide telephone notice before the Prior Approval Surety receives SBA's guarantee approval form if the officer has already signed the form. In the event of a conflict between the telephone notice and the written form, the written form controls.

(c) *Reconsideration-appeal of SBA determination.* A Prior Approval Surety may request reconsideration of a decline from the SBA officer who made the decision. If the decision on reconsideration is negative, the Surety may appeal to an individual designated by the AA/SG. If the decision is again adverse, the Surety may appeal to the AA/SG, who will make the final decision.

(d) *Notice and payment to SBA.* When the Surety has Executed a Final Bond, including a Final Bond under a bonding line, the Surety must complete the Prior Approval Agreement, and submit the form, together with the Principal's payment for its guarantee fee (see § 115.32(b)) to SBA within 45 days, or in the case of a bonding line, within 15 business days (see § 115.33(d)(2)) after Execution of the bond.

§ 115.31 Guarantee percentage.

(a) *Ninety percent.* SBA reimburses a Prior Approval Surety for 90% of the Loss incurred and paid if:

(1) The total amount of the Contract at the time of Execution of the bond is $100,000 or less; or

(2) The bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals. See part 124 of this chapter for applicable definitions and criteria.

(b) *Eighty percent.* SBA reimburses a Prior Approval Surety in an amount not to exceed 80% of the Loss incurred and paid on bonds for Contracts in excess of $100,000 which are executed on behalf of non-disadvantaged concerns.

(c) *Contract increase to over $100,000.* If the Contract amount increases to more than $100,000 after Execution of the bond, the guarantee percentage decreases by one percentage point for each $5,000 of increase or part thereof, but it does not decrease below 80%. This provision applies only to guarantees which qualify under paragraph (a)(1) of this section.

(d) *Contract increase to over $1,250,000.* If the Contract amount increases above the statutory limit of $1,250,000 after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For example, if a Contract amount increases to $1,375,000, SBA's share of the Loss under an 80% guarantee is limited to 72.73% [1,250,000 / 1,375,000=90.91%×80%=72.73%].

(e) *Contract decrease to $100,000 or less.* If the Contract amount decreases to $100,000 or less after Execution of the bond, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

§ 115.32 Fees and Premiums.

(a) *Surety's Premium.* A Prior Approval Surety must not charge a Principal an amount greater than that authorized by the appropriate insurance department. The Surety must not require the Principal to purchase casualty or other insurance or any other services from the Surety or any Affiliate or agent of the Surety. The Surety must not charge non-Premium fees to a Principal unless the Surety performs other services for the Principal, the additional fee is permitted by State law, and the Principal agrees to the fee.

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The percentage is determined by SBA and is published in Notices in the Federal Register from time to time. The Principal's fee is rounded to the nearest dollar and is to be remitted to SBA by the Surety together with the form required under § 115.30(d). See paragraph (d) of this section for additional requirements when the Contract amount changes.

(c) *SBA charge to Surety.* SBA does not charge Sureties application or Bid Bond guarantee fees. Subject to § 115.18(a)(4), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) in the ordinary course of business. The fee is a certain percentage of the bond Premium, determined by SBA and published in Notices in the Federal Register from time to time. The fee is rounded to the nearest dollar. SBA does not receive any portion of a Surety's non-Premium charges. See paragraph (d) of this section for additional requirements when the bond amount or the Contract amount changes.

(d) *Contract or bond increases/decreases.*—(1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or $50,000, as soon as the Surety acquires knowledge of the change. Whenever the original bond amount increases as a result of a single change order of at least 25% or $50,000, the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement (Supplemental Form 990) and is conditioned upon payment by the Surety of the increase in the Principal's guarantee fee as set forth in paragraph (d)(2) of this section.

(2) *Increases; fees.* Notification of increases in the Contract or bond amount under this paragraph (d) must be accompanied by payment of the increase in the Principal's guarantee fee computed on the increase in the Contract amount. If the increase in the Principal's fee is less than $40, such

increase is not due until all unpaid increases in the Principal's fee aggregate at least $40. The Surety's check for payment of the increase in the Surety's guarantee fee, computed on the increase in the bond Premium, may be submitted in the ordinary course of business. Increases in the Surety's fee are not due until they aggregate at least $40.

(3) *Decreases; refunds.* Whenever SBA is notified of a decrease in the Contract or bond amount, SBA will refund to the Principal a proportionate amount of the Principal's guarantee fee and rebate to the Surety a proportionate amount of SBA's Premium share in the ordinary course of business. If the amount to be refunded or rebated is less than $40, such refund or rebate will not be made until the amounts to be refunded or rebated, respectively, aggregate at least $40. Upon receipt of the refund, the Surety must promptly pay a proportionate amount of its Premium to the Principal.

§ 115.33 Surety bonding line.

A surety bonding line is a written commitment by SBA to a Prior Approval Surety which provides for the Surety's Execution of multiple bonds for a specified small business strictly within pre-approved terms, conditions and limitations. In applying for a bonding line, the Surety must provide SBA with information on the applicant as requested. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line:

(a) *Underwriting.* A bonding line may be issued by SBA for a Principal only if the underwriting evaluation is satisfactory. The Prior Approval Surety must require the Principal to keep it informed of all its contracts, whether bonded by the same or another surety or unbonded, during the term of the bonding line.

(b) *Bonding line conditions.* The bonding line contains limitations on the following:

(1) The term of the bonding line, not to exceed 1 year subject to renewal in writing;

(2) The total dollar amount of the Principal's bonded and unbonded work on hand at any time, including outstanding bids, during the term of the bonding line;

(3) The number of such bonded and unbonded contracts outstanding at any time during the term of the bonding line;

(4) The maximum dollar amount of any single guaranteed bonded Contract;

(5) The timing of Execution of bonds under the bonding line—bonds must be dated and Executed before the work on the underlying Contract has begun, or the Surety must submit to SBA the documentation required under § 115.19(f)(1)(ii); and

(6) Any other limitation related to type, specialty of work, geographical area, or credit.

(c) *Excess bonding.* If, after a bonding line is issued, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, the Surety must submit an application to SBA under regular procedures.

(d) *Submission of forms to SBA.*—(1) *Bid Bonds.* Within 15 business days after the Execution of any Bid Bonds under a bonding line, the Surety must submit a ''Surety Bond Guarantee Underwriting Review'' (SBA Form 994B) to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a ''Surety Bond Guarantee Review Update'' (SBA Form 994C) may be submitted instead. If the Surety fails to submit either form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a signed Prior Approval Agreement and a ''Surety Bond Guarantee Underwriting Review'' (SBA Form 994B) to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a ''Surety Bond Guarantee Review Update'' (SBA Form 994C) may be submitted instead. If the Surety fails to submit these forms together with the Principal's payment for its guarantee fee within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

(3) *Additional information.* The Surety must submit any other data SBA requests.

(e) *Cancellation of bonding line.*—(1) *Optional cancellation.* Either SBA or the Surety may cancel a bonding line at any time, with or without cause, upon written notice to the other party. Upon the receipt of any adverse information concerning the Principal, the Surety must promptly notify SBA, and SBA may cancel the bonding line.

(2) *Mandatory cancellation.* Upon the occurrence of a default by the Principal, whether under a contract bonded by the same or another surety or an unbonded contract, the Surety must immediately cancel the bonding line.

(3) *Effect of cancellation.* Cancellation of a bonding line by SBA is effective upon receipt of written notice by the Surety. Bonds issued before the effective date of cancellation remain guaranteed by SBA. Upon cancellation by SBA or the Surety, the Surety must promptly notify the Principal in writing.

§ 115.34 Minimization of Surety's Loss.

(a) *Imminent Breach.*—(1) *Prior approval requirement.* SBA will reimburse its guaranteed share of payments made by a Surety to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond only if the payments were made with the prior approval of OSG. OSG's prior approval will be given only if the Surety demonstrates to SBA's satisfaction that a breach is imminent and that there is no other recourse to prevent such breach.

(2) *Amount of reimbursement.* The aggregate of the payments by SBA to avoid Imminent Breach cannot exceed 10% of the Contract amount, unless the Administrator finds that a greater payment (not to exceed the guaranteed share of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of this part 115.

(3) *Recordkeeping requirement.* The Surety must keep records of payments made to avoid Imminent Breach.

(b) *Salvage and recovery.* A Prior Approval Surety must pursue all possible sources of salvage and recovery until SBA concurs with the Surety's recommendation for a discontinuance or for a settlement. The Surety must certify that continued pursuit of salvage and recovery would be neither economically feasible nor a viable strategy in maximizing recovery. See also § 115.17(b).

§ 115.35 Claims for reimbursement of Losses.

(a) *Notification requirements.*—(1) *Events requiring notification.* A Prior Approval Surety must notify OSG of the occurrence of any of the following:

(i) Legal action under the bond has been initiated.

(ii) The Obligee has declared the Principal to be in default under the Contract.

(iii) The Surety has established a claim reserve for the bond.

(iv) The Surety has received any adverse information concerning the

Principal's financial condition or possible inability to complete the project or to pay laborers or suppliers.

(2) *Timing of notification.* Notification must be made in writing at the earlier of the time the Surety applies for a guarantee on behalf of an affected Principal, or within 30 days of the date the Surety acquires knowledge, or should have acquired knowledge, of any of the listed events.

(b) *Surety action.* The Surety must take all necessary steps to mitigate Losses resulting from any of the events in paragraph (a) of this section, including the disposal at fair market value of any collateral held by or available to the Surety. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle and defend such suits. The Surety must handle and process all claims under the bond and all settlements and recoveries as it does on non-guaranteed bonds.

(c) *Claim reimbursement requests.* (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSG on a ''Default Report, Claim for Reimbursement and Record of Administrative Action'' (SBA Form 994H), within 1 year from the time of each disbursement. Claims submitted after 1 year must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

(2) The Surety must also submit evidence of the disposal of all collateral at fair market value.

(3) SBA may request additional information prior to reimbursing the Surety for its Loss.

(4) Subject to the offset provisions of part 140, SBA pays its share of the Loss incurred and paid by the Surety within 90 days of receipt of the requisite information.

(5) Claims for reimbursement and any additional information submitted are subject to review and audit by SBA, including but not limited to the Surety's compliance with SBA's regulations and forms.

(d) *Status updates.* The Surety must submit semiannual status reports on each claim 6 months after the initial default notice, and then every 6 months. The Surety must notify SBA immediately of any substantial changes in the status of the claim or the amounts of Loss reserves.

(e) *Reservation of SBA rights.* The payment by SBA of a Surety's claim does not waive or invalidate any of the terms of the Prior Approval Agreement, the regulations set forth in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must repay the specified amounts to SBA.

§ 115.36 Indemnity settlements and reinstatement of Principal.

(a) *Indemnity settlements.* (1) An indemnity settlement occurs when a defaulted Principal and its Surety agree upon an amount, less than the actual loss under the bond, which will satisfy the Principal's indebtedness to the Surety. Sureties must not agree to any indemnity settlement proposal or enter into any such agreement without SBA's concurrence.

(2) Any settlement proposal submitted for SBA's consideration must include current financial information, including financial statements, tax returns, and credit reports, together with the Surety's written recommendations. It should also indicate whether the Principal is interested in further bonding.

(3) The Surety must pay SBA its *pro rata* share of the settlement amount within 90 days of receipt. Prior to closing the file on a Principal, the Surety must certify that SBA has received its *pro rata* share of all indemnity recovery.

(b) *Conditions for reinstatement.* At any time after a Principal becomes ineligible for further bond guarantees under § 115.14(a), the Surety may recommend that such Principal's eligibility be reinstated. OSG may agree to reinstate the Principal and its Affiliates if:

(1) The Principal's guarantee fee has been paid to SBA and SBA receives evidence that the Principal has paid all delinquent amounts due to the Surety (including amounts for Imminent Breach); or

(2) The Surety has settled its claim with the Principal for an amount and on terms accepted by OSG; or

(3) The Principal contests a claim and provides collateral, acceptable to the Surety and OSG, which has a liquidation value of at least the amount of the claim including related expenses; or

(4) The Principal's indebtedness to the Surety is discharged by operation of law (e.g., bankruptcy discharge); or

(5) OSG and the Surety determine that further bond guarantees are appropriate.

(c) *Underwriting after reinstatement.* A guarantee application submitted after reinstatement of the Principal's eligibility is subject to a very stringent underwriting review.

Subpart C—Preferred Surety Bond (PSB) Guarantees

§ 115.60 Selection and admission of PSB sureties.

(a) *Selection of PSB Sureties.* SBA's selection of PSB Sureties will be guided by, but not limited to, these factors:

(1) An underwriting limitation of at least $1,250,000 on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge Principals no more than the Surety Association of America's advisory premium rates in effect on August 1, 1987;

(3) Premium income from contract bonds guaranteed by any government agency (Federal, State or local) of no more than one- quarter of the total contract bond premium income of the Surety;

(4) The vesting of underwriting authority for SBA guaranteed bonds only in employees of the Surety;

(5) The vesting of final settlement authority for claims and recovery under the PSB program only in employees of the Surety's permanent claims department; and

(6) The rating or ranking designations assigned to the Surety by recognized authority.

(b) *Admission of PSB Sureties.* A Surety admitted to the PSB program must execute a PSB Agreement before approving SBA guaranteed bonds. No SBA guarantee attaches to bonds approved before the AA/SG or designee has countersigned the Agreement.

§ 115.61 Duration of PSB program.

The PSB program terminates on September 30, 1997, unless extended by legislation. SBA guarantees effective under this program on or before September 30, 1997, will remain in effect after such date.

§ 115.62 Prohibition on participation in Prior Approval program.

Neither a PSB Surety nor any of its Affiliates is eligible to submit applications under subpart B of this part.

§ 115.63 Allotment of guarantee authority.

(a) *General.* SBA allots to each PSB Surety a periodic maximum guarantee authority. No SBA guarantee attaches to bonds approved by a PSB Surety if the bonds exceed the allotted authority for the period in which the bonds are approved. No reliance on future authority is permitted. An allotment can be increased only by prior written permission of SBA.

(b) *Execution of Bid Bonds.* When the PSB Surety Executes a Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the estimated penal sum of the Final Bond SBA would guarantee if the Contract were awarded. If the Contract is then awarded for an amount other than the bid amount, or if the bid is withdrawn or the Bid Bond guarantee has expired (see § 115.12(c)), SBA debits or credits the Surety's allotment accordingly.

(c) *Execution of Final Bonds.* If the PSB Surety Executes a guaranteed Final Bond, but not the related Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the Final Bond. SBA will debit the allotment for increases, and credit the allotment for decreases, in the bond amount.

(d) *Release and non-issuance of Final Bonds.* The release of Final Bonds upon completion of the Contract does not restore the corresponding allotment. If, however, a PSB Surety approves a Final Bond but never issues the bond, SBA will credit the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the bond. In that event, the Surety must notify SBA as soon as possible, but in no event later than 5 business days after the non-issuance has been determined. Until the Surety has so notified SBA, it cannot rely on such credit.

§ 115.64 Timeliness requirement.

There must be no Execution or approval of a bond by a PSB Surety after commencement of work under a Contract unless the Surety obtains written approval from the AA/SG. To apply for such approval, the Surety must submit a completed ''Surety Bond Guarantee Agreement Addendum'' (SBA Form 991), together with the evidence and certifications described in § 115.19(f)(1)(ii).

§ 115.65 General PSB procedures.

(a) *Retention of information.* A PSB Surety must comply with all applicable SBA regulations and obtain from its applicants all the information and certifications required by SBA. The PSB Surety must document compliance with SBA regulations and retain such certifications in its files, including a contemporaneous record of the date of approval and Execution of each bond. See also § 115.19(f). The certifications and other information must be made available for inspection by SBA or its agents and must be available for submission to SBA in connection with the Surety's claims for reimbursement. The PSB Surety must retain the certifications and other information for the term of the bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related certifications and other information until the findings are resolved.

(b) *Usual staff and procedures.* The approval, Execution and administration by a PSB Surety of SBA guaranteed bonds must be handled in the same manner and with the same staff as the Surety's activity outside the PSB program. The Surety must request job status reports from Obligees in accordance with its own procedures.

(c) *Notification to SBA.* (1) *Approvals.* A PSB Surety must notify SBA by electronic transmission or monthly bordereau, as agreed between the Surety and SBA, of all approved Bid and Final Bonds, and of the Surety's approval of increases and decreases in the Contract or bond amount. The notice must contain the information specified from time to time in agreements between the Surety and SBA. SBA may deny liability with respect to Final Bonds for which SBA has not received timely notice.

(2) *Other events requiring notification.* The PSB Surety must notify SBA within 30 calendar days of the name and address of any Principal against whom legal action on the bond has been instituted; whenever an Obligee has declared a default; whenever the Surety has established or added to a claim reserve; of the recovery of any amounts on the guaranteed bond; and of any decision by the Surety to bond any such Principal again.

§ 115.66 Fees.

The PSB Surety must pay SBA a certain percentage of the Premium it charges on Final Bonds. The PSB Surety must also remit to SBA the Principal's payment for its guarantee fee, equal to a certain percentage of the Contract amount. The fee percentages are determined by SBA and are published in Notices in the Federal Register from time to time. Each fee is rounded to the nearest dollar. The Surety must remit SBA's Premium share and the Principal's guarantee fee with the bordereau listing the related Final Bond, as required in the PSB Agreement.

§ 115.67 Changes in Contract or bond amount.

(a) *Increases.* The PSB Surety must process Contract or bond amount increases within its allotment in the same manner as initial guaranteed bond issuances (see § 115.65(c)(1)). The Surety must present checks for additional fees due from the Principal and the Surety on increases aggregating 25% of the contract or bond amount or $50,000, and attach such payments to the respective monthly bordereau. If the additional Principal's fee or Surety's fee is less than $40, such fee is not due until all unpaid increases in such fee aggregate at least $40.

(b) *Decreases.* If the Contract or bond amount is decreased, SBA will refund to the Principal a proportionate amount of the guarantee fee, and adjust SBA's Premium share accordingly in the ordinary course of business. No refund or adjustment will be made until the amounts to be refunded or rebated, respectively, aggregate at least $40.

§ 115.68 Guarantee percentage.

SBA reimburses a PSB Surety in an amount not to exceed 70% of the Loss incurred and paid. Where the Contract amount, after the Execution of the bond, increases beyond the statutory limit of $1,250,000, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For an example, see § 115.31(d).

§ 115.69 Imminent Breach.

(a) *No prior approval requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The PSB Surety does not need SBA approval to make Imminent Breach payments.

(b) *Amount of reimbursement.* The aggregate of the payments by SBA under this section cannot exceed 10% of the Contract amount, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment under any provision of these regulations in this part.

(c) *Recordkeeping requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

§ 115.70 Claims for reimbursement of Losses.

(a) *How claims are submitted.* A PSB Surety must submit claims for reimbursement on a form approved by SBA no later than 1 year from the date the Surety paid the amount. Loss is determined as of the date of receipt by

SBA of the claim for reimbursement, or as of such later date as additional information requested by SBA is received. Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information. Claims for reimbursement and any additional information submitted are subject to review and audit by SBA.

(b) *Surety responsibilities.* The PSB Surety must take all necessary steps to mitigate Losses when legal action against a bond has been instituted, when the Obligee has declared a default, and when the Surety has established a claim reserve. The Surety may dispose of collateral at fair market value only. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle or defend the suits. The Surety must handle and process all claims under the bond and all settlements and recoveries in the same manner as it does on non-guaranteed bonds.

(c) *Reservation of SBA's rights.* The payment by SBA of a PSB Surety's claim does not waive or invalidate any of the terms of the PSB Agreement, the regulations in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must repay the specified amounts to SBA.

§ 115.71 Denial of liability.

In addition to the grounds set forth in § 115.19, SBA may deny liability to a PSB Surety if:

(a) The PSB Surety's guaranteed bond was in an amount which, together with all other guaranteed bonds, exceeded the allotment for the period during which the bond was approved, and no prior SBA approval had been obtained;

(b) The PSB Surety's loss was incurred under a bond which was not listed on the bordereau for the period when it was approved; or

(c) The loss incurred by the PSB Surety is not attributable to the particular Contract for which an SBA guaranteed bond was approved.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1347 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations. As a result, SBA is clarifying and streamlining its regulations. This final rule improves the Agency's size program by simplifying and clarifying language in the existing rules, conforming these rules to present SBA policies and practices, and providing some substantive modifications to streamline the delivery of services to the public. The revised regulations will be more understandable and much easier to use, and will reduce the number of sections comprising Part 121 from eighteen to thirteen. The rule improves language, but does not change the existing size standards which apply to particular industries.

EFFECTIVE DATE: This rule is effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: On November 24, 1995, SBA published a proposed rule in the Federal Register (60 FR 57982) to completely revise its regulations governing the size determination program. SBA's intent in finalizing that rule is to streamline the size standards operation by simplifying and clarifying existing regulatory language and by eliminating unnecessary, irrelevant, or obsolete provisions. The final rule amends office titles to reflect a previous reorganization of functions within the structure of SBA. SBA has attempted to rewrite Part 121 in plain English in order to make the regulations more readable and less confusing.

The proposed rule contained eligibility requirements for organizations for the handicapped to receive awards of contracts set aside for small business and procedures for filing protests regarding the status of handicapped organizations (proposed §§ 121.1201–121.1206). Those sections have been removed from this final rule because the authority for such eligibility has expired. As a consequence, §§ 121.1301–121.1305 of the proposed rule have been renumbered as §§ 121.1201–121.1205 in this final rule.

SBA received and considered 25 timely comments in response to the proposed rule. The comments, as well as SBA's response to them, are discussed below. Other than the changes identified below in response to the comments and the elimination of proposed §§ 121.1201–121.1206 (as discussed above), the regulatory text of Part 121 has not been changed from the proposed rule. For a section by section analysis of the revised Part 121 and SBA's rationale for any changes from the pre-existing regulations, see the supplementary information published as part of the proposed rule (60 FR 57982).

Analysis of Comments Received

SBA received and considered eight comments to the proposed text for its affiliation regulation (proposed § 121.103). Six of these comments responded to the proposed exclusion from affiliation coverage afforded certain private investors that are engaged in the business of providing equity and/or debt financing to third parties. In addition to the existing exclusion from affiliation for Small Business Investment Companies (SBICs) and Development Companies, the proposed rule added an exclusion, for purposes of SBIC assistance only, for concerns owned by certain venture capital firms, pension funds, and charitable entities exempt from federal taxation under § 501(c) of the Internal Revenue Code. The proposed rule imposed the same control limitations on these investors as those imposed by SBA on SBICs under 13 CFR Part 107.

While the commenters supported SBA's intent to add an exclusion from affiliation for the listed investors, they thought that the proposal did not go far enough. One commenter agreed with the proposal to include venture capital operating companies (VCOCs) in the list of investors which would not be affiliated with applicant concerns, but felt that limiting the exception to financial investors that technically qualify as VCOCs might not achieve the desired goal. The commenter pointed out that a fund which resembles a VCOC because it has at least 50% of its portfolio in ''qualified venture capital investments'' and it obtains and exercises certain ''management rights'' with respect to those investments may nevertheless fail to qualify as a VCOC if its first investment was a passive investment. The commenter suggested that the affiliation exemption should be made available to any investing company that (1) has 50% of its portfolio in ''qualified venture capital investments'' at the time size is determined, or (2) would qualify as a VCOC but for its first investment.

SBA has considered the suggestion but has decided to limit § 121.103(b)(5)(i) to VCOCs, as proposed. SBA understands that other investors may exist whose investment goals, policies and activities are

identical to those of a VCOC, but who for one reason or another are not considered VCOCs. However, to properly administer a regulation that refers to the type of investments of a private entity would demand resources far in excess of those available to SBA. If, on the other hand, the private investor's status as a VCOC is the criteria for exemption from affiliation, SBA examiners need look no farther than a statement from the entity that it is a VCOC. SBA believes a statement of this type is likely to be reliable, since any company that is a VCOC is subject to certain requirements under Department of Labor regulations.

Another commenter recommended that the exclusion from affiliation be broadened to include any non-registered investment company beneficially owned by less than 100 persons if such company's sales literature or organization documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises. The commenter felt that a concern that meets the definition of an ''investment company'' under the Investment Company Act of 1940, as amended (the 1940 Act), has the necessary investment characteristics even though it is not registered under the 1940 Act due to the number of its beneficial owners. SBA agrees and has added a new paragraph (vi) to § 121.103(b)(5).

Three commenters argued that lack of control over the small concern should not be a requirement for an investor to benefit from the exclusion from affiliation. SBA disagrees. A small concern must be independently owned and operated, in addition to being small, in order to be eligible for SBIC assistance. See 15 USC 632 and 15 USC 662. Generally, a business that is controlled by its large investors does not satisfy this statutory requirement. In Part 107, however, SBA has identified certain special circumstances under which SBICs are permitted to assume control over a small concern. See 13 CFR § 107.865(c) and (d). In the proposed rule covering Part 121, SBA proposed to extend those exceptions to the private firms listed in § 121.103(b)(5). SBA is finalizing that proposal, but would like to clarify two points regarding the application of the control test to those private investors:

First, ''control'' will be determined under § 107.865, which incorporates the definition of Control under § 107.50. Second, the requirement in § 107.865(e) for an SBIC assuming temporary control over a concern to file a control certification with SBA would not apply to non-SBIC investors in the concern.

SBA is also taking this opportunity to correct a drafting error in current § 121.401(b), which was repeated in proposed § 121.103(b)(1). Both sections provide an unconditional exclusion from the affiliation rules for the entities listed therein, and both sections mention investment companies registered under the 1940 Act. However, it was never SBA's intent to provide an exclusion from affiliation for all investment companies registered under the 1940 Act. The regulation was intended to cover only those registered investment companies that are also SBICs. See 54 FR 52634 (December 21, 1989). In the final rule adopted today, registered investment companies are treated the same as non-registered investment companies—they will not be considered affiliated with the applicant concern if they satisfy the control test under § 107.865. Registered investment companies are listed under new § 121.103(b)(5)(v) in the final rule.

Finally, one commenter recommended expanding the exclusion from affiliation in § 121.103(b)(5) to include all investors primarily engaged in the business of providing equity and/or debt financing to third parties. SBA believes that such an exclusion is too broad, and does not adopt it in this final rule.

One commenter expressed concern that ''common facilities'' had been eliminated as a separate basis for finding affiliation in the proposed rule, and recommended that it be reinserted in the final rule. Although the proposed rule eliminated ''common facilities'' as a separate basis for finding affiliation, it was not SBA's intent to prohibit SBA from considering all appropriate factors, including ''common facilities,'' in determining whether affiliation exists. Section 121.103(a)(2) lists certain factors that may be considered by SBA in determining whether affiliation exists. It states that SBA considers factors such as ownership, management, and contractual relationships, but does not intend that list to be exhaustive. SBA believes that the flexibility to make an appropriate affiliation determination was in the proposed regulation, and does not add another separate basis for finding affiliation in this rule.

Another commenter objected to the language of proposed § 121.103(c)(1) that eliminated the ''presumption'' of control for persons that own, control, or have the power to control 50 percent or more of a concern's voting stock contained in the predecessor regulation at § 121.401(e)(1). The commenter felt that the regulation should provide only for a presumption of control which can be negated by specific facts in a particular case (e.g., person may own over 50% of voting stock, but through voting agreements or proxies may have divested control of the company). SBA disagrees. SBA believes that a person owning 50 percent of a concern should be deemed to control that concern regardless of any voting agreements. A person that has voting control of 50 percent of a concern, even if he or she does not own the stock associated with the voting rights, would also be deemed to control the concern, but that does not do away with the interests attendant to a 50 percent owner.

SBA received 12 comments to its proposed revision to the definition of ''annual receipts'' (proposed § 121.104). Ten commenters enthusiastically supported the revision of annual receipts that eliminated the requirement that businesses operating on a cash basis maintain a separate set of accrual basis books. They noted that such a change will reduce paper work and expense. No change in the final rule is made to that provision.

One commenter strongly supported the exclusion from annual receipts for amounts collected by another by a conference management services provider. Again, SBA concurs, and no change is made in this final rule.

One commenter recommended that custom brokers (businesses that collect customs duties and federal revenues) should be able to exclude ''pass-through'' amounts from their annual receipts in determining their size. The commenter felt that this added income distorts their status as a small business. Pass-through amounts for custom brokers was not an issue before the public in SBA's November 24, 1995 proposed rule. As such, SBA cannot add such an exclusion in this final rule. In addition, SBA has not performed an analysis of this industry to determine whether such an exclusion is warranted. In order for such a review to be done, interested parties must submit a request to the Assistant Administrator of SBA's Size Standards Staff in Washington, DC.

Finally, SBA has clarified what the term ''receipts'' encompasses in this final rule. There was some internal confusion that the proposed rule would have required a double counting of certain amounts by requiring the inclusion of ''gross or total income'' plus ''cost of goods sold.'' No double counting was intended, nor will it occur under this regulation. The terms ''total income,'' ''gross income,'' and ''cost of goods sold'' come directly from the definitions of those terms as set forth in applicable Internal Revenue Service (IRS) Federal tax return forms. For a corporation (IRS Form 1120, line 11), a

sub-chapter S corporation (IRS Form 1120S, line 6), or a partnership (IRS Form 1065, line 8), the applicable term is ''total income.'' For a sole proprietorship (Schedule C, IRS Form 1040, line 7), the applicable term is ''gross income.'' To this amount, the ''cost of goods sold'' (IRS Form 1120, line 2; IRS Form 1120S, line 2; IRS Form 1065, line 2; IRS Form 1040, Schedule C, line 4) is added to determine ''receipts'' for SBA purposes. SBA never intended to add ''cost of goods sold'' to the ''gross receipts or sales'' figures identified in these IRS forms, which would have resulted in some double counting.

One commenter believed that proposed § 121.105(c) needed to be clarified in the final rule. The proposed rule added that provision to make it clear that if one entity is replaced by another having the same assets and liabilities, the successor firm would not be treated as a new entity for purposes of calculating annual receipts or employees. SBA's regulations have historically required a concern that has acquired or been acquired as an affiliate during the applicable averaging period to include the receipts of both concerns in determining size. See 13 CFR 121.402(e)(1) (1995). That provision is retained in this final rule at § 121.104(d). This new provision is not intended to repeat that rule. It is intended to apply to the situation where a business entity ceases and a ''new'' business entity emerges with basically the same assets and liabilities as the previous entity. In such a case, instead of treating the successor business entity as a ''new'' concern, with § 121.104((b)(2) or § 121.106(b)(3) applying as appropriate, the revenues or employees of the predecessor concern will be counted for the full averaging period. A business entity cannot reorganize and be able to avoid the full application of SBA's size requirements.

One commenter recommended that the $6 million net worth and $2 million net income size standards for the Development Company program should be increased for inflation because they have not changed since their inception in 1980. The numerical value of specific size standards was not an item proposed for change in the November 24, 1995 proposed rule. As such, any change at this time would be contrary to the requirements of the Administrative Procedures Act and inappropriate. Anyone believing that specific size standards should be altered should write to the Assistant Administrator of SBA's Size Standards Staff at SBA's Headquarters, giving detailed reasons for the desired change.

Two commenters recommended that the reference to ''net worth'' in proposed § 121.301(b)(1) should be to ''tangible net worth,'' because items such as goodwill have no tangible value and should not be taken into account during calculation of net worth for loan approval purposes. SBA concurs and makes that revision in this final rule.

Four commenters opposed the elimination of a size standard differential for Redevelopment Areas in the context of SBA financial assistance (proposed § 121.301(e)). They supported keeping the differential for Redevelopment Areas for concerns seeking such financial assistance. Alternatively, if the differential is eliminated, they proposed increasing all receipt-based size standards by 25%. SBA disagrees. The reason for the differential was to assist distressed geographical areas needing development, not to increase all size standards by 25% for purposes of SBA financial assistance. Because Redevelopment Areas have become so common, however, that is effectively what has occurred. In addition, unlike Labor Surplus Areas, which are reviewed on a regular basis, a Redevelopment Area remains so designated once it receives the designation. Thus, areas that are no longer distressed remain eligible for the increased size standards. Given these circumstances, SBA continues to believe that the Redevelopment Area differential should be eliminated and the final rule reflects that.

One commenter disagreed with the provision of § 121.302 establishing size for financial assistance at the time the application for assistance is received by SBA, stating that concerns do not make applications directly to SBA. The commenter recommended that size should be determined as of the date of the funding or commitment to fund. SBA believes that the date of funding or commitment to fund is too far along in the process to determine a concern's size. SBA should not use its limited resources to determine loan-worthiness of a concern that is ineligible to receive the financial assistance because of its size. Thus, SBA believes that size must be determined when SBA starts its analysis. That, however, may not occur when the application is first received by SBA. Sometimes an application is not acted on immediately because it is not complete. In response to this comment and SBA's re-evaluation of its position, the final rule makes the date that an application is accepted for processing by SBA as the date that a concern's size is determined.

One commenter objected to the provision of proposed § 121.304 which permits a business concern with an existing SBA loan to be considered small for purposes of refinancing that loan even though it exceeds the applicable size standard at the time of the refinancing. This is a pre-existing SBA policy that was not changed by the November 24, 1995 proposed rule. That policy has existed for many years in order to protect the Government's investment. SBA has added a sentence to this section in this final rule to clarify that such refinancing would occur only where SBA determines that it is necessary to protect the Government's financial interest.

SBA received three comments regarding waivers to its nonmanufacturer rule (§ 121.406(b)). One comment recommended that the local SBA district office be empowered with the authority to approve or disapprove requests for waivers of the non-manufacturer rule. SBA disagrees. The statutory authority for such waivers is given to SBA's Administrator. This authority has been delegated to SBA's Associate Administrator for Government Contracting. While SBA has moved more and more authority to local district offices wherever possible, SBA believes that the authority to waive the nonmanufacturer rule needs to remain at this level to ensure consistency and fairness in all SBA offices.

Two commenters responded to SBA's proposed implementation of the nonmanufacturer rule under Simplified Acquisition Procedures (SAP) (proposed § 121.406(d)). One commenter supported the provision as written and applauded SBA's effort to consider the dilemma of regular dealers, suppliers and distributors under SAP. The other commenter recommended that the $25,000 ceiling below which a nonmanufacturer need not supply the product of a small business (provided that the product is manufactured or produced in the United States) should be increased to $100,000. That commenter reasoned that the ceiling was $25,000 when the Small Purchase amount was $25,000. Since SAP have replaced Small Purchase Procedures and the threshold for SAP is $100,000, the commenter believed that the nonmanufacturer ceiling should similarly be raised to $100,000.

Existing SBA regulations (13 CFR 121.906 and 121.1106) implement amendments made in 1988 to the Small Business Act (15 U.S.C. 637(a)(17)). Those regulations specify that to qualify for a small business set-aside or section 8(a) procurement of a manufactured or processed product, a small

nonmanufacturer must provide the product of a domestic small manufacturer. Specifically, an offeror that is not the manufacturer of the product (1) must itself be a small business concern, *and* (2) must also supply a product manufactured by a domestic small business concern. This requirement is commonly referred to as the ''nonmanufacturer rule.'' SBA may waive the nonmanufacturer rule if one of the following conditions exists: (1) SBA determines that no small business manufacturer can reasonably be expected to offer a product meeting the specifications required by a solicitation (individual waiver); or (2) SBA determines that no small business manufacturer of an item is available to participate in the federal market generally (class waiver).

On May 26, 1995 SBA published in the Federal Register (60 FR 27924) a proposed rule that would require a small business dealer or nonmanufacturer to provide the product of a small manufacturer on all small business set-aside or section 8(a) supply contracts over $2,500, including those processed under SAP. This proposed rule was not finalized, and the comments received by SBA and further study of the issue persuaded SBA that the May 26th proposed rule should not be adopted as final. As indicated above, the section in the November 24th proposed rule dealing with this issue resulted in only two comments. SBA has decided to finalize the rule as proposed on November 24th. In order to set forth its reasoning on this matter, SBA discusses below the comments earlier received in response to its May 26th proposed rule.

SBA's May 26th proposed rule would have extended the nonmanufacturer rule to all procurements processed under the SAP established by the Federal Acquisition Streamlining Act (FASA) of 1994. SBA offered two alternatives to this proposal, and invited comments on both along with the proposal. SBA's first alternative was to exempt from the nonmanufacturer rule contracts of $100,000 or less. The second alternative was to exempt contracts of $25,000 or less. (Contracts below the micro-purchases level of $2,500 would be exempt regardless of the approach in the proposed rule or either alternative.) This second alternative was the one proposed as part of SBA's November 24, 1995 proposed revision to the entire Part 121.

After considering the forty comments received in response to the May 26th proposed rule, as well as the two received in response to the November 24th proposed rule, SBA has concluded that applying the nonmanufacturer rule to all procurements reserved for small business, including those handled under SAP, would place inappropriate and substantial administrative burdens on a great number of small-dollar value contracts. Given the large volume of contracts of $25,000 or less (98 percent of procurement actions), contracting officers would likely experience burdensome delays in order to identify small manufacturer sources and to verify that small dealers were supplying the product of domestic small manufacturers. The likely significant increase in requests for waivers of the nonmanufacturer rule would overly burden contracting agencies and the SBA, creating further delays in the procurement process. SBA also has concluded that adoption of the proposed rule could have an undesirable effect of diminishing opportunities for small dealers in the federal market. For many products purchased in small-dollar quantities, there often appears to be few or no small business manufacturers participating in the federal market. Consequently, many dealers who have been supplying the federal government with products on contracts of $25,000 or less would, under the May 26th proposed rule, not be eligible for an award of a set-aside contract since they do not have or could not obtain products of a small manufacturer.

At the same time, SBA strongly believes that an exemption from the nonmanufacturer rule for contracts greater than $25,000 would have a substantial damaging effect on domestic small manufacturers. In fiscal years 1991 through 1993, small manufacturers averaged over $500 million in set-aside and 8(a) contracts ranging between $25,000 and $100,000. An exemption from the nonmanufacturer rule for these procurements would potentially shift much of this contracting from small to large manufacturers, and would defeat the very purpose of the nonmanufacturer rule.

The selection of the $25,000 level for applying the nonmanufacturer rule to contracts reserved for small business is consistent with the threshold formerly established for small purchase procedures (discontinued under FASA) and balances the important objectives of simplifying the procurement process with continuing to ensure that most of the benefits of procurements reserved for small business actually flow to small business. Utilizing this threshold of $25,000 will continue the level of competition between small and large manufacturers that existed under small purchase procedures. A higher threshold would introduce a new level of competition that would adversely affect small manufacturing enterprises. At the same time, small business dealers will continue to have the same level of contract opportunities at $25,000 and below that they formerly had under small purchase procedures. That is, they will continue to be able to provide the products of large manufacturers on procurements of $25,000 or less. Selecting this threshold will add no new requirements to the vast majority of smaller-sized procurements.

SBA received 40 comments in response to the May 26th proposed rule. Of the 40 comments, ten were from federal contracting activities, one from a State University Economic Development Institute (EDI), 28 from businesses (27 dealers and 1 manufacturer), and one was from a trade association. All but one of the commenters opposed applying the nonmanufacturer rule as the May 26th rule proposed to do. The one, a federal contracting activity, indicated its commitment to supporting the rule however implemented. Thirty-six commenters supported the first alternative of the proposed rule (a $100,000 threshold), and three indicated some support for the second alternative (a $25,000 threshold).

The ten federal contracting activities and one EDI that commented on the proposed rule favored exempting procurements of $100,000 or less from the nonmanufacturer rule. They believe that applying the rule to all procurements reserved for small business will place additional administrative burdens on contracting personnel, which is contrary to the intent of FASA. They pointed out that the proposed policy could result in a reluctance on the part of some contracting personnel to set aside procurements for small business, thus actually reducing small business participation and increasing government costs because of lessened cost competitiveness. They also anticipated a need to request more waivers, causing administrative burdens and processing delays at the SBA. Two of the federal contracting activities indicated that they would support retaining the $25,000 threshold as a practical alternative to requiring the application of the nonmanufacturer rule to all contracts over $2,500. The EDI's comments, while supporting some of the above, more fully describe the effects of the proposed rule upon small dealers and distributors. (SBA addresses the effects upon dealers later in this discussion.)

SBA recognizes that these points are legitimate concerns of federal procurement personnel with regard to

the proposed rule. Therefore, SBA has decided that the nonmanufacturer rule shall apply only to those contracts set aside for small business that are above $25,000. The exemption from the nonmanufacturer rule for contracts processed under small purchase procedures of $25,000 and below had proven quite workable in the past. SBA agrees that establishing a $100,000 threshold for the nonmanufacturer rule would certainly further simplify the procurement process and reduce the administrative burden on contracting officers. However, this administrative relief would come at significant expense to domestic small manufacturers who have traditionally provided products in response to procurements set aside for small business. With this final rule, administrative burdens will be no more and no less than they had been under small purchase procedures. Also, small business set-aside opportunities would not be diminished as a result of extending the nonmanufacturer rule to previously exempted procurements. SBA has concluded that the adverse effect of a $100,000 threshold upon such a significant part of the market for small manufacturers is not appropriate, and that the $25,000 threshold strikes a proper balance with the FASA goal of reducing administrative matters associated with federal procurement.

To alleviate the potential delays in the procurement process by applying the nonmanufacturer rule to procurements reserved for small business, two federal contracting activities recommended that SBA delegate waiver authority to contracting officers for these procurements. The SBA does not agree with this recommendation. Delegating this decision to literally thousands of contracting offices would likely lead to an inconsistent application of the nonmanufacturer rule. However, to address concerns regarding delays in the procurement process, SBA will attempt to complete the processing of individual waiver requests in connection with procurements processed under simplified acquisition procedures within five (5) business days of the receipt of a complete waiver request instead of the normal fifteen (15) business days. Generally, a contracting office submits, and SBA processes, a waiver request before it issues its solicitation. The markedly reduced time involved should lessen significantly any direct negative impact on small manufacturers or dealers or on the procurement process.

All but one of the 28 business commenters and the sole trade association commenting are associated with one affected industry, namely military surplus aircraft parts, and all supported the adoption of the $100,000 threshold. Firms in this industry purchase at auction military surplus aircraft parts from the Department of Defense (DoD), inventory them, and resell them to U.S. and friendly foreign military services. Items they purchase are generally new and unused, and are products almost exclusively of large manufacturers. As suppliers of products they do not manufacture, they would be unable to compete on small business set-aside and section 8(a) procurements if the nonmanufacturer rule were applicable.

Uniformly these commenters favored adoption of the alternative that would establish a $100,000 threshold instead of the proposed rule. They stated that the May 26, 1995 proposal to apply the nonmanufacturer rule to all procurements reserved for small business would harm small dealers of military surplus aircraft parts by effectively rendering them unable to compete on most procurements reserved for small business. This diminished opportunity to compete would result because there are few DoD approved small manufacturers of military aircraft parts, and most procurements are below the $100,000 simplified acquisition threshold. With few or no small manufacturers to supply products for these dealers, more federal solicitations would likely become open and unrestricted. On unrestricted procurements, these dealers believe they are at a competitive disadvantage when placed into direct competition with the same large manufacturers whose products they would propose to supply. Therefore, they believe such an application of the nonmanufacturer rule would in fact harm small businesses, and benefit large defense contractors.

SBA shares the concern about the impact of the proposed rule on the opportunities for small dealers in the federal market. As these comments point out, as well as comments received from several of the federal contracting activities, small dealers find it difficult to comply with the nonmanufacturer rule on small-dollar contracts due to the limited number of small manufacturer sources. To address this concern, the final rule re-establishes an exemption of the nonmanufacturer rule on contracts of $25,000 or less. The SBA, however, does not believe that a higher threshold is in the best interests of all small businesses.

As stated in this final rule as well as the May 26th proposed rule, SBA is particularly concerned about the impact on small business manufacturers of an exemption to the nonmanufacturer rule. Participation of small business in the federal procurement of aircraft parts offers an excellent example of the reasons for the SBA's concerns. In fiscal year 1993, small manufacturers of aircraft parts received direct awards of over $20 million in set-aside and 8(a) contracts that ranged between $25,000 and $100,000. (This figure does not include set-aside and 8(a) contracts for products that small manufacturers provided through small dealers.) An exemption of the nonmanufacturer rule to small business set-aside procurements between $25,000 and $100,000 could significantly reduce the opportunities for small business manufacturers. The SBA has found that a number of other industries would be affected in a similar manner if the $100,000 threshold were adopted. In recognition of the business practices of small dealers in the federal market, while at the same time protecting opportunities for small manufacturers and ensuring that the substantial value of small business set-asides flow to small business, the SBA believes that this final rule is in the overall best interest of small business.

The commenting membership of the association of dealers in military surplus aircraft parts also emphasized the unique character of their commodity, and they requested that it be treated as such. As a minimum alternative to the proposed rule, they requested that SBA grant a class waiver for military aircraft spare parts. As a response to this alternative, the Agency notes that §§ 121.1201–121.1205 of this final rule provide the policies and procedures that apply to all class waivers of the nonmanufacturer rule. SBA will consider a request for a class waiver for military surplus aircraft parts that is submitted with adequate support in accordance with the procedures laid out in the preceding reference.

The only business commenter not associated with the military surplus aircraft parts industry believes that the proposed rule would be inconsistent with U.S. policy regarding free trade barriers with its global trading partners. SBA disagrees. In accordance with the General Agreement on Tariffs and Trade, the North American Free Trade Agreement and the Canadian Free Trade Agreement, governments may establish procurement preference programs to assist small business, and this rule pertains to policies concerning the eligibility of business concerns who may participate in U.S. small business procurement programs.

SBA received three comments to § 121.603 of the November 24th proposed rule. The first comment

recommended that the section be revised to include the time at which size is determined for specific 8(a) subcontracts, believing that SBA must have inadvertently omitted this requirement from the November 24th proposed rule. That requirement was not omitted from the proposed rule, but, rather, appeared in proposed § 121.404. Proposed § 121.401 stated that the requirements set forth in §§ 121.401–121.412 applied to procurement programs including SBA's Minority Enterprise Development (i.e., the 8(a)) program. Proposed § 121.404 set forth the time at which size is determined for these procurement programs. While the time at which size is determined for 8(a) subcontracts continues to be contained in § 121.404, the final rule adds a cross reference in § 121.603 to § 121.404 for clarification.

The second comment believed that notification of size verification by SBA (proposed § 121.603(b)) is an unnecessary burden on SBA. SBA believes that such notification is needed to ensure fairness and the integrity of the program, and that any self-imposed burden is outweighed by this benefit.

The last comment suggested that § 121.603(c) be eliminated as unnecessary and redundant. This provision does not appear elsewhere in Part 121, and SBA believes that it is needed within the size provisions specifically relating to the 8(a) program.

As part of the supplementary information to the November 24, 1995 proposed rule, SBA published a table of statutory and regulatory size standards established by agencies other than SBA. That table is not repeated in this final rule. Anyone with an interest in size standards established by other agencies for specific programs within their authority should consult the table published with the proposed rule. 60 FR 57982, 57988.

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 believes that this final rule will have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* In addition, this rule constitutes a significant regulatory action for the purpose of Executive Order 12866. A regulatory assessment and a regulatory flexibility analysis follow:

(1) Description of Entities to Which This Rule Applies

This rule will primarily apply to small business nonmanufacturers (wholesale trade and retail trade firms) and will allow them to furnish the product of any manufacturer on procurements of $25,000 or less. Also, small business manufacturers will have to compete on certain procurements with small nonmanufacturers supplying products of large manufacturers. The lack of detailed data on contracts of $25,000 or less precludes an estimate of the number of small nonmanufacturers and small manufacturers this rule will affect. However, comments on the proposed rule suggest that a significantly greater number of small nonmanufacturers will be impacted by this rule than small manufacturers.

(2) Description of Potential Benefits of This Rule

The benefits of this rule are threefold. First, small business nonmanufacturers will maintain the same procurement opportunities for contracts of $25,000 and below as they had under small purchase procedures. Although the amount of contracting cannot be estimated, it does represent a significant proportion of the $7.9 billion awarded to small businesses under small purchase procedures in FY 1993. Second, small manufacturers will have the same or greater level of procurement opportunities under the simplified acquisition threshold as they had under small business set-aside and 8(a) procurements of $25,000 to $100,000. As discussed in the proposed rule, small manufacturers have received over $500 million annually in set-aside and 8(a) contracts within this dollar range. Finally, administrative burdens to small nonmanufacturers and contracting officers will be reduced since there will be no need to determine the size status of a manufacturing source on thousands of small-dollar contracts.

(3) Description of Potential Costs of This Rule

SBA believes there will be minimal costs to the federal government by reserving procurements of $25,000 or less to small nonmanufacturers. All small business set-aside and section 8(a) contracts are expected to be awarded at no more than fair-market value. Contracting officers, who determine that on a given procurement there will not be two or more small businesses competitive in market price, quality and delivery, may issue an unrestricted procurement. Therefore, there should be no significant increased costs to the government.

(4) Description of the Potential Net Benefits of the Rule

SBA believes that the benefits to small business exceed any costs to federal procurement as a result of this final rule. In the May 26th proposed rule, SBA expressed its belief that small business opportunities would be greater if small nonmanufacturers were required to supply the product of a domestic small business manufacturer. In light of the comments received, SBA has concluded that small nonmanufacturers participate much more significantly in small-dollar procurements than do small manufacturers. Thus, the net benefits of this final rule to small dealers, in terms of federal contracting opportunities for small business, would be substantially greater than the net benefits to small manufacturers from the proposed rule.

(5) Legal Basis for This Rule

The legal basis for this rule is sections 3(a), 5(a), 8(a) and 15(a) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(a).

(6) Federal Rules

There are no federal rules that duplicate, overlap or conflict with this final rule. SBA has exclusive statutory jurisdiction in establishing size standards. In establishing the $100,000 threshold for simplified acquisition procedures under which all procurements are reserved exclusively for small business, FASA did not address the application of the nonmanufacturer rule.

(7) Significant Alternatives to This Rule

In compliance with the Regulatory Flexibility Act, SBA considered two alternatives in its proposed rule of May 26, 1995. One alternative is the proposed rule itself, which would have the nonmanufacturer rule apply to all small business set-aside and section 8(a) procurements over $2,500. In proposing that rule, SBA offered and requested comments on two alternatives. The proposed rule, together with the alternatives, are discussed in the ''Supplementary Information,'' above. SBA has concluded for the reasons more fully presented above to adopt the second alternative.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does

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.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

Accordingly, pursuant to the authority set forth in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), SBA hereby revises part 121 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

Provisions of General Applicability

Sec.

Size Standards Used to Define Small Business Concerns

Size Eligibility Requirements for SBA Financial Assistance

Size Eligibility Requirements for Government Procurement

Size Eligibility Requirements for Sales or Lease of Government Property

Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

Size Eligibility Requirements for the Small Business Innovation Research (SBIR) Program

Size Eligibility Requirements for Paying Reduced Patent Fees

Size Eligibility Requirements for Compliance With Programs of Other Agencies

Procedures for Size Protests and Requests for Formal Size Determinations

Appeals of Size Determinations and SIC Code Designations

Subpart B—Other Applicable Provisions

Waivers of the Nonmanufacturer Rule for Classes of Products and Individual Contracts

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

Subpart A—Size Eligibility Provisions and Standards

Provisions of General Applicability

§ 121.101 What are SBA size standards?

SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ''small business'' concerns. Size standards have been established for types of economic activity, or industry, generally under the Standard Industrial Classification (SIC) System. The SIC System is described in the ''Standard Industrial Classification Manual'' published by the Office of Management and Budget, Executive Office of the President, and sold by the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The SIC System assigns four-digit SIC codes to all economic activity within ten major divisions. Section 121.201 describes the size standards now established. A full table matching a size standard with each four-digit SIC code is also published annually by SBA in the Federal Register.

§ 121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) Please address any requests to change existing size standards or establish new ones for emerging industries to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

§ 121.103 What is affiliation?

(a) *General Principles of Affiliation.* (1) Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

(3) Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated.

(4) SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.

(b) *Exclusion from affiliation coverage.* (1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

(3) Business concerns which are part of an SBA approved pool of concerns for a joint program of research and development as authorized by the Small Business Act are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses are not affiliated with the leasing company solely on the basis of a leasing agreement.

(5) For financial, management or technical assistance under the Small Business Investment Company program, an applicant concern is not affiliated with the investors listed in paragraphs (b)(5)(i) through (vi) of this section if the investors do not control the concern except under those circumstances set forth in § 107.865(c) or (d) of this chapter. For purposes of this paragraph (b)(5), ''control'' is determined under § 107.865 of this chapter.

(i) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 CFR 2510.3–101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or any state, or their political subdivisions, or any agency or instrumentality thereof, for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*);

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under section 501(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 501(c));

(v) Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (15 U.S.C. 80a-1, *et seq.*); and

(vi) Investment companies, as defined under the 1940 Act, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.

(6) A protege firm is not an affiliate of a mentor firm solely because the protege firm receives assistance from the mentor firm under Federal Mentor-Protege programs.

(c) *Affiliation based on stock ownership.* (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock.

(2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

(d) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Since stock options, convertible debentures, and agreements to merge (including agreements in principle) affect the power to control a concern, SBA treats them as though the rights granted have been exercised (except that an affiliate cannot use them to appear to terminate control over another concern before it actually does so). SBA gives present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered ''agreements in principle'' and, thus, are not given present effect.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern.

(f) *Affiliation based on joint venture arrangements.* (1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Concerns bidding on a particular procurement or property sale as joint venturers are affiliated with each other with regard to performance of that contract.

(3) A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

(4) For size purposes, a concern must include in its revenues its proportionate share of joint venture receipts.

(g) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

§ 121.104 How does SBA calculate annual receipts?

(a) *Definitions.* In determining annual receipts of a concern:

(1) *Receipts* means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus the ''cost of goods sold'' as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms (Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for other sole proprietorships). However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(2) *Completed fiscal year* means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

(3) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(b) *Period of measurement.* (1) Annual receipts of a concern which has been in business for 3 or more completed fiscal years means the receipts of the concern over its last 3 completed fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than 3 complete fiscal years means the receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Annual receipts of a concern which has been in business 3 or more complete fiscal years but has a short year as one of those years means the receipts for the short year and the two full fiscal years divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.

(c) *Use of information other than the Federal tax return.* Where other information gives SBA reason to regard Federal Income Tax returns as false, SBA may base its size determination on such other information.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before small business self-certification, the annual receipts in determining size status include the receipts of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size rather than only for the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (b) of this section even though this may result in different periods being used to calculate annual receipts.

(2) The annual receipts of a former affiliate are not included as annual receipts if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased .

§ 121.105 How does SBA define ''business concern or concern''?

(a) A business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

§ 121.106 How does SBA calculate number of employees?

(a) Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. SBA will consider the totality of the circumstances, including factors relevant for tax purposes, in

determining whether individuals are employees of the concern in question.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4) The treatment of employees of former affiliates or recently acquired affiliates is the same as for size determinations using annual receipts in § 121.104(d).

§ 121.107 How does SBA determine a concern's ''primary industry''?

In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

§ 121.108 What are the penalties for misrepresentation of size status?

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

Size Standards Used To Define Small Business Concerns

§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?

The size standards described in this section apply to all SBA programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. The following is a listing of size standards for industries under the SIC System. Size standards are listed by Division and apply to all industries in that Division except those specifically listed with separate size standards for a specific two-digit major group or four-digit industry code. The industry code applicable to an industry that cannot be otherwise classified will be SIC code 9999, Nonclassifiable Establishments, with a corresponding size standard of $5.0 million in annual receipts.

Size Standards by SIC Industry

SIC code and description	Size standards in number of employees or millions of dollars
DIVISION A—AGRICULTURE	
MAJOR GROUP 01—AGRICULTURAL PRODUCTION CROPS	$0.5
MAJOR GROUP 02—LIVESTOCK AND ANIMAL SPECIALTIES	$0.5
Except:	
0211 Beef Cattle Feedlots (Custom)	$0.5
0252 Chicken Eggs	$9.0
MAJOR GROUP 07—AGRICULTURAL SERVICES	$5.0
MAJOR GROUP 08—FORESTRY	$5.0
MAJOR GROUP 09—FISHING, HUNTING, AND TRAPPING	$3.0
DIVISION B—MININ	
MAJOR GROUP 10—METAL MINING	$500
MAJOR GROUP 12—COAL MINING	$500
MAJOR GROUP 13—OIL AND GAS EXTRACTION AND MAJOR GROUP 14—MINING AND QUARRYING OF NON-METALLIC MINERALS, EXCEPT FUELS.	$500
EXCEPT:	
1081 Metal Mining Services	$5.0
1241 Coal Mining Services	$5.0
1382 Oil and Gas Field Exploration Services	$5.0
1389 Oil and Gas Field Services, N.E.C.	$5.0
1481 Nonmetallic Minerals Services, Except Fuels	$5.0
DIVISION C—CONSTRUCTION	
MAJOR GROUP 15—GENERAL BUILDING CONTRACTORS	$17.0
MAJOR GROUP 16—HEAVY CONSTRUCTION, NON BUILDING	$17.0
EXCEPT:	
1629 (Part) Dredging and Surface Cleanup Activities	$13.5 [1]
MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	$7.0
DIVISION D—MANUFACTURING, [2]	500
EXCEPT:	
2032 Canned Specialties	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description		Size standards in number of employees or millions of dollars
2033	Canned Fruits, Vegetables, Preserves, Jams and Jellies	500 [3]
2043	Cereal Breakfast Foods	1,000
2046	Wet Corn Milling	750
2052	Cookies and Crackers	750
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C	750
2085	Distilled and Blended Liquors	750
2111	Cigarettes	1,000
2211	Broadwoven Fabric Mills, Cotton	1,000
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2656	Sanitary Food Containers, Except Folding	750
2657	Folding Paperboard Boxes, Including Sanitary	750
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2892	Explosives	750
2911	Petroleum Refining	1,500 [4]
2952	Asphalt Felts and Coatings	750
3011	Tires and Inner Tubes	1,000 [5]
3021	Rubber and Plastics Footwear	1,000
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C	750
3241	Cement, Hydraulic	750
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3275	Gypsum Products	1,000
3292	Asbestos Products	750
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C	750
3411	Metal Cans	1,000
3431	Enameled Iron and Metal Sanitary Ware	750
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
3519 Internal Combustion Engines, N.E.C	1,000
3531 Construction Machinery and Equipment	750
3537 Industrial Trucks, Tractors, Trailers, and Stackers	750
3562 Ball and Roller Bearings	750
3571 Electronic Computers	1,000
3572 Computer Storage Devices	1,000
3575 Computer Terminals	1,000
3577 Computer Peripheral Equipment, N.E.C	1,000
3578 Calculating and Accounting Machines, Except Electronic Computers	1,000
3585 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3612 Power, Distribution, and Specialty Transformers	750
3613 Switchgear and Switchboard Apparatus	750
3621 Motors and Generators	1,000
3624 Carbon and Graphite Products	750
3625 Relays and Industrial Controls	750
3631 Household Cooking Equipment	750
3632 Household Refrigerators and Home and Farm Freezers	1,000
3633 Household Laundry Equipment	1,000
3634 Electronic Housewares and Fans	750
3635 Household Vacuum Cleaners	750
3641 Electric Lamp Bulbs and Tubes	1,000
3651 Household Audio and Video Equipment	750
3652 Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661 Telephone and Telegraph Apparatus	1,000
3663 Radio and Television Broadcasting and Communications Equipment	750
3669 Communications Equipment, N.E.C	750
3671 Electron Tubes	750
3692 Primary Batteries, Dry and Wet	1,000
3694 Electrical Equipment for Internal Combustion Engines	750
3695 Magnetic and Optical Recording Media	1,000
3699 Electrical Machinery, Equipment, and Supplies, N.E.C	750
3711 Motor Vehicles and Passenger Car Bodies	1,000
3714 Motor Vehicle Parts and Accessories	750
3716 Motor Homes	1,000
3721 Aircraft	1,500
3724 Aircraft Engines and Engine Parts	1,000
3728 Aircraft Parts and Auxiliary Equipment, N.E.C	1,000 [9]
3731 Shipbuilding and Repair of Nuclear Propelled Ships	1,000
Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
Ship Repair (Including Overhauls and Conversion) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3743 Railroad Equipment	1,000
3761 Guided Missiles and Space Vehicles	1,000
3764 Guided Missile and Space Vehicle Propulsion Units and Propulsion Units Parts	1,000
3769 Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C	1,000
3795 Tanks and Tank Components	1,000
3812 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3996 Linoleum, Asphalted-Felt-Base, and other Hard Surface Floor Coverings, N.E.C	750
DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS, AND SANITARY SERVICES	
MAJOR GROUP 40—RAILROAD TRANSPORTATION	1500
EXCEPT:	
4013 Railroad Switching and Terminal Establishments	500
MAJOR GROUP 41—LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY AND PASSENGER TRANSPORTATION.	$5.0
MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	$18.5
EXCEPT:	
4212 (Part) Garbage and Refuse Collection, Without Disposal	$6.0
4231 Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
MAJOR GROUP 44—WATER TRANSPORTATION	500
EXCEPT:	
4491 Marine Cargo Handling	$18.5
4492 Towing and Tugboat Services	$5.0
4493 Marinas	$5.0
4499 Water Transportation Services, N.E.C.	$5.0
—Offshore Marine Water Transportation Services	$20.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
MAJOR GROUP 45—TRANSPORTATION BY AIR	1500
EXCEPT:	
4522 Air Transportation, Nonscheduled	1500
—Offshore Marine Air Transportation Services	$20.5
4581 Airports, Flying Fields, and Airport Terminal Services	$5.0
MAJOR GROUP 46—PIPELINES, EXCEPT NATURAL GAS,	1500
EXCEPT:	
4619 Pipelines, N.E.C.	$25.0
MAJOR GROUP 47—TRANSPORTATION SERVICES,	$5.0
EXCEPT:	
4724 Travel Agencies	$1.0[6]
4731 Arrangement of Transportation of Freight and Cargo	$18.5
4783 Packing and Crating	$18.5
MAJOR GROUP 48—COMMUNICATIONS.	
4812 Radiotelephone Communications	1,500
4813 Telephone Communications, Except Radiotelephone	1,500
4822 Telegraph and Other Message Communications	$5.0
4832 Radio Broadcasting Stations	$5.0
4833 Television Broadcasting Stations	$10.5
4841 Cable and Other Pay Television Services	$11.0
4899 Communications Services, N.E.C.	$11.0
MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES,	$5.0
EXCEPT:	
4911 Electric Services	4 million megawatt hrs.
4924 Natural Gas Distribution	500
4953 Refuse Systems	$6.0
4961 Steam and Air-Conditioning Supply	$9.0
DIVISION F—WHOLESALE TRADE	100
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
DIVISION G—RETAIL TRADE	$5.0
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
5271 Mobile Home Dealers	$9.5
5311 Department Stores	$20.0
5331 Variety Stores	$8.0
5411 Grocery Stores	$20.0
5511 Motor Vehicle Dealers (New and Used)	$21.0
5521 Motor Vehicle Dealers (Used Only)	$17.0
5541 Gasoline Service Stations	$6.5
5599 Automobile Dealers, N.E.C.	$5.0
—Aircraft Dealers, Retail	$7.5
5611 Men's and Boys' Clothing and Accessory Stores	$6.5
5621 Women's Clothing Stores	$6.5
5651 Family Clothing Stores	$6.5
5661 Shoe Stores	$6.5
5722 Household Appliance Stores	$6.5
5731 Radio, Television, and Consumer Electronics Stores	$6.5
5734 Computer and Computer Software Stores	$6.5
5812 (Part) Food Service, Institutional	$15.0
5961 Catalog and Mail-Order Houses	$18.5
5983 Fuel Oil Dealers	$9.0
DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE	$5.0
EXCEPT:	
6021–6082 National and Commercial Banks, Savings, Institutions and Credit Unions	$100 Million in assets[7]
6331 Fire, Marine, and Casualty Insurance	1,500
6515 (Part) Leasing of Building Space to Federal Government by Owners	$15.0[8]
6531 Real Estate Agents and Managers	$1.5[6]
DIVISION I—SERVICES	$5.0
EXCEPT:	

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
7211 Power Laundries, Family and Commercial	$10.5
7213 Linen Supply	$10.5
7216 Drycleaning Plants, Except Rug Cleaning	$3.5
7217 Carpet and Upholstery Cleaning	$3.5
7218 Industries Launderers	$10.0
7311 Advertising Agencies	$5.0 [6]
7312 Outdoor Advertising Services	$5.0 [6]
7313 Radio, Television, and Publishers' Advertising Representatives	$5.0 [6]
7319 Advertising, N.E.C.	$5.0 [6]
7349 Building Cleaning and Maintenance Services, N.E.C.	$12.0
7371 Computer Programming Services	$18.0
7372 Prepackaged Software	$18.0
7373 Computer Integrated Systems Design	$18.0
7374 Computer Processing and Data Preparation and Processing Services	$18.0
7375 Information Retrieval Services	$18.0
7376 Computer Facilities Management Services	$18.0
7377 Computer Rental and Leasing	$18.0
7378 Computer Maintenance and Repair	$18.0
7379 Computer Related Services, N.E.C	$18.0
7381 Detective, Guard, and Armord Car Services	$9.0
7382 Security Systems Services	$9.0
7389 Business Services, N.E.C	$5.0
Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	$3.5
7513 Truck Rental and Leasing Without Drivers	$18.5
7514 Passenger Car Rental	$18.5
7515 Passenger Car Leasing	$18.5
7534 Tire Retreading and Repair Shops	$10.5
7699 Repair Shops and Related Services, N.E.C	$5.0 [9]
7812 Motion Picture and Video Tape Production	$21.5
7819 Services Allied to Motion Picture Production	$21.5
7822 Motion Picture and Video Tape Distribution	$21.5
8299 (Part) Flight Training Services	$18.5
8711 Engineering Services	$2.5
Military and Aerospace Equipment and Military Weapons	$20.0
Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
Marine Engineering and Naval Architecture	$13.5
8712 Architectural Services (Other Than Naval)	$2.5
8713 Surveying Services	$2.5
8721 Accounting, Auditing, and Bookkeeping Services	$6.0
8731 Commercial Physical and Biological Research	500 [10]
Aircraft	1,500
Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8741 (Part) Conference Management Services	$5.0 [6]
8744 Facilities Support Management Services	$5.0 [11]
Base Maintenance	$20.0 [12]
Environmental Remediation Services	500 [13]

Footnotes:

[1] SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[2] SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

[3] SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in section 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

[4] SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[5] SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture;

(2) The value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period; and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

[6] SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

[7] A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Assets* for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

[8] SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[9] SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

[10] SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[11] Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

[12] SIC code 8744:

(1) If one of the activities of base maintenance, as defined in paragraph (2) of this footnote, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

[13] SIC codre 8744: (1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Size Eligibility Requirements For SBA Financial Assistance

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the industry in which:

(1) The applicant combined with its affiliates is primarily engaged; and

(2) The applicant alone is primarily engaged.

(b) For Development Company programs, an applicant must meet one of the following standards:

(1) Including its affiliates, tangible net worth not in excess of $6 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $2 million; or

(2) The same standards applicable under paragraph (a) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) Including its affiliates, tangible net worth not in excess of $18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years not in excess of $6 million; or

(2) The same standards applicable under paragraph (a) of this section.

(d) For Surety Bond Guarantee assistance—

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if its average annual receipts do not exceed $5.0 million.

(2) Any concern not specified in paragraph (d)(1) of this section must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.

(e) The applicable size standards for the purpose of all SBA financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25 percent whenever the applicant agrees to use the assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication called ''Area Trends.''

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size of an applicant for SBA financial assistance is determined as of the date the application for such financial assistance is accepted for processing by SBA, except for the Disaster Loan and Preferred Lenders programs.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration.

(d) Changes in size subsequent to the applicable date when size is determined will not disqualify an applicant for assistance.

§ 121.303 What size procedures are used by SBA before it makes a formal size determination?

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

§ 121.304 What are the size requirements for refinancing an existing SBA loan?

(a) A concern that applies to refinance an existing SBA loan or guarantee will be considered small for the refinancing even though its size has increased since the date of the original financing to exceed its applicable size standard, provided that:

(1) The increase in size is due to natural growth (as distinguished from merger, acquisition or similar management action); and

(2) SBA determines that refinancing is necessary to protect the Government's financial interest.

(b) If a concern's size has increased other than by natural growth, the concern and its affiliates must be small at the time the application for refinancing is accepted for processing by SBA.

§ 121.305 What size eligibility requirements exist for obtaining business loans relating to particular procurements?

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

Size Eligibility Requirements for Government Procurement

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401 through 121.412 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency Program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, and Federal Small Disadvantaged Business programs.

§ 121.402 What size standards are applicable to procurement assistance programs?

(a) A concern must meet the size standard for the SIC code specified in the solicitation.

(b) The procuring agency contracting officer, or authorized representative, designates the proper SIC code and size standard in a solicitation, selecting the SIC code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the SIC Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value.

(c) The SIC code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns a SIC code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by a SIC code designation or size standard designation may appeal the designations to OHA under Part 134 of this chapter.

§ 121.403 Are SBA size determinations and SIC code designations binding on parties?

Formal size determinations and SIC code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

§ 121.404 When does SBA determine the size status of a business concern?

Generally, SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price. The following are two exceptions to this rule:

(a) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(b) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(f)(3) is determined as of the date of the best and final offer.

§ 121.405 May a business concern self-certify its small business size status?

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to § 121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or MED procurements?

(a) *General.* In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products, an offeror must either:

(1) Be the manufacturer of the end item being procured (and the end item

must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) *Nonmanufacturers.* (1) A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public; and

(iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

(2) For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semifinished as a raw material to be used in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(i) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and

(ii) The importance of the elements added by the concern to the function of the end item, regardless of their relative value.

(3) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market.

(4) The two waiver possibilities identified in paragraph (b)(3) of this section are called ''class'' waivers and ''individual'' waivers respectively, and the procedures for them are contained in § 121.1204 .

(5) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the SIC codes of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in § 13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed $25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

§ 121.407 What are the size procedures for multiple item procurements?

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an ''Application for Small Business Size Determination'' (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in § 121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the SIC code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to section 8(d) of the Small Business Act, a concern is small:

(a) For subcontracts of $10,000 or less which relate to Government procurements, if its number of employees (including its affiliates) does not exceed 500 employees. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under SIC code 8711;

(b) For subcontracts exceeding $10,000 which relate to Government procurements, if its number of employees or average annual receipts (including its affiliates) does not exceed the size standard for the product or service it is providing on the subcontract; and

(c) For subcontracts for financial services, if the concern (including its affiliates) is a commercial bank or savings and loan association whose assets do not exceed $100 million.

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

(a) Prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS), or equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

§ 121.412 What are the size procedures for partial small business set-asides?

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

Size Eligibility Requirements For Sales Or Lease Of Government Property

§ 121.501 What programs for sales or leases of Government property are subject to size determinations?

Sections 121.501 through 121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium.

§ 121.502 What size standards are applicable to programs for sales or leases of Government property?

(a) Unless otherwise specified in this part—

(1) A concern primarily engaged in manufacturing is small for sales or leases of Government property if it does not exceed 500 employees;

(2) A concern not primarily engaged in manufacturing is small for sales or leases of Government property if it has annual receipts not exceeding $2 million.

(b) Size status for such sales and leases is determined by the primary industry of the applicant business concern.

§ 121.503 Are SBA size determinations binding on parties?

Formal size determinations based upon a specific Government sale or lease, or made in response to a request from another Government agency under § 121.901, are binding upon the parties. Other SBA opinions provided to contracting officers or others are only advisory, and are not binding or appealable.

§ 121.504 When does SBA determine the size status of a business concern?

SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the Government as part of its initial offer including price where there is a specific sale or lease at issue, or as set forth in § 121.903 if made in response to a request of another Government agency.

§ 121.505 What is the effect of a self-certification?

(a) A contracting officer may accept a concern's self-certification as true for the particular sale or lease involved, in the absence of a written protest by other offerors or other credible information which would cause the contracting officer or SBA to question the size of the concern.

(b) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.

§ 121.506 What definitions are important for sales or leases of Government-owned timber?

(a) *Forest product industry* means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials.

(b) *Logging of timber* means felling and bucking, yarding, and/or loading. It does not mean hauling.

(c) *Manufacture of logs* means, at a minimum, breaking down logs into rough cuts of the finished product.

(d) *Sell* means, in addition to its usual and customary meaning, the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber.

(e) *Significant logging of timber* means that a concern uses its own employees to perform at least two of the following: felling and bucking, yarding, and loading.

§ 121.507 What are the size standard and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

(a) To be small for purposes of the sale of Government-owned timber (other than Special Salvage Timber) a concern must:

(1) Be primarily engaged in the logging or forest products industry;

(2) Not exceed 500 employees, taking into account its affiliates; and

(3) If it does not intend at the time of the offer to resell the timber—

(i) Agree that it will manufacture the logs with its own facilities or those of another business which meets the requirements of paragraphs (a)(1) and (a)(2) of this section;

(ii) Agree that if it eventually resells the timber, it will resell no more than 30% of the sawtimber volume to other businesses which do not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(iii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume to businesses which do meet the requirements of paragraphs

(a)(1) and (a)(2) of this section; or

(4) If it intends at the time of offer to resell the timber—

(i) Agree that it will not sell more than 30% of such timber (50% of such timber if the concern is an Alaskan business) to a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(ii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume (or at least 50% of the sawtimber volume, if it is an Alaskan business) to businesses which meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(b) For a period of three years following the date upon which a concern purchases timber under a small business set-aside (other than through the Special Salvage Timber Sale program), it must maintain a record of:

(1) The name, address and size status of every concern to which it sells the timber or sawlogs; and

(2) The species, grades and volumes of sawlogs sold.

(c) For a period of three years following the date upon which a concern purchases timber, it must by contract require all small business repurchasers of the sawlogs or timber it purchased under the small business set-aside to maintain the records described in paragraph (b) of this section.

§ 121.508 What are the size standard and other requirements for the purchase of Government-owned Special Salvage Timber?

(a) In order to purchase Government-owned Special Salvage Timber from the United States Forest Service or the Bureau of Land Management as a small business, a concern must:

(1) Be primarily engaged in the logging or forest product industry;

(2) Have, together with its affiliates, no more than twenty-five employees during any pay period for the last twelve months; and

(3) If it does not intend at the time of offer to resell the timber—

(i) Agree that it will manufacture a significant portion of the logs with its own employees; and

(ii) Agree that it will log the timber only with its own employees or with employees of another business which is eligible for award of a Special Salvage Timber sales contract; or

(4) If it intends at the time of offer to resell the timber, agree that it will perform a significant portion of timber logging with its own employees and that it will subcontract the remainder of the timber logging to a concern which is eligible for award of a Special Salvage Timber sales contract.

§ 121.509 What is the size standard for leasing of Government land for coal mining?

A concern is small for this purpose if it:

(a) Together with its affiliates, does not have more than 250 employees;

(b) Maintains management and control of the actual mining operations of the tract; and

(c) Agrees that if it subleases the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

§ 121.510 What is the size standard for leasing of Government land for uranium mining?

A concern is small for this purpose if it, together with its affiliates, does not have more than 100 employees.

§ 121.511 What is the size standard for buying Government-owned petroleum?

A concern is small for this purpose if it is primarily engaged in petroleum refining and meets the size standard for a petroleum refining business.

§ 121.512 What is the size standard for stockpile purchases?

A concern is small for this purpose if:

(a) It is primarily engaged in the purchase of materials which are not domestic products; and

(b) Its annual receipts, together with its affiliates, do not exceed $42 million.

Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

§ 121.601 What is a small business for purposes of admission to SBA's Minority Enterprise Development (MED) program?

An applicant must be small under the size standard corresponding to its primary industry classification in order to be admitted to SBA's Minority Enterprise Development (MED) program.

§ 121.602 At what point in time must a MED applicant be small?

A MED applicant must be small for its primary industry at the time SBA certifies it for admission into the program.

§ 121.603 How does SBA determine whether a Participant is small for a particular MED subcontract?

(a) *Self certification by Participant.* A MED Participant must certify that it qualifies as a small business under the SIC code assigned to a particular MED subcontract as part of its initial offer including price to the procuring agency. The Participant also must submit a copy of its offer, including its self-certification as to size, to the appropriate SBA district office at the same time it submits the offer to the procuring agency. *See* § 121.404 for the time at which size is determined for, and § 121.406 for the applicability of the nonmanufacturer rule to, MED procurements.

(b) *Verification of size by SBA.* Within 30 days of its receipt of a Participant's size self-certification for a particular MED subcontract, the SBA district office serving the geographic area in which the Participant's principal office is located will review the Participant's self-certification and determine if it is small for purposes of that subcontract. The SBA district office will review the Participant's most recent financial statements and other relevant data and then notify the Participant of its decision.

(c) *Changes in size between date of self-certification and date of award.* (1) Where SBA verifies that the selected Participant is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status for that procurement.

(2) Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status, and SBA must verify the new certification before award can occur.

(d) *Finding Participant to be other than small.* (1) A Participant may request a formal size determination (pursuant to §§ 121.1001 through 121.1009) with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the Participant is located within 5 working days of its receipt of notice from the SBA district office that it is not small for a particular MED subcontract.

(2) Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the MED program, as appropriate.

§ 121.604 Are MED Participants considered small for purposes of other SBA assistance?

A concern which SBA determines to be a small business for the award of a MED subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the MED subcontract in question.

Size Eligibility Requirements for the Small Business Innovation Research (SBIR) Program

§ 121.701 What SBIR programs are subject to size determinations?

(a) These sections apply to size status for award of a funding agreement pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97–219, 15 U.S.C. 638(e) through (k)).

(b) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(c) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work includes:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible to compete for award of funding agreements in SBA's Small Business Innovation Research (SBIR) program, a business concern must:

(a) Be at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(b) Not have more than 500 employees, including its affiliates.

§ 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

§ 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards.

§ 121.705 Must a business concern self-certify its size status?

(a) A firm must self-certify it is small in its SBIR funding proposal.

(b) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001 through 121.1009.

Size Eligibility Requirements For Paying Reduced Patent Fees

§ 121.801 May patent fees be reduced if a concern is small?

These sections apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97–247, 96 Stat. 317. The eligibility requirements for independent inventors and nonprofit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Questions concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBA size determination.

Size Eligibility Requirements for Compliance With Programs of Other Agencies

§ 121.901 Can other Government agencies obtain SBA size determinations?

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.

§ 121.902 What size standards are applicable to programs of other agencies?

(a) *SBA size standards.* The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

(b) *Special size standards.* (1) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not appropriate, then agency heads may establish a small business definition for the exclusive use of such program which is more appropriate, but only when:

(i) The size standard is first proposed for public comment pursuant to the Administrative Procedure Act, 4 U.S.C. 553;

(ii) The proposed size standard provides for determining size measured by average number of employees over 12 months for manufacturing concerns, average annual revenues over three years for concerns providing services, and data over a period of not less than three years for all other concerns (unless approved by SBA, ''annual receipts'' and ''number of employees'' must be determined in accordance with §§ 121.104 and 121.106, respectively); and

(iii) The proposed size standard is approved by SBA's Administrator.

(2) In order to receive the approval of SBA's Administrator, the agency head must:

(i) Request approval prior to publishing the proposed rule containing the size standard. The request must include: an explanation of the contemplated industry size standard, the reasons the SBA size standard is not appropriate, and the reasons the proposed size standard would be appropriate; and a certification that there will be compliance with the criteria set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(ii) Agree to provide written notice to SBA's Administrator prior to publishing the contemplated size standard as a final rule. The notice must include: a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standard followed by a copy of the intended final rule and preamble prior to its publication; copies of all public

comments relating to the size standard received in response to the proposed rule; and any other supporting documentation relevant to the size standard and requested by SBA's Administrator.

(3) When approving any size standard established pursuant to subsection (b) of this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(4) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

§ 121.903 When does SBA determine the size status of a business concern?

For the purpose of compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Procedures for Size Protests and Requests for Formal Size Determinations

§ 121.1001 Who may initiate a size protest or a request for formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, the following entities may file a size protest in connection with a particular procurement or sale:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, or the Associate Administrator for Government Contracting; and

(iv) Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question. A concern found to be other than small in connection with the procurement is not an interested party unless there is only one remaining offeror after the concern is found to be other than small.

(2) For SBA's Subcontracting Program, the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(v) Other interested parties.

(3) For SBA's Small Business Innovation Research (SBIR) Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director or the Assistant Administrator for Technology; and

(iv) Other interested parties.

(4) For the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another Federal agency, the following entities may file a protest in connection with a particular SDB procurement:

(i) Any offeror for the specific SDB requirement;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(5) For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB price evaluation preferences, the following entities may protest in connection with a particular procurement:

(i) Any offeror;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(b) *Request for Size Determinations.* (1) For SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance; and

(ii) The SBA official with authority to take final action on the assistance requested. That official may also request the appropriate Government Contracting Area Office to determine whether affiliation exists between an applicant for financial assistance and one or more other entities for purposes of determining whether the applicant would exceed the loan limit amount imposed by § 120.151 of this chapter.

(2) For SBA's MED program—

(i) Concerning initial MED eligibility, the following entities may request a formal size determination:

(A) The MED applicant concern; and

(B) The Director of the Division of Program Certification and Eligibility or the Associate Administrator for MED.

(ii) Concerning individual 8(a) subcontract awards, whether sole source or competitive, the following entities may request a formal size determination:

(A) The MED concern nominated by SBA for the particular sole source 8(a) award or the apparent successful offeror for the particular competitive 8(a) award;

(B) The SBA program official with authority to execute the 8(a) subcontract; and

(C) The SBA District Director in the district serving the area in which the headquarters of the MED concern is located, regardless of the location of a parent company and affiliates, or the Associate Administrator for MED.

(3) For SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a COC; and

(ii) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting.

(4) For SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(ii) Authorized officials of other Federal agencies administering a property sales program.

(5) For eligibility to pay reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees; and

(ii) The Patent and Trademark Office.

(6) For purposes of determining compliance with small business requirements of another Government agency program not otherwise specified in this section, an official with authority to administer the program involved may request a formal size determination.

§ 121.1002 Who makes a formal size determination?

The responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination, with the exception of size determinations for purposes of the Disaster Loan Program, which will be made by the Disaster Area Office Director or designee responsible for the area in which the disaster occurred.

§ 121.1003 Where should a size protest be filed?

A protest involving a government procurement or sale must be filed with the contracting officer for the procurement or sale, who must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested concern is located, regardless of the location of any parent company or affiliates.

§ 121.1004 What time limits apply to protests?

(a) *Protests by entities other than contracting officers or SBA.* (1) *Non-negotiated procurement or sale.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) *Negotiated procurement.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Multiple award schedule.* On a multiple award schedule procurement set aside for small business, protests will be considered timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in § 121.1004(a)(1) or postmarked no later than one day after the date of the telephone protest.

§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

(1) The protest and any accompanying materials;

(2) A copy of the self-certification as to size;

(3) Identification of the applicable size standard;

(4) A copy of the solicitation;

(5) Identification of the date of bid opening or notification provided to unsuccessful offerors;

(6) The date on which the protest was received; and

(7) A complete address and point of contact for the protested concern.

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA.

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's SBIR Program, the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

(b) When SBA receives a request for a formal size determination in accord with § 121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern does not submit a completed SBA Form 355, answers to the protest allegations, or other requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the form, any information missing from it, or other missing information would show or tend to show that the concern is other than a small business.

§ 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* After receipt of a protest or a request for a formal size determination, SBA will make a formal size determination within 10 working days, if possible.

(b) *Basis for determination.* The size determination will be based primarily on information supplied by the protestor or the entity requesting the size determination and the subject concern. The determination, however, may also be based on other grounds not raised in the protest or request for size determination. SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(c) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(d) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(e) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(g) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA.

(2) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(3) A concern determined to be other than small for a particular size standard is ineligible for any procurement or assistance authorized by the Small Business Act or the Small Business Investment Act of 1958, requiring the same or a lower size standard, unless recertified as small pursuant to § 121.1010. Following an adverse size determination, a concern cannot again self-certify as small within the same or a lower size standard unless it is recertified as small by SBA. If it does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on another assistance application, the concern must immediately inform the officials responsible for the pending procurement or other requested assistance of the adverse size determination.

(h) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided the case has not been accepted for review by OHA.

§ 121.1010 How does a concern become recertified as a small business?

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

Appeals of Size Determinations and SIC Code Designations

§ 121.1101 Are formal size determinations subject to appeal?

There is no right of appeal of a size determination. OHA, however, may, in its sole discretion, review a formal size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office. Unless OHA accepts a petition for review of a formal size determination, the size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office is the final decision of SBA. The procedures for requesting discretionary reviews by OHA of formal size determinations are set forth in part 134 of this chapter.

§ 121.1102 Are SIC code designations subject to appeal?

Appeals may be made to OHA, which has exclusive jurisdiction to determine appeals of SIC code designations pursuant to part 134 of this chapter.

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular MED contract, only the Associate Administrator for MED may appeal.

(b) Procedures for perfecting SIC code appeals with OHA are contained in § 19.303 of the Federal Acquisition Regulations, 48 CFR 19.303.

Subpart B—Other Applicable Provisions

Waivers of the Nonmanufacturer Rule for Classes of Products and Individual Contracts

§ 121.1201 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in § 121.406(b).

§ 121.1202 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?

(a) A waiver for a class of products (class waiver) will be granted when there are no small business manufacturers or processors available to participate in the Federal market for that class of products.

(b) *Federal market* means acquisitions by the Federal Government from offerors located in the United States, or such smaller area as SBA designates if it concludes that the class of products is not supplied on a national basis.

(1) When considering the appropriate market area for a product, SBA presumes that the entire United States is the relevant Federal market, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(2) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius, political, or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. SBA examines the following factors, among others, in cases where geographic segmentation for a class of products is urged:

(i) Whether perishability affects the area in which the product can practically be sold;

(ii) Whether transportation costs are high as a proportion of the total value

of the product so as to limit the economic distribution of the product;

(iii) Whether there are legal barriers to transportation of the item;

(iv) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and

(v) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(c) *Available to participate* in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within a four-digit Industry Number as established by the Office of Management and Budget in the SIC Manual.

§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

An individual waiver for a product in a specific solicitation will be approved when the SBA Associate Administrator for Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.1204 What are the procedures for requesting and granting waivers?

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Associate Administrator of Government Contracting, Small Business Administration, 409 3rd Street S.W., Washington, D.C. 20416.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable SIC code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the Federal Register seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the Federal Register stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Associate Administrator for Government Contracting that the procurement is proceeding under the authority of FAR § 6.302–2 (48 CFR 6.302–2) for ''unusual and compelling urgency,'' or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the Federal Register. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Associate Administrator for Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Associate Administrator for Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the Federal Register, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or processor in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the Federal Register.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, SIC code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed $500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted will be maintained in SBA's Procurement Automated Source System (PASS). A list of such waivers may also be obtained by contacting the Office of Government Contracting at the Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416, or at the nearest SBA Government Contracting Area Office.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1348 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is clarifying and streamlining its regulations. This final rule reorganizes the entire Part 123 covering the disaster loan program to make it clearer and easier to use.

EFFECTIVE DATE: This rule is effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, at (202) 205–6734.

SUPPLEMENTARY INFORMATION: Part 123 of Chapter I, 13 CFR contains policies governing the eligibility of disaster victims to obtain low-cost loans to restore their damaged property to its pre-disaster condition. On November 24, 1995, SBA published a proposed rule in the Federal Register (60 FR 58014) to reorganize the entire Part 123 to make it clearer and easier to use. SBA did not receive any comments in response to the proposed rule. Thus, SBA is finalizing that rule without any material changes. The rule eliminates references to disasters which occurred years ago, and it would eliminate Subpart D—Persian Gulf Troop Deployment Economic Injury Loans because the authority for that loan program has expired. A conversion table follows:

Existing section	Action	New section
123.1	Revise ..	123.1
123.2	Revise ..	123.101
123.3	Revise ..	123.3, 123.4, 123.5, 123.10, 123.101
123.4	Revise ..	123.5
123.5	Delete ..	
123.6	Revise ..	123.8
123.7	Revise ..	123.3
123.8	Delete ..	
123.9	Revise ..	123.101, 123.104, 123.105
123.10 ..	Delete ..	
123.11 ..	Revise ..	123.11
123.12 ..	Revise ..	123.13
123.13 ..	Revise ..	123.16, 123.104
123.14 ..	Revise ..	123.101
123.15 ..	Delete ..	
123.16 ..	Delete ..	
123.17 ..	Revise ..	123.201
123.18 ..	Revise ..	123.12
123.19 ..	Revise ..	123.9
123.20 ..	Delete ..	
123.21 ..	Revise ..	123.100, 123.200
123.22 ..	Revise ..	123.3
123.23 ..	Revise ..	123.3
123.24 ..	Revise ..	123.6, 123.7, 123.12, 123.101, 123.105, 123.106, 123.107, 123.201, 123.202
123.25 ..	Revise ..	123.15, 123.105
123.26 ..	Revise ..	123.202, 123.203
123.27 ..	Delete ..	
123.28 ..	Revise ..	123.202
123.29 ..	Delete ..	
123.40 ..	Delete ..	
123.41 ..	Revise ..	123.14, 123.301, 123.302, 123.303
123.60–69.	Delete ..	

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 rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866, or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting preparation of the 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.

List of Subjects in 13 CFR Part 123

Disaster assistance, loan programs—business, Small businesses.

Pursuant to the authority set forth in sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, SBA revises Part 123 of Title 13 of the Code of Federal Regulations, to read as follows:

PART 123—DISASTER LOAN PROGRAM

Overview

Home Disaster Loans

Physical Disaster Business Loans

Economic Injury Disaster Loans

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

Overview

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (c), and (f). Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change the rules in this part, without advance notice, by publishing interim emergency regulations in the Federal Register.

§ 123.2 What are disaster loans and disaster declarations?

SBA offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

§ 123.3 How are disaster declarations made?

(a) There are four ways in which disaster declarations are issued which make SBA disaster loans possible:

(1) The President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance).

(2) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property. Such damage usually must meet the following tests:

(i) In any county or other smaller political subdivision of a State or U.S. possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

(ii) In any such political subdivision, at least three businesses each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower, and, as a direct result of such physical damage, 25 percent or more of the work force in their community would be unemployed for at least 90 days; and

(iii) the Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245–0121). This request should be delivered to the SBA Disaster Area Office serving the region where the disaster occurred within 60 days of the date of the disaster.

(3) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.

(4) SBA makes an economic injury declaration in reliance on a state certification that at least 5 small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivisions in which the disaster occurred, and must be delivered (with supporting documentation) to the servicing SBA Disaster Area Office within 120 days of the disaster occurrence.

(b) SBA publishes notice of any disaster declaration in the Federal Register. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist victims in applying for disaster loans. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes beyond the control of the applicant.

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

§ 123.5 What kinds of loans are available?

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

§ 123.7 Are there restrictions on how disaster loans can be used?

You must use disaster loans to restore or replace your primary home (including a mobile home used as a primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan. You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. If your loan is made in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you.

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.

(b) If SBA learns that you may have misapplied your loan proceeds, SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution or civil or administrative action.

§ 123.10 What happens if I cannot use my insurance proceeds to make repairs?

If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs. If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of $10,000 or less, or an economic injury disaster loan of $5,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

(a) Sometimes a borrower, including affiliates as defined in Part 121 of this title, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed $10,000 and all economic injury disaster loans to see if they exceed $5,000.

(b) SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

§ 123.12 Are books and records required?

You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of 3 years after you receive your final disbursement of loan proceeds. If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. You must retain applicable books and records for 3 years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first. You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must also permit SBA and any participating financial institution to inspect and appraise your assets. (OMB Approval No. 3245–0110.)

§ 123.13 What happens if my loan application is denied?

(a) If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than size (not being a small business) has the right to present information to overcome the reason or reasons for the decline and to request reconsideration in writing. (OMB Approval No. 3245–0122.)

(b) Any decline due to size can only be appealed as set forth in Part 121 of this chapter.

(c) Any request for reconsideration must be received by the SBA office that declined the original application within six months of the date of the declined notice. After six months, a new loan application is required.

(d) A request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for reconsideration of a business loan application must also be accompanied by current business financial statements.

(e) If SBA declines your application a second time, you have the right to appeal in writing to the Area Director's Office. All appeals must be received by the office that declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must give specific reasons why the decline action should be reversed.

(f) The decision of the Area Director is final unless:

(1) The Area Director does not have authority to approve the requested loan;

(2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or

(3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations, alleged improper acts by SBA personnel or others in processing the application, and conflicting policy interpretations between two Area Offices.

§ 123.14 How does the Federal Debt Collection Procedures Act of 1990 apply?

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States generally is not eligible to receive physical and economic injury disaster loans. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans upon a demonstration of good cause. Good cause means a written representation by you under oath which convinces SBA that:

(1) The declared disaster was a major contributing factor to the delinquency which led to the judgment lien, regardless of when the original debt was incurred; or

(2) The disaster directly prevented you from fulfilling the terms of an agreement with SBA or any other Federal Government entity to satisfy its pre-disaster judgment lien; in this situation, the judgment creditor must certify to SBA that you were complying with the agreement to satisfy the judgment lien when the disaster occurred; or

(3) Other circumstances exist which would justify a waiver.

(b) The waiver determination by the Associate Administrator for Disaster Assistance, or designee, is a final, non-appealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

§ 123.15 What if I change my mind?

If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR Part 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

§ 123.16 How are loans administered and serviced?

(a) If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA. The SBA rules on servicing are found in Part 120 of this chapter.

(b) If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

§ 123.17 Do other Federal requirements apply?

As a condition of disbursement, you must be in compliance with certain requirements relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations, as set forth in §§ 120.170 through 120.175 of this chapter.

Home Disaster Loans

§ 123.100 Am I eligible to apply for a home disaster loan?

(a) You are eligible to apply for a home disaster loan if you:

(1) Own and occupy your primary residence and have suffered a physical loss to your primary residence, personal property, or both; or

(2) Do not own your primary residence, but have suffered a physical loss to your personal property. Family members sharing a residence are eligible if they are not dependents of the owners of the residence.

(b) Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

§ 123.101 When am I not eligible for a home disaster loan?

You are not eligible for a home disaster loan if:

(a) You have been convicted, during the past year, of a felony during and in connection with a riot or civil disorder or other declared disaster;

(b) You acquired voluntarily more than a 50 percent ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception, these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan (OMB Approval No. 3245–0124)). The one exception applies to amounts received under the Individual and Family Grant Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan);

(d) SBA determines that you assumed the risk (for example, by not maintaining flood insurance as required by an earlier SBA disaster loan when the current loss is also due to flood);

(e) Your damaged property is a secondary home (although if you rented the property out before the disaster and the property would not constitute a ''residence'' under the provisions of Section 280A of the Internal Revenue Code (26 U.S.C. 280A), you may be eligible for a physical disaster business loan);

(f) Your damaged property is the type of vehicle normally used for recreational purposes, such as motorhomes, aircraft, and boats;

(g) Your damaged property consists of cash or securities;

(h) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;

(i) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;

(j) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

(k) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and (without a significant business justification) is located seaward of mean high tide or entirely in or over water; or

(l) You voluntarily decide to relocate outside the business area in which the disaster has occurred, and there are no special or unusual circumstances leading to your decision (business area means the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or equivalent political entity in which your damaged home is located).

§ 123.102 What circumstances would justify my relocating?

SBA may approve a loan if you intend to relocate outside the business area in which the disaster has occurred if your relocation is caused by such special or unusual circumstances as:

(a) demonstrable risk that the business area will suffer future disasters;

(b) a change in employment status (such as loss of job, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs);

(c) medical reasons; or

(d) special family considerations which necessitate a move outside of the business area.

§ 123.103 What happens if I am forced to move from my home?

If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. In this case, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses of personal property and eligible refinancing.

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed 4 percent per annum. Credit elsewhere means that, with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property. Under prior legislation, some SBA disaster loans had split interest rates. On any such loan, repayments of principal are applied first to that portion of the loan with the lowest interest rate.

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) For all disasters occurring on or after October 26, 1993, there are limits on how much money you can borrow for particular purposes:

(1) $40,000 for repair or replacement of household and personal effects;

(2) $200,000 for repair or replacement of a primary residence (including upgrading in order to meet minimum standards of safety and decency or current building code requirements). Repair or replacement of landscaping and/or recreational facilities cannot exceed $5,000;

(3) $200,000 for eligible refinancing purposes; and

(4) 20 percent of the loan amount (not including refinancing) up to a maximum of $48,000 for mitigation (see § 123.107).

(b) You may not use loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay equal monthly installments of principal and interest, beginning five months from the date of the loan, as shown on the Note securing the loan. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of home disaster loans.

§ 123.106 What is eligible refinancing?

(a) If your home (primary residence) is totally destroyed or substantially damaged, and you do not have credit elsewhere, SBA may allow you to borrow money to refinance recorded liens or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

(1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or

(2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of $200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 What is mitigation?

Mitigation means specific measures taken by you to protect against recurring damage in similar future disasters. Examples include retaining walls, sea walls, grading and contouring land, relocating utilities and modifying structures. The money that you can borrow for mitigation is limited to the lesser of the cost of mitigation, or 20 percent of your loan to repair or replace your damaged primary residence and personal property. SBA will not accept a request for a loan increase for mitigation filed after final disbursement of your original loan unless you can show that your request was late because of substantial reasons beyond your control.

Physical Disaster Business Loans

§ 123.200 Am I eligible to apply for a physical disaster business loan?

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you (or any principal of the business) fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your damaged business is not an agricultural enterprise, you may apply for a physical disaster business loan, but loan proceeds may not be used, directly or indirectly, for the benefit of your agricultural enterprises, even if they also suffered damage.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

(1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;

(2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;

(3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;

(4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;

(5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result

in substantially increased expenses for your business in the business area;

(6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

(7) Other factors which undermine the economic viability of your business area.

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the greater of the uncompensated physical loss and economic injury or $1.5 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the $1.5 million limitation. A major source of employment is a business concern which has one or more locations in the disaster area which:

(1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employed 5 percent of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

(3) Employed no less than 250 employees within the disaster area.

(b) SBA will consider waiving the $1.5 million loan limit only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in excess of $1.5 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

(2) You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described in § 123.104) to alleviate your physical damage and economic injury.

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business property must be totally destroyed or substantially damaged, which means:

(1) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including land) and damaged machinery and equipment; or

(2) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding land) and damaged machinery and equipment.

(d) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed $5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, have credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability, but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

Economic Injury Disaster Loans

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in Part 121 of this chapter) when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in gambling, lending, multi-level sales distribution, loan packaging, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative; or

(d) Not a small business concern.

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event;

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–1162 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 125

Government Contracting Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. This rule would eliminate seven sections which are currently contained in 13 CFR Part 125 pertaining to SBA's procurement assistance programs. The Part will be retitled Government Contracting Assistance.

EFFECTIVE DATE: This rule is effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: Part 125 of chapter I of title 13 of the Code of Federal Regulations sets forth the policies and procedures by which SBA regulates Government contracting. On November 27, 1995 (60 FR 58276), SBA published a proposed rule in the Federal Register to reorganize part 125, eliminating seven sections and streamlining other sections. SBA proposed minor, but substantive, rule changes—notably, removing Walsh-Healey determinations from the Certificate of Competency process; increasing the threshold over which a contracting officer could appeal the award of a Certificate of Competency to Headquarters from $25,000 to $100,000, and clarifying that prospective limitations on subcontracting applied to base year contracts, irrespective of option years.

SBA received sixteen timely comments to this proposed revision. Eleven of the comments were directed at proposed § 125.4, which concerns Government property sale assistance. One was directed at the proposed elimination of § 125.10, the Procurement Automated Source System (PASS). The remainder raised objections to proposed § 125.6, dealing with subcontracting limitations.

SBA proposed a streamlined section on government property sales at § 125.4. The proposed section described the purpose of the Government property sales assistance program; described what the program does; described what sorts of economic activities are covered by the program; and referred the reader to the appropriate sections in Part 121 to obtain the size standards for the program. This section replaces present § 125.8, which recites the size standards in detail, describes who in SBA is responsible for administering the program, sets forth what interagency agreements SBA has concerning the program and with whom, sets forth the form number of the applicable certification, describes penalties for contract breach, and sets forth the program's ''emphasis'', not only in the present but in the past as well.

Eight of the eleven comments discussing this section expressed the mistaken belief that the proposed revision would eliminate all references to the Government property sales assistance program. All eleven of the comments expressed concern that in the absence of the current detailed regulation, the general public, the timber industry and employees of the Federal Government would lack sufficient information to properly utilize the program. Some of these commenters expressed concern that in the absence of the particulars of present § 125.8, other agencies having interagency agreements with the SBA would be unaware of their responsibilities under those agreements. Conversely, other commenters were concerned that the proposed revision would somehow ''signal'' those other agencies that they were no longer bound by their agreements. Some commenters were concerned that without a regulation which assigns specific duties to specific SBA employees, SBA would soon eliminate those employees. Finally, one commenter claims that were SBA not to designate in the Code of Federal Regulations which employees were to carry out which responsibilities under the Government property sales assistance program, SBA would be in violation of the Freedom of Information Act (5 U.S.C. 552).

SBA has considered all of these comments, but believes that § 125.4 as proposed is an appropriate regulation. Current § 125.8 has little useful information for either interested small businesses or for federal agencies conducting sales under the program. The statutory language replicated in current § 125.8 is among the most general in the entire Small Business Act, guaranteeing only that a ''fair'' proportion of sales and leases be given to small businesses. The bare recitation of which agencies have Interagency Agreements with SBA which relate to the Government Property Sales Assistance Program provides no useful information to the interested small business. The contents of those agreements, which may be obtained from the Small Business Administration upon request, may be of help, but they are not printed in the present regulation, and to include them in the Code of Federal Regulations would be impractical. The agencies themselves, of course, know what the agreements require them to do, and a regulation is not needed to create enforceability.

SBA's own obligations under the Government Property Sales Assistance Program remain unaffected by removing specific references to which SBA employee performs which task. Descriptions of duties of employees and other internal management matters need not be contained in regulations.

The size standards relevant to the timber set-aside program will be restated, with more clarity, in new §§ 121.506–121.508 of this chapter. A proposed rule revising Part 121 of these regulations was published on November 24, 1995, and will become final when this rule becomes effective. There is no substantive change to the size standard.

SBA disagrees with the contention that the Freedom of Information Act requires that SBA set forth in regulation the responsibilities of the property sales industrial representative, as the current regulation does. FOIA merely requires that agencies publish descriptions of their organization, not that they publish specific responsibilities for specific staff. Moreover, FOIA merely requires that this publication be in the Federal Register, not in regulations.

One commenter urges that § 125.10 be retained if its deletion ''in any way diminishes the quality, availability, or emphasis for this program.'' The

deletion of this regulation will have none of these adverse effects.

Three of the commenters objected to proposed § 125.6(e), which would measure a small business offeror's compliance with subcontracting limitation percentages on the basis of the work it will perform during the base contract period only, regardless of the work it does during contract option years.

The commenters argued that SBA's proposed regulation was contrary to the legislative intent behind the statute, which was to apply the subcontracting limitations to the anticipated length of the contract, rather than to individual task orders. One of the commenters also argued that such a regulation would make it particularly difficult for small businesses to bid in high-tech fields, where the common practice of the industry is to subcontract large portions of the contract at the beginning phases and to gradually perform more and more of the work in-house. Another commenter also pointed out that the proposed rule was inconsistent with § 17.206(a) of the Federal Acquisition Regulation (48 CFR § 17.206(a)), which requires purchasing agencies to evaluate proposals over their full length, rather than simply the base year.

Unfortunately, the mere existence of option years in a contract is not necessarily dispositive of the question of the anticipated length of that contract. Some agencies offer contracts with short base periods and many option years as the best way to protect the agency's interests, without any real expectation that the awardee will perform the contract for the full period. It would defeat the purpose of § 644(o) to permit, for example, an award to a concern which ends up subcontracting most of the performance during the actual period of performance on the basis of its promise to perform with its own personnel during option years which are never awarded.

However, SBA agrees that where the purchasing activity awards the contract on the basis of an evaluation of more than the base period, SBA should accept this evaluation as evidence of the anticipated length of the contract. Accordingly, SBA has modified new § 125.6(e) so that where a proposal is evaluated on the basis of more than the base year, the contract awardee must perform the statutory minimum over the period of time upon which the evaluation is made. In all other instances, the contract awardee must perform the statutory minimum over the base period.

Another commenter objected to the language of § 125.6(a), which sets forth the subcontracting limitations, where applicable, for each type of procurement. This commenter contended that the language of present § 124.314, which sets forth subcontracting limitations on 8(a) concerns, is more clear. SBA disagrees. SBA believes the wording of § 125.6 merely eliminates unnecessary wording. No substantive difference is intended.

One commenter asked why proposed § 125.6(a)(2), which establishes a 50% performance of work requirement for contractors for supplies (other than procurement from a regular dealer in such supplies) establishes no performance or work requirement for regular dealers. SBA believes that the statute imposes no requirement on regular dealers to perform any percentage of the work.

A commenter noted that the language of proposed § 125.6(b), which establishes the definition of certain accounting terms for purposes of complying with the limitations on subcontracting, may be too burdensome for small business offerors who normally have less formal accounting procedures. SBA does not consider it unduly burdensome for small business offerors to employ these terms. The terms need defining in a consistent way and the definitions are not overly complex.

Two commenters noted that in many instances small business offerors have not made at the time of their offer the decisions they need to make in order to determine how much of the contract they intend to subcontract. SBA must respect the need of federal agencies to determine the eligibility of small business bidders by a date certain. In the instance of a sealed bid, the contracting officer must be able to determine whether a bidder is responsible at the time of bid opening and, if it is not, must be able to move on to the next bidder. Similarly, in the instance of a negotiated procurement, the small business offeror will have substantially completed its subcontracting intentions by the time it makes its best and final offer, and must be able to commit to compliance with statutory limitations on subcontracting at that point.

A commenter noted proposed § 125.6(d) treated subcontracting limitations as a responsibility, rather than a size, issue and stated that this decision would raise questions as to whether the proposed regulation was a renunciation of the ostensible subcontractor rule found in § 121.401(l)(4). SBA has decided to treat limitations on subcontracting as a responsibility matter because it relates to how a contractor intends to perform a specific contract and is analogous to traditional responsibility issues such as capacity and credit. Moreover, treating the issue in this way places the obligation to question compliance with the contracting officer, and insures that the contracting agency will be consulted before a negative determination is overruled by SBA. This new rule will not affect the ostensible subcontractor rule, which is being restated in new § 121.103(f)(3). Size protests will continue to be processed where the protester alleges an anticipated awardee exceeds the applicable size standard due to a joint venture relationship with a purported subcontractor, regardless of whether the limitations on subcontracting percentages will be met by the awardee.

Another comment was an objection to the provision of § 125.6(f), which provides that work which a concern intends to subcontract to subsidiaries and affiliates would not count as work performed by the concern. The commenter points out that SBA does not treat the affiliate as a separate entity for purposes of size determination and argues that it is inconsistent to treat the affiliate as a separate entity for purposes of subcontracting. The commenter also points out that an applicant can easily defeat this restriction by bidding as a joint venture with its affiliate.

SBA believes that the governing statute, 15 U.S.C. 644(o), urges this result. That statute refers to ''employees of the concern'' (contracts for services) and ''the concern will perform work'' (contracts for supplies). SBA regulations define a ''concern'' as ''a business entity organized for profit * * * (which) may be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative * * *.'' (13 CFR 121.403).

An offeror and its affiliates are separate legal entities. Even if the statute were construed to permit a different rule, SBA believes a regulation defining ''concern'' differently for different purposes could be burdensome and confusing. While it is true that SBA aggregates for size purposes the employees or revenues of subsidiaries or affiliates of a concern, SBA does not treat the different legal entities as having merged or lost their separate identities in terms of ownership, management, assets and liabilities. To credit work performed by a subsidiary or an affiliate as work performed by the concern itself would be inconsistent with this approach.

Finally, two commenters inquired as to how SBA or a contracting officer can

determine an offeror's compliance with subcontracting restrictions before an award. As a responsibility matter, the contracting officer will determine whether an offeror intends to comply and if so, whether it is capable of complying. SBA may then review adverse determinations. If award occurs, the contracting officer will have a continuing responsibility to monitor contract performance to assure compliance with contract terms, including subcontracting limitations.

In addition to modifying the provision governing the period of time considered for measuring compliance with statutory subcontracting limitations, the final rule makes minor changes from the proposed rule in order to further streamline the part. SBA has removed the list of ''additional responsibilities'' assigned to commercial marketing representatives (CMRs) set forth in proposed § 125.3(e). CMRs will be assigned responsibilities in addition to their matching tasks as the need arises. SBA has also deleted the last sentence of proposed § 125.6(b)(4), which was inadvertently included in the proposed regulation. The treatment of leasing utility distribution facilities in the context of this section is still under review. SBA also corrected an inadvertent error contained in the proposed rule as to the eligibility of kit assemblers for a certificate of competency (§ 125.5(b)(1)(v)(B) of the proposed rule). The final rule will continue SBA's policy of making COCs available to kit assemblers regardless of the size of the manufacturer where the procurement is unrestricted, and of making COCs available to kit assemblers on small business set-asides only where they provide components manufactured only by domestic small businesses. SBA has also removed language in that subparagraph relating to the treatment of components manufactured by directed sources where the sources are large businesses. Under current regulations, contracting agencies must first obtain a waiver of the nonmanufacturing rule from SBA before they may direct large business sources in a small business set-aside. Accordingly, there is no need to include additional language governing directed sources.

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 rule will not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule eliminates seven sections of SBA's regulations that SBA has determined to be obsolete, unnecessary, or duplicative. The remaining regulations have been rewritten for clarity and ease of use. No contracting opportunities for small business will be affected by this rule. Therefore, it is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does 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.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

Accordingly, pursuant to the authority set forth in Section 4 of Public Law 101–515 (104 Stat. 2140), Section 610(a) of Public Law 100–202 (101 Stat. 1329–39), sections 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, *et seq.*), 31 U.S.C. 9701, 9702, SBA hereby revises Part 125 of Title 13 of the Code of Federal Regulations to read as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

Sec.

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702.

§ 125.1 Programs included.

The regulations in this part relate to the Government contracting assistance programs of SBA. There are four main programs: Prime contracting assistance; Subcontracting assistance; Government property sales assistance; and the Certificate of Competency program. The objective of the programs is to assist small businesses in obtaining a fair share of Federal Government contracts, subcontracts, and property sales.

§ 125.2 Prime contracting assistance.

(a) *Traditional PCR responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside would be appropriate. In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal to the secretary of the department or head of the agency. The procedures and time limits for such appeals are set forth in § 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(2) PCRs review and evaluate the small business programs of Federal agencies and buying activities and make recommendations for improvement. They also recommend small business, small women-owned business, and small disadvantaged business sources for use by contracting activities and assist these businesses in obtaining Federal contracts and subcontracts. Other authorized duties of a PCR are set forth in the FAR in 48 CFR 19.402(c) and in the Small Business Act (the Act) in Section 15(a) (15 U.S.C. 644(a)).

(b) *BPCR responsibilities.* (1) SBA is required by section 403 of Public Law 98–577 (15 U.S.C. 644(l)) to assign a breakout PCR (BPCR) to major contracting centers. A major contracting center is a center that, as determined by SBA, purchases substantial dollar amounts of other than commercial items, and which has the potential to achieve significant savings as a result of the assignment of a BPCR.

(2) BPCRs advocate full and open competition in the Federal contracting process and recommend the breakout for competition of items and requirements which previously have not been competed. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures set forth in § 19.505 of the FAR (48 CFR 19.505). BPCRs also review restrictions and obstacles to competition and make recommendations for improvement. Other authorized functions of a BPCR are set forth in 48 CFR 19.403(c) of the

FAR and Section 15(l) of the Act (15 U.S.C. 644(l)).

§ 125.3 Subcontracting assistance.

(a) The purpose of the subcontracting assistance program is to achieve maximum utilization of small business by major prime contractors. The Act requires other-than-small firms awarded contracts that offer subcontracting possibilities by the Federal Government in excess of $500,000, or $1 million for construction of a public facility, to submit a subcontracting plan to the contracting agency. The FAR sets forth the requirements for subcontracting plans in 48 CFR part 19, subpart 19.7, and 48 CFR 52.219–9.

(b) Upon determination of the successful subcontract offeror, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror. This is applicable to all subcontracts over $10,000.

(c) SBA Commercial Market Representatives (CMRs) facilitate the process of matching large prime contractors with small, small disadvantaged, and small women-owned subcontractors. CMRs identify, develop, and market small businesses to the prime contractors and assist the small firms in obtaining subcontracts.

(d) Each CMR has a portfolio of prime contractors and conducts periodic compliance reviews and needs assessments of the companies in this portfolio. CMRs are also required to perform opportunity development and source identification. Opportunity development means assessing the current and future needs of the prime contractors. Source identification means identifying those small, small disadvantaged, and small women-owned firms which can fulfill the needs assessed from the opportunity development process.

§ 125.4 Government property sales assistance.

(a) The purpose of SBA's Government property sales assistance program is to:

(1) Insure that small businesses obtain their fair share of all Federal real and personal property qualifying for sale or other competitive disposal action; and

(2) Assist small businesses in obtaining Federal property being processed for disposal, sale, or lease.

(b) SBA property sales assistance primarily consists of two activities:

(1) Obtaining small business set-asides when necessary to insure that a fair share of Government property sales are made to small businesses; and

(2) Providing advice and assistance to small businesses on all matters pertaining to sale or lease of Government property.

(c) The program is intended to cover the following categories of Government property:

(1) Sales of timber and related forest products;

(2) Sales of strategic material from national stockpiles;

(3) Sales of royalty oil by the Department of Interior's Minerals Management Service;

(4) Leases involving rights to minerals, petroleum, coal, and vegetation; and

(5) Sales of surplus real and personal property.

(d) SBA has established specific small business size standards and rules for the sale or lease of the different kinds of Government property. These provisions are contained in §§ 121.501 through 121.514 of this chapter.

§ 125.5 Certificate of Competency Program.

(a) *General.* (1) The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concerns possess the responsibility to perform a specific Government procurement (or sale) contract. The COC Program is applicable to all Government procurement actions. For purposes of this Section, the term ''United States'' includes its territories, possessions, and the Commonwealth of Puerto Rico.

(2) A contracting officer must, upon determining an apparent low small business offeror to be nonresponsible, refer that small business to SBA for a possible COC, even if the next low apparently responsible offeror is also a small business.

(3) A small business offeror referred to SBA as nonresponsible may apply to SBA for a COC. Where the applicant is a non-manufacturing offeror on a supply contract, the COC applies to the responsibility of the non-manufacturer, not to that of the manufacturer.

(b) *COC Eligibility.* (1) The offeror seeking a COC has the burden of proof to demonstrate its eligibility for COC review. To be eligible for the COC program, a firm must meet the following criteria:

(i) It must qualify as a small business concern under the size standard applicable to the procurement. Where the solicitation fails to specify a size standard or Standard Industrial Classification (SIC) code, SBA will assign the appropriate size standard to determine COC eligibility. SBA determines size eligibility as of the date described in § 121.404 of this chapter.

(ii) A manufacturing, service, or construction concern must demonstrate that it will perform a significant portion of the proposed contract with its own facilities, equipment, and personnel. The contract must be performed or the end item manufactured within the United States.

(iii) A non-manufacturer making an offer on a small business set-aside contract for supplies must furnish end items that have been manufactured in the United States by a small business. A waiver of this requirement may be requested under §§ 121.1301 through 121.1305 of this chapter for either the type of product being procured or the specific contract at issue.

(iv) A non-manufacturer making an offer on an unrestricted procurement or a procurement utilizing simplified acquisition threshold procedures with a cost that does not exceed $25,000 must furnish end items manufactured in the United States to be eligible for a COC.

(v) An offeror intending to provide a kit consisting of finished components or other components provided for a special purpose, is eligible if:

(A) It meets the Size Standard for the SIC code assigned to the procurement;

(B) Each component comprising the kit was manufactured in the United States; and

(C) In the case of a set-aside, each component comprising the kit was manufactured by a small business under the size standard applicable to the component provided. A waiver of this requirement may be requested under §§ 121.1301 through 121.1305 of this chapter.

(2) SBA will determine a concern ineligible for a COC if the concern, or any of its principals, appears in the ''Parties Excluded From Federal Procurement Programs'' section found in the U.S. General Services Administration Office of Acquisition Policy Publication: List of Parties Excluded From Federal Procurement or Nonprocurement Programs. If a principal is unable to presently control the applicant concern, and appears in the Procurement section of the list due to matters not directly related to the concern itself, responsibility will be determined in accordance with paragraph (f)(2) of this section.

(3) An eligibility determination will be made on a case-by-case basis, where a concern or any of its principals appears in the Nonprocurement Section of the publication referred to in paragraph (b)(2) of this section.

(c) *Referral of nonresponsibility determination to SBA.* (1) A contracting officer who determines that an apparently successful offeror that has certified itself to be a small business with respect to a specific Government procurement lacks any element of responsibility (including competency, capability, capacity, credit, integrity or tenacity or perseverance) must refer the matter in writing to the SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located. The referral must include a copy of the following:

(i) Solicitation;

(ii) Offer submitted by the concern whose responsibility is at issue for the procurement (its Best and Final Offer for a negotiated procurement);

(iii) Abstract of Bids, where applicable, or the Contracting Officer's Price Negotiation Memorandum;

(iv) Preaward survey, where applicable;

(v) Contracting officer's written determination of nonresponsibility;

(vi) Technical data package (including drawings, specifications, and Statement of Work); and

(vii) Any other justification and documentation used to arrive at the nonresponsibility determination.

(2) Contract award must be withheld by the contracting officer for a period of 15 working days (or longer if agreed to by SBA and the contracting officer) following receipt by the appropriate Area Office of a referral which includes all required documentation.

(3) The COC referral must indicate that the offeror has been found responsive to the solicitation, and also identify the reasons for the nonresponsibility determination.

(d) *Application for COC.* (1) Upon receipt of the contracting officer's referral, the Area Office will inform the concern of the contracting officer's negative responsibility determination, and offer it the opportunity to apply to SBA for a COC by a specified date.

(2) The COC application must include all information and documentation requested by SBA and any additional information which the firm believes will demonstrate its ability to perform on the proposed contract. The application should be returned as soon as possible, but no later than the date specified by SBA.

(3) Upon receipt of a complete and acceptable application, SBA may elect to visit the applicant's facility to review its responsibility. Where a service or construction contract will be performed outside the United States, SBA will rely solely on documentation and other relevant information obtained within the United States. SBA personnel may obtain clarification or confirmation of information provided by the applicant by directly contacting suppliers, financial institutions, and other third parties upon whom the applicant's responsibility depends.

(e) *Incomplete applications.* If an application for a COC is materially incomplete or is not submitted by the date specified by SBA, SBA will close the case without issuing a COC and will notify the contracting officer and the concern with a declination letter.

(f) *Reviewing an application.* (1) The COC review process is not limited to the areas of nonresponsibility cited by the contracting officer. SBA may, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but it may presume responsibility exists as to elements other than those cited as deficient. SBA may deny a COC for reasons of nonresponsibility not originally cited by the contracting officer.

(2) A small business will be rebuttably presumed nonresponsible if any of the following circumstances are shown to exist:

(i) Within three years before the application for a COC, the concern, or any of its principals, has been convicted of an offense or offenses that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR part 9, subpart 9.4), and the matter is still under the jurisdiction of a court (e.g., the principals of a concern are incarcerated, on probation or parole, or under a suspended sentence); or

(ii) Within three years before the application for a COC, the concern or any of its principals has had a civil judgment entered against it or them for any reason that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR part, subpart 9.4).

(g) *Decision by Area Director (''Director'').* After reviewing the information submitted by the applicant and the information gathered by SBA, the Area Director will make a determination, either final or recommended as set forth in the following chart:

Contracting actions	SBA official or office with authority to make decision	Finality of decision; options for contracting agencies
$100,000 or less, or in accordance with Simplified Acquisition Threshold procedures.	Director may approve or deny	Final. The Director will notify both applicant and contracting agency in writing of the decision.
Between $100,000 and $25 million	(1) Director may deny (2) Director may approve, subject to right of appeal and other options.	(1) Final. (2) Contracting agency may proceed under paragraph (h) or paragraph (i) of this section.
Exceeding $25 million	(1) Director may deny (2) Director must refer to SBA Headquarters recommendation for approval.	(1) Final. (2) Contracting agency may proceed under paragraph (j) of this section.

(h) *Notification of intent to issue on a contract with a value between $100,000 and $25 million.* Where the Director determines that a COC is warranted, he or she will notify the contracting officer of the intent to issue a COC, and of the reasons for that decision, prior to issuing the COC. At the time of notification, the contracting officer has the following options:

(1) Accept the Director's decision to issue the COC and award the contract to the concern. The COC issuance letter will then be sent, including as an attachment a detailed rationale of the decision; or

(2) Ask the Director to suspend the case for one of the following purposes:

(i) To forward a detailed rationale for the decision to the contracting officer for review within a specified period of time;

(ii) To afford the contracting officer the opportunity to meet with the Area Office to review all documentation contained in the case file;

(iii) To submit any information which the contracting officer believes SBA has not considered (at which time, SBA will establish a new suspense date mutually

agreeable to the contracting officer and SBA); or

(iv) To permit resolution of an appeal by the contracting agency to SBA Headquarters under paragraph (i) of this section.

(i) *Appeals of Area Director determinations.* For COC actions with a value exceeding $100,000, contracting agencies may appeal a Director's decision to issue a COC to SBA Headquarters by filing an appeal with the Area Office processing the COC application. The Area Office must honor the request to appeal if the contracting officer agrees to withhold award until the appeal process is concluded. Without such an agreement from the contracting officer, the Director must issue the COC. When such an agreement has been obtained, the Area Office will immediately forward the case file to SBA Headquarters.

(1) The intent of the appeal procedure is to allow the contracting agency the opportunity to submit to SBA Headquarters any documentation which the Area Office may not have considered.

(2) SBA Headquarters will furnish written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) at the secretariat level of the procuring agency (with a copy to the contracting officer), that the case file has been received and that an appeal decision may be requested by an authorized official at that level. If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its Director, OSDBU, within 10 working days (or a time period agreed upon by both agencies) of its receipt of the notice under paragraph (h) of this section. The appeal and any supporting documentation must be filed within 10 working days (or a different time period agreed to by both agencies) after SBA receives the request for a formal appeal.

(3) The SBA Associate Administrator for Government Contracting (AA/GC) will make a final determination, in writing, to issue or to deny the COC.

(j) *Decision by SBA Headquarters where contract value exceeds $25 million.* (1) Prior to taking final action, SBA Headquarters will contact the contracting agency at the secretariat level or agency equivalent and afford it the following options:

(i) Ask SBA Headquarters to suspend the case so that the agency can meet with Headquarters personnel and review all documentation contained in the case file; or

(ii) Submit to SBA Headquarters for evaluation any information which the contracting agency believes has not been considered.

(2) After reviewing all available information, the AA/GC will make a final decision to either issue or deny the COC. If the AA/GC's decision is to deny the COC, the applicant and contracting agency will be informed in writing by the Area Office. If the decision is to issue the COC, a letter certifying the responsibility of the firm will be sent to the contracting agency by Headquarters and the applicant will be informed of such issuance by the Area Office. Except as set forth in paragraph (l) of this section, there can be no further appeal or reconsideration of the decision of the AA/GC.

(k) *Notification of denial of COC.* The notification to an unsuccessful applicant following either an Area Director or a Headquarters denial of a COC will briefly state all reasons for denial and inform the applicant that a meeting may be requested with appropriate SBA personnel to discuss the denial. Upon receipt of a request for such a meeting, the appropriate SBA personnel will confer with the applicant and explain the reasons for SBA's action. The meeting does not constitute an opportunity to rebut the merits of the SBA's decision to deny the COC, and is for the sole purpose of giving the applicant the opportunity to correct deficiencies so as to improve its ability to obtain future contracts either directly or, if necessary, through the issuance of a COC.

(l) *Reconsideration of COC after issuance.* (1) An approved COC may be reconsidered and possibly rescinded, at the sole discretion of SBA, where an award of the contract has not occurred, and one of the following circumstances exists:

(i) The COC applicant submitted false or omitted materially adverse information;

(ii) New materially adverse information has been received relating to the current responsibility of the applicant concern; or

(iii) The COC has been issued for more than 60 days (in which case SBA may investigate the firm's current circumstances).

(2) Where SBA reconsiders and reaffirms the COC the procedures under paragraph (h) of this section do not apply.

(m) *Effect of a COC.* By the terms of the Act, a COC is conclusive as to responsibility. Where SBA issues a COC on behalf of a small business with respect to a particular contract, contracting officers are required to award the contract without requiring the firm to meet any other requirement with respect to responsibility.

(n) *Effect of Denial of COC.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm, nor does it prevent the concern from making an offer on any other procurement.

(o) *Monitoring performance.* Once a COC has been issued and a contract awarded on that basis, SBA may monitor contractor performance.

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

(2) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(b) *Definitions.* The following definitions apply to this section:

(1) *Cost of the contract.* All allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(2) *Cost of contract performance incurred for personnel.* Direct labor costs and any overhead which has only direct labor as its base, plus the concern's General and Administrative rate multiplied by the labor cost.

(3) *Cost of manufacturing.* Those costs incurred by the firm in the production of the end item being acquired. These are costs associated with the manufacturing process, including the direct costs of fabrication, assembly, or other production activities, and indirect costs which are allocable and allowable. The cost of materials, as well as the profit or fee from the contract, are excluded.

(4) *Cost of materials.* Includes costs of the items purchased, handling and

associated shipping costs for the purchased items (which includes raw materials), off-the-shelf items (and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items), special tooling, special testing equipment, and construction equipment purchased for and required to perform on the contract. In the case of a supply contract, the acquisition of services or products from outside sources following normal commercial practices within the industry are also included.

(5) *Off-the-shelf item.* An item produced and placed in stock by a manufacturer, or stocked by a distributor, before orders or contracts are received for its sale. The item may be commercial or may be produced to military or Federal specifications or description. Off-the-shelf items are also known as Nondevelopmental Items (NDI).

(6) *Personnel.* Individuals who are ''employees'' under § 121.106 of this chapter.

(7) *Subcontracting.* That portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available off-the-shelf, and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government to use any specific source for parts, supplies, components subassemblies or services, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

(c) SBA will determine compliance with the Prime Contractor Performance Requirements as of the following dates:

(1) In a sealed bid procurement, as of the date the bid was submitted;

(2) In a negotiated procurement, as of the date the concern submits its best and final offer. If a concern is determined not to be in compliance at the time it submits its best and final offer, it may not come into compliance later for that procurement by revising its subcontracting plan.

(d) Compliance will be considered an element of responsibility and not a component of size eligibility.

(e) The period of time used to determine compliance will be the period of performance which the evaluating agency uses to evaluate the proposal or bid. If the evaluating agency fails to articulate in its solicitation the period of performance it will use to evaluate the proposal or bid, the base contract period, excluding options, will be used to determine compliance. In indefinite quantity contracts, performance over the guaranteed minimum will be used to determine compliance unless the evaluating agency articulates a different period of performance which it will use to evaluate the proposal or bid in its solicitation.

(f) Work to be performed by subsidiaries or other affiliates of a concern is not counted as being performed by the concern for purposes of determining whether the concern will perform the required percentage of work.

(g) The procedures of § 125.5 apply where the contracting officer determines non-compliance, the procurement is a full or partial small business set-aside or an SDB has claimed a preference, and refers the matter to SBA for a COC determination.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–1157 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–96–002]

Regulated Navigation Area: Chesapeake Bay Ice Navigation Season

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: Coast Guard Captain of the Port (COTP) Baltimore is placing in effect from January 4, 1996 to April 15, 1996 the Regulated Navigation Area for the Maryland portion of the Chesapeake Bay, the District of Columbia, the Potomac River and its tributaries on the Maryland side, and the Maryland portion of the Chesapeake and Delaware Canal. Operators of specified vessels are required to contact COTP Baltimore prior to entering or getting underway within the Regulated Navigation Area to determine if operating restrictions have been imposed due to ice conditions.

EFFECTIVE DATES: Section 165.503 of 33 CFR is effective from 12:01 a.m., January 4, 1996 to 12:01 a.m., April 15, 1996, unless sooner terminated by the Captain of the Port Baltimore by publication of a notice in the Federal Register.

SUPPLEMENTARY INFORMATION: Call the 24 Hour recorded message at (410) 576–2682, or U.S. Coast Guard Activities Baltimore Duty Officer at (410) 576–2520 for COTP ice information.

Drafting Information. The drafters of this regulation are Lieutenant Eric Bautz, project officer, Captain of the Port, Baltimore, Maryland, and Lieutenant Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Ice conditions frequently exist during winter months on the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal. Severe ice conditions may threaten the safety of persons, vessels and the environment. COTP Baltimore may issue specific COTP orders imposing operating restrictions due to ice conditions, vessel construction, and cargo. Mariners are also encouraged to monitor Broadcast Notices to Mariners to determine if ice conditions exist in a specific area.

Section 165.503 of 33 CFR establishes a Regulated Navigation Area (RNA). Operators of vessels carrying oil or hazardous materials in bulk as cargo or residue, power-driven vessels of three hundred gross tons or more, vessels of one hundred gross tons or more carrying one or more passengers for hire, and towing vessels of 26 feet or more in length must contact COTP Baltimore before entering or getting underway within the RNA to obtain current COTP orders. Section 165.503 will remain in effect from January 4, 1996 to April 15, 1996.

Dated: January 3, 1996.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 96–1882 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5406–3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stay and reconsideration.

SUMMARY: This action announces a three-month stay and reconsideration of

a certain reporting requirement in the petition process for the import of used class I controlled substances promulgated under sections 604 and 606 of the Clean Air Act Amendments of 1990. The effectiveness of 40 CFR 82.13(g)(2)(viii), that requires the importer to certify that the purchaser of the controlled substance is liable for the tax, is stayed for three months pending reconsideration. The EPA is issuing this stay pursuant to section 307(d)(7)(B) of the Clean Air Act, which provides the Administrator authority to stay the effectiveness of a rule during reconsideration.

In the proposed rules Section of today's Federal Register document, EPA is proposing to extend this stay to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question.

DATES: Effective January 31, 1996, 40 CFR 82.13(g)(2)(viii) is stayed until April 30, 1996.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–13, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, Stratospheric Protection Division, Office of Air and Radiation, U.S. Environmental Protection Agency (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1995, PAACO International, Inc., an importer of used class I controlled ozone-depleting substances, sent to the United States Environmental Protection Agency (EPA) a petition for reconsideration of one reporting requirement in the petition process for the import of used class I controlled substances. This reporting requirement is included as § 82.13(g)(2)(viii) in the amendment to the Accelerated Phaseout Rule promulgated on May 10, 1995 (60 FR 24970). The provision requires an importer to certify that the purchaser of the used substances is liable for the excise tax. By this action, EPA is convening a proceeding for reconsideration.

II. Rules to be Stayed and Reconsidered

EPA proposed amendments to the accelerated phaseout regulation in the Federal Register on November 10, 1994. In the proposal, EPA discussed options for addressing the illegal import of controlled substances that are mislabelled as being previously used. EPA viewed the potential for mislabelling virgin ozone-depleting substances as ''used'' as a possible loophole in the controls on imports. The controls on imports are established in the phaseout regulation in accordance with United States' obligations under the Montreal Protocol and as required by the Clean Air Act Amendments of 1990 (CAAA) in Section 604(c). The final rule amending the accelerated phaseout regulation was published in the Federal Register on May 10, 1995, and established a petition process for the import of used class I controlled substances in § 82.13(g)(2). A person wishing to import used class I controlled substances is required to submit a petition to EPA at least 15 working-days before the shipment is to leave the port of export. The petition must provide specific information to allow EPA to independently verify that the material was in fact previously used. Section 82.13(g)(2)(viii) requires the person submitting the petition to certify that the purchaser of the used substances is liable for the tax.

The petitioners stated as the basis for their request for the stay and reconsideration that EPA did not give public notice of this requirement and therefore it was ''impracticable to raise objections'' to the provision during the public comment period. The petitioner also claimed that the objections are of central relevance to the rule because it believes that ''purchasers'' are not liable for the tax, it could not certify liability, and it could not conduct its business under the rule.

Today's action stays the requirement in § 82.13(g)(2)(viii) regarding certification of liability for the tax. EPA recognizes that the proposed rule did not discuss the possibility of a certification of liability for taxes. The Agency has completed a preliminary review of PAACO's information and will reconsider the need to include such a requirement.

III. Issuance of Stay

EPA hereby issues a three-month administrative stay of the effectiveness of § 82.13(g)(2)(viii), including all applicable compliance dates (60 FR 25001). EPA will reconsider this rule, as discussed above and, following the notice and comment procedures of section 307(d) of the Clean Air Act, will take appropriate action.

If the reconsideration results in provisions for the import of used class I controlled substances that are stricter than the existing rule, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rule and associated compliance period announced by this notice are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for three months in order to consider a request for reconsideration. The issues in the petition for reconsideration were impracticable to raise during the comment period, and are of central relevance to the outcome of this provision of the rule.

V. Proposed Additional Temporary Stay

Because EPA may not be able to complete the reconsideration (including any appropriate regulatory action) of the rule stayed by this document within the three-month period expressly provided in section 307(d)(7)(B), in the Proposed Rules Section of today's Federal Register, EPA proposes a temporary extension of the stay beyond the three months provided, only to the extent necessary to complete reconsideration of the rule in question.

I certify that this stay of a reporting requirement for a petition to import used controlled substances will not have any additional negative economic imports on any small entities.

VI. Effective Date

This action is effective on January 31, 1996.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports,

Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 11, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.13 is amended by January 31, 1996 staying paragraph (g)(2)(viii) from until April 30, 1996.

[FR Doc. 96–1553 Filed 1–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–154–7092a; FRL–5328–7]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to Process Emission Standards for New and Existing Cotton Gins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on April 18, 1995. This submittal included revisions to the current regulations concerning process emission standards for new and existing cotton gins. These revisions also provide an optional method of using selected controls to demonstrate compliance with the emission standards.

DATES: This final rule is effective April 1, 1996 unless adverse or critical comments are received by March 1, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Karen Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4197. Reference file TN154–01–7092.

SUPPLEMENTARY INFORMATION: On April 18, 1995, the State of Tennessee through the Tennessee Department of Environment and Conservation submitted a revision to their SIP incorporating changes to regulations for new and existing cotton gins. The SIP revision consists of changes to Paragraph 1200–3–7–.08(3). EPA is approving these revisions which are summarized as follows.

1. Subparagraph 1200–3–7–.08(3)(a) has been revised. This subparagraph has been amended to add definitions for the following items: ''Cotton Gins;'' ''Cotton Gin Site or Gin Site;'' ''High Efficiency Cyclone;'' ''Low Pressure Exhausts;'' ''High Pressure Exhaust;'' and ''Dust House.'' The former subparagraph prohibited ''the emission of particulate matter in any on hour in excess of * * * amount shown in Table 4'' and has been deleted. This requirement was incorporated into Subparagraph 1200–3–7–.08(3)(b).

2. Subparagraph 1200–3–7–.08(3)(b) has been revised. This paragraph has been amended by deleting the former language that allowed the total process weight from all similar units at a plant to be used to determine the maximum allowable emission of particulate matter from a stack. This has been replaced by the requirements that the owner or operator of the cotton gin meet the standards set forth in Table 4 of this paragraph. Table 4 establishes the allowable rate of particulate emissions based on the process weight rate for new and existing cotton gins. These allowable emission rates have not been amended. This revised subparagraph alternatively allows the owner or operator of a cotton gin to utilize defined control devices, rather than demonstrating compliance with the emission standards. The control devices which are allowed include screens with a mesh size of 80 by 80 or finer, or perforated condenser drums with holes of .045 inches in diameter or less, or dust houses for emission control from low pressure exhausts. For emission control from high pressure exhausts, high efficiency cyclones may be used to demonstrate compliance. Subparagraph 1200–3–7–.08(3)(b) has also been amended to prohibit the burning of cotton gin waste at a gin site in a wigwam or any other type of enclosed burner.

3. Subparagraph 1200–3–7–.08(3)(c) has been revised. The former subparagraph required compliance by January 1, 1973, or July 1, 1975. This language was deleted. The new compliance date for this regulation has been included in subparagraph (b), above, and is now July 1, 1991. The revised paragraph (c) now states that the ''allowable particulate emission standards for * * * cotton gins shall be determined by Table 4.'' This language was contained in subparagraph (a) prior to this SIP revision.

4. Table 4, subparagraph 1200–3–7-.08(3), has been revised. The title of this table has been modified from ''Allowable Particulate Emission Based on Process Weight Rate for Cotton Gins'' to ''Allowable Rate of Particulate Emissions Based on Process Weight Rate for New and Existing Cotton Gins.'' The address for the Tennessee Division of Air Pollution Control has also been updated.

Final Action

EPA is approving the aforementioned * revisions contained in the State's April 18, 1995, submittal. The EPA is publishing this rulemaking without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 1, 1996, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a

subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 1, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2) and 7410(k)(3).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 17, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(127) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(127) Revisions to the State of Tennessee Air Pollution Control Regulations submitted by the Tennessee Department of Environment and Conservation on April 18, 1995. These consist of revisions to the process emission standards for new and existing cotton gins. These revised regulations also provide an optional method of using selected controls to demonstrate compliance with the emission standards.

(i) Incorporation by reference.

(A) Tennessee Division of Air Pollution Control Regulations, Chapter 1200–3–7-.08(3) effective July 16, 1990.

(ii) Other material. None.

* * * * *

[FR Doc. 96–1837 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH66–1–6499A, OH76–1–6900A; FRL–5405–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State of Ohio's State Implementation Plan revision request to redesignate the Canton (Stark County), and Youngstown (Mahoning and Trumbull Counties) marginal ozone nonattainment areas to attainment, and establish ozone standard maintenance plans for these areas. Ground-level ozone, commonly known as smog, is an air pollutant which forms on hot summer days which harmfully affects lung tissue and breathing passages. The redesignation to attainment of the health-based ozone air quality standard is based on a request from the State of Ohio to redesignate this area and approve its maintenance plan, and on the supporting data the State submitted in support of the requests. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change, and a maintenance plan is put in place which is designed to ensure the area maintains ozone air quality standard for the next ten years.

DATES: The ''direct final'' is effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 1, 1996. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office).

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones at (312) 886–6058.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the ozone attainment status for each area of every State. For Ohio, Canton (Stark County), and Youngstown (Mahoning, and Trumbull Counties) were designated as a nonattainment area for ozone, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(1)(C) of the CAA, the Canton and Youngstown areas retained their designation of nonattainment for ozone by operation of law, see 56 FR 56694 (November 6, 1991). At the same time these areas were classified as marginal ozone nonattainment areas based on design values of 0.135 parts per million (ppm) for Canton, and 0.134 ppm for Youngstown. Design values are based upon actual monitoring data collected in the area. A design value is calculated for each monitoring site in the area, with the highest monitor design value being the design value for the area. A design value for each monitor is usually the fourth highest reading during a three year period. Generally, the design value has been set from the years 1987 to 1989. Section 181 of the CAA provides a table establishing classifications for different areas based upon area design values. Areas with design values of 0.121 ppm up to 0.138 ppm are classified as marginal nonattainment. Mercer County, Pennsylvania was also included in the Youngstown-Warren-Sharon marginal ozone nonattainment area, along with Mahoning and Trumbull Counties, Ohio. An ozone redesignation request was made by Ohio for Mahoning and Trumbull Counties, but Pennsylvania has not requested redesignation of Mercer County. In this case it is appropriate to proceed with the redesignation of the Ohio portion of this ozone nonattainment area, because: (1) The entire Youngstown-Warren-Sharon marginal ozone nonattainment area has attained the ozone National Ambient Air Quality Standards (NAAQS); and (2) Ohio's maintenance plan contains triggers that rely on the ozone monitor located in Mercer County, Pennsylvania.

The Ohio Environmental Protection Agency (OEPA) requested that the areas be redesignated in letters dated March 25, 1994, (received on April 5, 1994) and August 15, 1994, (received on August 22, 1994) for Canton and Youngstown, Ohio, respectively. The public hearing portions were transmitted to us in letters from Robert Hodanbosi, Chief of the Division of Air Pollution Control, OEPA, dated August 10, 1994, for Canton, and November 14, 1994, for Youngstown.

The State provided monitoring, emissions data, and other documentation to support its redesignation requests. The review criteria and a review of the requests are provided below.

I. Redesignation Review Criteria

Under the CAA, designations can be changed if sufficient data are available to warrant such change. The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the NAAQS; (ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175A; and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The United States Environmental Protection Agency (USEPA) has provided guidance on processing redesignation requests in the following memoranda and related documents:

1. Inspection/Maintenance Program Requirement—Provisions for Redesignation (60 FR 1735), January 5, 1995.
2. ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.
3. Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions, General Preamble for Future Proposed Rulemakings (59 FR 31238), June 17, 1994.
4. ''Section 182(f) Nitrogen Oxides (NO_x) Exemptions Revised Process and Criteria,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, May 27, 1994.
5. ''Maintenance Plan Requirements for Incomplete/No Data Areas,'' Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, May 8, 1994.
6. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.
8. ''Technical Support Document (TSDs) for Redesignating Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993.
9. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992.
10. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

11. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

II. Review of the Redesignation Requests

The redesignation requests were reviewed to determine if they meet the criteria for redesignating an area to attainment.

A. The Area Must Have Attained the Ozone NAAQS

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR 50.9, based on the three (3) most recent consecutive calendar years of quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1) average expected exceedance per year. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review.

Ambient air quality monitoring data show that these two areas attained the NAAQS for ozone during the 1989 to 1994 time period, and preliminary 1995 ozone monitoring data continues to demonstrate both areas' continued attainment.

The ozone monitoring network for Canton consists of four (4) monitors. In Canton only one (1) exceedance of the ozone standard has been monitored since 1990; it was 0.130 ppm and occurred at the North Canton monitor in 1991. The monitoring network for the Youngstown area consists of four (4) monitors that are located in Mercer, Mahoning, and Trumbull Counties. The Youngstown area has monitored several exceedances since 1990 but is not in violation of the ozone standard. Preliminary monitoring data for 1995 shows only one exceedance at the Mahoning County Monitor, which is the first exceedance at that monitor since 1991. This would not result in a violation.

Data stored in AIRS was used to determine the annual average expected exceedances for the years 1992, 1993, and 1994. Data contained in AIRS have undergone quality assurance review by the State and USEPA. Since the annual average number of expected exceedances for each monitor during the most recent three years is less than 1.0, the Canton and Youngstown areas are attaining the standard.

Summaries of air quality data for Canton, and Youngstown are contained in Tables 1 and 2. The areas are currently meeting the section 107(d)(3)(E)(i) requirement of attaining the ozone NAAQS.

TABLE 1.—PEAK 1-HOUR OZONE CONCENTRATIONS IN THE CANTON AREA 1989 TO 1994

Site	County	Year	Exceedances measured	Expected exceedances
Malone College	Stark	1989	0	0.0
Malone College	Stark	1990	0	0.0
Malone College	Stark	1991	0	0.0
Malone College	Stark	1992	0	0.0
Malone College	Stark	1993	0	0.0
Malone College	Stark	1994	0	0.0
245 W 5th St	Stark	1992	0	0.0
245 W 5th St	Stark	1993	0	0.0
245 W 5th St	Stark	1994	0	0.0
6318 Heminger Av	Stark	1989	0	0.0
6318 Heminger Av	Stark	1990	0	0.0
6318 Heminger Av	Stark	1991	1	1.0
6318 Heminger Av	Stark	1992	0	0.0
6318 Heminger Av	Stark	1993	0	0.0
6318 Heminger Av	Stark	1994	0	0.0
City of Alliance	Stark	1991	0	0.0
City of Alliance	Stark	1992	0	0.0
City of Alliance	Stark	1993	0	0.0
City of Alliance	Stark	1994	0	0.0

TABLE 2.—PEAK 1-HOUR OZONE CONCENTRATIONS IN THE YOUNGSTOWN AREA 1989 TO 1994

Site	County	Year	Exceedances measured	Expected exceedances
9 West Front St	Mahoning	1989	0	0.0
9 West Front St	Mahoning	1990	0	0.0
9 West Front St	Mahoning	1991	1	1.0
9 West Front St	Mahoning	1992	0	0.0
9 West Front St	Mahoning	1993	0	0.0
9 West Front St	Mahoning	1994	0	0.0
Airport	Trumbull	1991	0	0.0
Airport	Trumbull	1992	0	0.0
Airport	Trumbull	1993	0	0.0
Airport	Trumbull	1994	0	0.0
Community Hall	Trumbull	1992	0	0.0
Community Hall	Trumbull	1993	1	1.0
Community Hall	Trumbull	1994	0	0.0
City of Farrell	Mercer	1989	0	0.0
City of Farrell	Mercer	1990	0	0.0
City of Farrell	Mercer	1991	0	0.0

TABLE 2.—PEAK 1-HOUR OZONE CONCENTRATIONS IN THE YOUNGSTOWN AREA 1989 TO 1994—Continued

Site	County	Year	Exceedances measured	Expected exceedances
City of Farrell	Mercer	1992	0	0.0
City of Farrell	Mercer	1993	0	0.0
City of Farrell	Mercer	1994	0	0.0
M. K. Goddard State Park	Mercer	1989	0	0.0
M. K. Goddard State Park	Mercer	1990	0	0.0
M. K. Goddard State Park	Mercer	1991	0	0.0
M. K. Goddard State Park	Mercer	1992	0	0.0

B. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met all Applicable Requirements Under Section 110 and Part D

Before the Canton and Youngstown areas may be redesignated to attainment for ozone, each area must have fulfilled the applicable requirements of section 110 and part D. USEPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation request. As the Canton and Youngstown redesignation requests were submitted to USEPA in March and August 1994, requirements that came due prior to these respective times must be met for each request to be approved. Requirements of the CAA that come due subsequent to the submission of the redesignation request continue to be applicable to the area (*see* section 175A(c)) and, if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, Part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio SIP was reviewed to ensure that all requirements under the amended Act were satisfied.

2. Part D Requirements

Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The 1990 Amendments to the CAA reaffirmed the ozone nonattainment status of the Canton and Youngstown areas and classified the areas as marginal. Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—as well as the applicable requirements of subpart 2 of part D that apply to marginal areas such as Canton and Youngstown.

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended CAA. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. In the cases of Canton and Youngstown, the State has satisfied all of the section 172(c) requirements necessary for these areas to be redesignated upon the basis of the redesignation requests submitted on March 25, 1994, and August 15, 1994.

In the case of marginal ozone nonattainment areas, the section 172(c)(1) Reasonably Available Control Measures was superseded by section 182(a)(2) Reasonably Available Control Technology (RACT) requirements, which required marginal ozone nonattainment areas that were previously designated nonattainment to submit RACT corrections. See General Preamble for the Implementation of Title I, 57 FR at 13503, and the volatile organic compound (VOC) RACT Fix-up rulemaking published at 58 FR 49458. Thus, for the Canton and Youngstown areas, the VOC RACT fix-up SIP must be fully approved. The VOC RACT fix-up SIP previously submitted by Ohio was given partial approval, partial disapproval, and partial limited approval/limited disapproval. See the Federal Register rulemaking dated May 9, 1994, at 56 FR 23796. However, Ohio made a subsequent submittal to address the VOC RACT requirements for these areas, for which USEPA has published a direct final approval, along with a proposed approval action. See the direct final and proposed rulemakings published in the Federal Register on March 23, 1995 (60 FR 15235, and 60 FR 15270). Consequently, the VOC RACT fix-up requirements have now been fully approved and became effective on May 5, 1995. Also, by virtue of provisions of section 182(a), marginal areas were not required to submit a demonstration that the SIP provide for attainment.

With respect to the section 172(c)(2) Reasonable Further Progress (RFP) requirement, as the Canton and Youngstown areas have attained the ozone NAAQS no RFP requirements apply. See General Preamble for the Implementation of title I, 57 FR at 13564.

The section 172(c)(3) emissions inventory requirement was addressed in a separate review and December 7, 1995, rulemaking action on the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1) (See 60 FR 62737). In that action, the inventory was approved as meeting the section 182(a)(1) requirement. Since the 182(a)(1) requirement is met, the 172(c)(3) requirement is also satisfied.

As for the section 172(c)(5) NSR requirement, USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect.

A memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment, fully describes the rationale for this view, and is based on the Agency's authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle,* 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed below, the State of Ohio has demonstrated that the Canton and Youngstown areas will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for these areas. Once the area is redesignated to attainment, the PSD program, which has been delegated to Ohio, will become effective immediately. The PSD program was delegated to Ohio at Code of Federal Regulations 40 CFR 52.21(u), on May 1, 1980, and amended November 7, 1988.

The section 172(c)(9) contingency measure requirements also do not apply to marginal ozone nonattainment areas. Section 182(a) of the CAA states that section 172(c)(9) (relating to contingency measures) shall not apply to marginal areas.

Finally, for purposes of redesignation, the Canton and Youngstown SIPs were reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, USEPA believes the SIP satisfies all of those requirements.

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity'').

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and November 30, 1994, respectively. Because the redesignation request was submitted before these SIP revisions came due, they are not applicable requirements under section 107(d)(3)(E)(v) for the purposes of evaluating this redesignation request.

Marginal ozone nonattainment areas are subject to the requirements of section 182(a) of subpart 2. Ohio has met all of the applicable requirements of that subsection with respect to the Canton and Youngstown areas. The emission statement SIP required by section 182(a)(3)(B) was approved on October 13, 1994. See 59 FR 51863. An Inspection/Maintenance (I/M) SIP was not required under section 182(a)(2)(B) since these areas were not required to have an I/M program before the enactment of the 1990 CAA Amendments. On September 23, 1993, the proposed rulemaking on the VOC RACT SIP was published. On May 9, 1994, the final rulemaking was published. This rulemaking gave partial approval/disapproval, partial limited approval/limited disapproval. A direct final rulemaking was published on March 23, 1995, providing full approval of the VOC RACT rules required for Youngstown and Canton. The emissions inventories were approved in a separate rulemaking, published on December 7, 1995 (See 60 FR 62737). Finally, the State need not comply with the requirements of section 182(a)(2)(C) concerning revisions to the part D NSR program in order for the Canton and Youngstown areas to be redesignated for the reasons explained above in connection with the discussion of the section 172(c)(5) NSR requirement. Since the emissions inventory, emissions statements, and VOC RACT SIPs are fully approved, the redesignations meet the section 107(d)(3)(E)(ii) and (v) requirements.

C. The Improvement in Air Quality Must be due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

In order to meet this requirement, the State should show the change in an area's emissions from its design value year (this is generally 1988) to an attainment year. The design value year is the year in which the monitored concentration, used to classify these areas as marginal, occurred.

In Canton, point source VOC emissions decreased 2.9 tons per day (TPD) from 1988 to 1993, due to a State permit controlling emissions at the Smith & Nephew Perry facility in Massillon. Area sources changed very little between 1988 and 1993. Mobile source VOC and NO_X decreased 15.0 tons per day (TPD) of VOC, and 1.7 TPD, respectively from 1988 to 1993. These mobile source emission reductions were due to Federal Motor Vehicle Emissions Control Program (FMVECP) required at 40 Code of Federal Regulations (CFR) Part 86 and the Federal Reid Vapor Pressure (RVP) program (which lowered the RVP of gasoline to 9.0 psi) required at 40 CFR Part 80. Since both these programs are Federal programs and are Federally enforceable and permanent, the improvement in Canton's air quality was due to permanent and enforceable reductions in emissions.

In Youngstown, mobile and point source VOC emissions decreased approximately 5 TPD, and 1 TPD, respectively, between 1988 and 1990. The area source emissions were unchanged. This results in a total change in VOC emissions of approximately 6 TPD (6 percent decrease) from 1988 to 1990. The majority of this reduction was due to the FMVECP. Based on this, the improvement in Youngstown's air quality was due to permanent and enforceable reductions in emissions.

Both the Canton and Youngstown redesignation requests meet the section 107(d)(3)(E)(iii) redesignation requirements.

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A September 4, 1992, USEPA memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions regarding redesignation provides further guidance on the required content of a maintenance plan.

An ozone maintenance plan should address the following five areas: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will

not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The State must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which ensure prompt correction of any violation of the ozone standard.

The State addresses the attainment inventory, maintenance demonstration, continued monitoring, tracking plans progress, and the contingency plan. The State has included emissions summaries for 1990 as the attainment inventories for Canton and Youngstown.

The Canton and Youngstown maintenance plans provide emissions estimates from 1990 to 2005 for VOCs.[1] The emissions are projected to decrease for both areas. The emissions projections for Youngstown show an expected 18 percent decrease in total VOC emissions, and almost a 6 percent decrease in total NO_X emissions from 1990 to 2005. For Canton, the emissions projections show a 15 percent reduction in VOC emissions and almost a 6 percent reduction in NO_X emissions. The results show that these areas are expected to maintain the ozone air quality standard for the next 10 years into the future.

TABLE 3.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	12.36	42.65	31.66	86.67
1996	13.01	43.25	18.27	74.53
2000	13.46	43.67	16.90	74.03
2006	14.07	44.20	15.34	73.61

TABLE 4.—NO_X VOC EMISSIONS IN TONS PER SUMMER DAY

1990	6.74	16.87	16.20	39.81
1996	7.17	17.19	14.20	38.56
2000	7.51	17.40	13.18	38.09
2006	7.96	17.68	12.00	37.64

Emissions summaries for VOCs and NO_X are provided below for the Youngstown area:

TABLE 5.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	16.71	41.28	48.98	106.97
1996	16.38	41.21	31.27	88.86
2000	15.90	41.14	27.58	84.62
2005	15.42	41.11	24.33	80.86

TABLE 6.—NO_X EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	23.25	17.99	29.87	71.11
1996	23.30	17.90	27.54	68.74
2000	23.36	17.79	24.11	65.26
2005	23.46	17.70	21.12	62.28

The State also commits to continuing the operation of the monitors in both areas. It will also track the maintenance of the areas by regularly updating the emissions inventories for the areas. The transportation conformity budgets for 2005 will be 32.16 TPD of VOC and 27.30 TPD of oxides of nitrogen (NO_X) for Youngstown. These budgets were chosen by the State of Ohio. The interim years do not set a budget for transportation conformity. They are based on allocating 30 percent of the VOC emissions safety margin to the mobile source sector and 70 percent of the NO_X emissions safety margin to the mobile sources sector. The safety margin is the difference in emissions between the total 2006 emissions and the 1990 emissions for VOC and NO_X. For Canton, the mobile source emissions budgets for 2006 are 15.34 TPD of VOC emissions and 12.0 TPD of NO_X. The budgets provided above for Canton and Youngstown are the only transportation conformity budgets established by the maintenance plan for these areas.

[1] The State used USEPA's MOBILE emission factor model and vehicle miles travelled projections to estimate future mobile source emissions in the area.

The State commits to lower RVP as the contingency measure for Canton. They also provided the following schedule in Table 4 for implementing the measure. This measure would be triggered in Canton by a violation of the ozone standard in Stark County. In order for the State to user lower RVP gasoline, a finding of necessity must first be made by USEPA under Section 211(c)(4)(C). If this finding of necessity is not provided, Ohio EPA has committed to choose an alternative unspecified emissions control measure deemed appropriate based upon a consideration of cost-effectiveness, VOC reduction potential, economic and social considerations, or other factors that the State judges to be appropriate. This decision would be made and implemented within 12 months from the official notification by USEPA that a waiver would not be granted.

In the Youngstown area a violation of the standard in Mahoning, Trumbull, or Mercer County, would trigger the lower RVP measure for Mahoning and Trumbull Counties. USEPA has to provide a waiver before the lower RVP measure can be implemented. The State will select a different measure if USEPA does not provide the waiver. The maintenance requirements of section 107(d)(3)(E)(iv) have been met by the Canton and Youngstown areas.

TABLE 7.—SCHEDULE FOR IMPLEMENTING LOWER RVP GASOLINE IN THE CANTON AND YOUNGSTOWN AREAS

Date	Action/event
March 15, 1994	Submit draft rules to USEPA. Revisions will be necessary to accommodate the Youngstown contingency plan.
October 15, 1994	Submit final rules to USEPA.
Trigger event	Monitored violation.
1 month from trigger	Ohio EPA finding of violation announced.
	Ohio EPA submits request for program budget.
	Ohio EPA hires additional staff for program.
2 months from trigger	Ohio EPA secures lab contracts.
3 months from trigger	Ohio EPA purchases needed equipment.
4 months from trigger	Ohio EPA initiates public awareness program.
	Ohio EPA secures lab contracts.
Six months from trigger	Gasoline Dispensing Facilities achieve final compliance.

III. Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA's regional oxidant model (ROM) indicate that ozone precursor emissions from various states west of the ozone transport region (OTR) contribute to increases in ozone concentrations in the OTR.[2] The State of Ohio has provided documentation that VOC emissions will remain below attainment levels for the next 10 years in the Canton and Youngstown areas. The USEPA is currently developing policy which will address the long range impacts of ozone transport. In addition, USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. Finally, USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

IV. Comment and Approval Procedure

The redesignation request is approved as meeting conditions of the CAA in section 107(d)(3)(E) for redesignation.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 1, 1996. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on April 1, 1996.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local,

[2] The OTR, comprised of eleven Eastern States and the District of Columbia, has been organized by the authority of section 184(a) of the CAA for the purpose of facilitating multi-State partnership to more effectively control ozone transport in the region.

and tribal governments or the private sector of less then $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control.

Dated: December 15, 1995.

Valdas V. Adamkus,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding paragraphs (b) (7) and (8) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(b) * * *

(7) Stark County.

(8) Mahoning and Trumbull Counties.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—OHIO

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

2. In § 81.336 the ozone table is amended by revising the entries for Stark, Mahoning, and Trumbull Counties to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	* *	* *	*	*
Canton Area	.....	.		
Stark County	April 1, 1996	Attainment.		
* *	* *	* *	*	*
Youngstown-Warren-Sharon Area:	.....	.		
Mahoning County.....	April 1, 1996	Attainment.		
Trumbull County.....	April 1, 1996	Attainment.		
* *	* *	* *	*	*

[1]This date is November 15, 1990, unless otherwise noted.

[FR Doc. 96–1848 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 2E4037 and 5E4437/R2195; FRL–4993–1]

RIN 2070–AB78

1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2yl]methyl]-1*H*-1,2,4-triazole (also called propiconazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on the raw agricultural commodities mint tops (leaves and stems) at 0.3 part per

million (ppm) and mushrooms at 0.1 ppm. The Interregional Research Project No. 4 (IR-4) submitted petitions under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting that EPA establish maximum permissible levels for residues of propiconazole in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective January 31, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2E4037 and 5E4437/R2195], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 2E4037 and 5E4437/R2195] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 15, 1995 (60 FR 57375), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted to EPA pesticide petitions, PP 2E4037 and PP 5E4437, on behalf of the named Agricultural Experiment Stations. The petitions requested that the Administrator, pursuant to section 408(e) of th Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.434 by establishing tolerances for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on certain raw agricultural commodities as follows:

1. *PP 2E4037*. Petition submitted on behalf of the Agricultural Experiment Station of Oregon proposing a tolerance for mint tops (leaves and stems) at 0.3 ppm. The petitioner proposed that use of propiconazole on mint be limited to mint production areas west of the Cascade Mountains based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking broader registration should contact the Agency's Registration Division at the address provided above.

2. *PP 5E4437*. Petition submitted on behalf of the Agricultural Experiment Station of Pennsylvania proposing a tolerance for mushrooms at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2E4037 and 5E4437/R2195] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in

ADDRESSES at the beginning of this document.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 23, 1996.

Stephen L. Johnson.

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, paragraph (a) is amended in the table therein by adding and alphabetically inserting an entry for mushrooms, and paragraph (b) is amended in the table therein by adding and alphabetically inserting an entry for mint, to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Mushrooms	0.1
* * * * *	

(b) * * *

Commodity	Parts per million
* * * * *	
Mint, tops (leaves and stems) ..	0.3
* * * * *	

* * * * *

[FR Doc. 96–1719 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4288 and 4E4289/R2198; FRL–4995–1]

RIN 2070–AC18

Chlorpyrifos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises tolerances for residues of the insecticide chlorpyrifos in or on the raw agricultural commodities peaches, pears, plums, and nectarines by establishing the current time-limited tolerances as permanent tolerances. The regulations to establish maximum permissible levels of residues of the insecticide were requested in petitions submitted by DowElanco and are needed to cover maximum expected residues in or on imported commodities.

EFFECTIVE DATE: This regulation became effective January 24, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PP 4E4288 and 4E4289/R2198], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM 1B2, 1921 Jefferson Davis Highway, Arlington, VA. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 4E4288 and 4E4289/R2198]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6386; e-mail:edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of September 28, 1993 (58 FR 68621) which announced that DowElanco had submitted pesticide petitions (PP 4E4288 and PP 4E4289) to the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), to amend 40 CFR 180.342 by revising the tolerances for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)

phosphorothioate] in or on the raw agricultural commodity pears from 0.01 to 0.05 part per million (ppm) and peaches, nectarines, and plums from 0.01 ppm to 0.05 ppm. These revisions in the tolerances were needed because of differing use patterns of chlorpyrifos in other parts of the world as compared to the U.S.

The Agency reviewed preliminary residue data and concluded that residues should not exceed the proposed tolerances, but determined that additional residue data for imported pears, peaches (data for peaches suffices for nectarines), plums and prunes (the processed commodity of plums) were required.

Pending submission and review of the data, the Agency issued a final rule, published in the Federal Register of February 25, 1994 (59 FR 9095), which announced that the Agency had revised the tolerances for a 2-year period. The expiration date is January 28, 1996, at which time the tolerances would revert to the previous 0.01 ppm for the named commodities.

Additional residue data for pears, peaches, and plums were submitted. (It was determined that chlorpyrifos residues do not concentrate in the processing of plums to prunes, and no data were submitted or required.) The data were reviewed and were determined to be sufficient to justify removing the time limitation from the existing tolerances. The available data do not support a change in the U.S. use pattern for the crops listed above. If such a change is desired, additional residue data generated in the U.S. must be submitted.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 2–year dog feeding study with a no-observed-effect level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest effect level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with chronic ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2–year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A voluntary human study with acute ChE NOEL of 0.10 mg/kg/day (based on daily single-dose exposures of 0, 0.014, 0.03, or 0.10 mg/kg/day) determined at 1, 3, 6, and 9 days of treatment.

5. A 2–year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study. Chlorpyrifos is classified as a Group E chemical (no evidence of carcinogenicity).

6. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

7. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal NOEL of 15 mg/kg/day and developmental NOEL of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

8. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested) and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

9. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal decreased food consumption on gestation day 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

10. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

11. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an *in vitro* chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

12. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is 3,5,6-trichloro-2-pyridinol (TCP). The studies listed below were conducted to demonstrate that TCP is less toxic than chlorpyrifos and is not a ChE inhibitor.

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Based on the above studies, the Agency has concluded that the TCP metabolite is not of toxicological concern.

For the assessment of chronic dietary risk, the reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. Tolerances for food uses appear in 40 CFR 180.342 and 40 CFR 185.1000. The Dietary Risk Exposure Section (DRES) used, when justified and appropriate, anticipated residues rather than published tolerance values, and data regarding percent crop treated (when less than 100%). The anticipated residue contribution (ARC) from published uses of chlorpyrifos is 0.000860 mg/kg of body weight/day for the overall U.S. population. This represents 28.7% of the RfD. None of the DRES subgroups has an exposure that exceeds the RfD. The population subgroup most highly exposed is non-nursing infants, less than 1 year old, with an ARC from published uses of 0.002147 mg/kg of body weight/day, 71.6% of the RfD. The next most highly exposed population subgroup is children, 1-6 years old, with an ARC from published uses of 0.001914 mg/kg of body weight/day, 63.8% of the RfD. It should be noted that these values include contributions from pears, nectarines, peaches, and plums with tolerances of 0.05 ppm; the tolerances are already in place as temporary tolerances. This rule converts existing, temporary tolerances to permanent tolerances and does not raise the ARC as a percentage of the RfD.

The DRES detailed acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977-78

Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of chlorpyrifos in the commodity. Since the toxicological endpoint to which exposure is being compared in this analysis is neurotoxicity, four human population subgroups (infants, less than 1 year old; children, 1-12 years old; females, 13 years old and older; males, 13 years old and older), as well as the overall population, are of interest.

The Margin of Exposure (MOE) is the ratio of the NOEL to the exposure (NOEL/exposure = MOE). For neurotoxicity, the Agency is generally not concerned unless the MOE is below 10 when the NOEL is based on human data. Using refined exposure estimates generated in the preparation of the Reregistration Eligibility Document (RED) for chlorpyrifos, MOEs are greater than 10 for all population subgroups evaluated except for children 1 through 6 years. Although the Agency has concerns when low MOEs are calculated, this tolerance action does not raise risk concerns. The MOEs are not affected by the rule because any incremental change in exposure resulting from the tolerances for pears, nectarines, peaches, and plums is negligible. Thus MOEs are not changed by the tolerances for these commodities, much less by the raising of the tolerance from 0.01 ppm to 0.05 ppm. It should also be noted that the Agency will reassess chlorpyrifos tolerances in general as part of the reregistration process. The RED is scheduled to be issued in 1996.

A record has been established for this rulemaking under docket number [PP 4E4288 and 4E4289/R2198] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by revising paragraph (e), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(e) Tolerances are established as follows for residues of the insecticide chlorpyrifos [*O*,*O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the following raw agricultural commodities:

Commodity	Parts per million
Nectarines	0.05
Peaches	0.05
Pears	0.05
Plums	0.05

* * * * *

[FR Doc. 96–1905 Filed 1–26–96; 2:55 pm]
BILLING CODE 6560–50–F

[FRL–5406–7]

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion of the Ossineke Groundwater Contamination Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Ossineke Groundwater Contamination site in Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Michigan have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties under CERCLA is appropriate. The site is being addressed under the Subtitle I provisions of RCRA.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Rita Garner-Davis at (312) 886–2440, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at: EPA Region V docket room at the above address and at the Alpenda Bank; 11686 U.S. Highway 23 south; Ossineke, MI 49766.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Ossineke Groundwater Contamination Site in Ossineke, Michigan. A Notice of Intent to Delete was published August 11, 1995 (60 FR 41051) for this site. The closing date for comments on the Notice of Intent to Delete was September 11, 1995. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous Waste, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Ossineke Ground Water Contamination, Ossineke, Michigan.

Dated: December 19, 1995.

David Ullrich,

Acting Regional Administrator U.S. EPA, Region V.

[FR Doc. 96–1710 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–276]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. Chapter 47, abandonment of barges, and § 12301(b), numbering of undocumented barges. In order that the Code of Federal Regulations reflect these delegations, a change is necessary.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: LT Chris Hayes, Office of Marine Safety, Security and Environmental Protection (G–MRO–3), (202) 267–2614, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, (202) 366–9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Public Law 102–587 is The Oceans Act of 1992. Subtitle C of Title V of The Oceans Act of 1992, titled the Abandoned Barge Act of 1992, (hereinafter referred to as the Act), amended 46, U.S. Code, to prohibit abandonment of barges, to provide a civil penalty for abandonment, to authorize removal, and to require the numbering of barges. The Secretary of Transportation is delegating his authority under the Act to the Commandant of the Coast Guard.

The Act prohibits an owner or operator of a barge over 100 gross tons from abandoning it on the navigable waters of the United States. The Act authorizes the Secretary to assess a civil penalty of up to $1,000 per day of abandonment. If the barge owner or operator cannot be identified or refuses to remove the barge, the Secretary may contract for removal of the barge at the expense of the owner or operator. To help identify barge owners, the Secretary is required to ensure the numbering of all undocumented barges over 100 gross tons.

This rule adds a specific delegation of authority to 49 CFR § 1.46, thus amending the codification to reflect the Secretarial delegation of authority to the Commandant of the Coast Guard.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the Federal Register. Therefore, this final rule is effective upon publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding a new paragraph (zz) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(zz) Carry out the functions and exercise the authority vested in the Secretary by 46 U.S. Code Chapter 47 (abandonment of barges) and § 12301(b) (numbering of undocumented barges), as enacted by the Oceans Act of 1992, Title V, section 5301 *et seq.*, Pub. L. No. 102–587, 106 Stat. 5081. This authority may be redelegated.

Issued at Washington, DC this 23rd day of January, 1996.

Federico Penã,

Secretary of Transportation.

[FR Doc. 96–1831 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 951120272–5272–01; I.D. 012696A]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 61

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 28, 1996, until superseded by the final 1996 specifications.

FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 61 was established by Interim 1996 Harvest Specifications (60 FR 61492, November 30, 1995) as 6,125 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determuined, in accordance with § 672.20(c)(2)(ii), that the 1996 interim specification of pollock in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 5,925 mt, and has set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 61 until superseded by the Final 1996 Harvest Specifications for Groundfish in the Federal Register.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: January 26, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–1906 Filed 1–26–96; 3:28 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 951120272–5272–01; I.D. 012696B]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 62

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 29, 1996, until superseded by the final 1996 specifications.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 62 was established by Interim 1996 Harvest Specifications (60 FR 61492, November 30, 1995) as 3,125 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1996 interim specification of pollock in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 2,925 mt, and has set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries., Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62 until superseded by the Final 1996 Harvest Specifications of Groundfish in the Federal Register.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is except from review under E.O. 12866.

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

Dated: January 26, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–1907 Filed 1–26–96; 3:28 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 61, No. 21
Wednesday, January 31, 1996

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF44

Reporting Requirements for Unauthorized Use of Licensed Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to add a new requirement for licensees to notify the NRC Operations Center within 24 hours of discovering an intentional or allegedly intentional diversion of licensed radioactive material from its intended or authorized use. The proposed rule would also require licensees to notify the NRC when they are unable, within 48 hours of discovery of the event, to rule out that the use was intentional. The proposed rule would require reporting of events that cause, or have the potential to cause, an exposure of individuals whether or not the exposure exceeds the regulatory limits.

DATES: Submit comments by March 1, 1996. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. For information on electronic communications please see the Electronic Access discussion in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6230, e-mail MLT1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

Recently, the NRC responded to two incidents involving phosphorous-32 (P–32) internal contamination of individuals at biomedical research facilities. P–32 is widely used in research institutions, as are many other radionuclides. Although these incidents both involved P–32, the inherent issues of security and control of radioactive material apply to all facilities using licensed material.

The first incident, involving a pregnant researcher, had been reported to the licensee's radiation safety office. The contamination was detected by the researcher's spouse, who worked with the researcher at the licensee's facility, while performing a routine survey of the lab. The licensee identified the radionuclide as P–32. In addition to the researcher's contamination, further surveys performed by the licensee identified P–32 contamination on the floor in front of a refrigerator in an adjacent lounge and a contaminated water cooler in the same building. Urine bioassays of other workers in the same building identified approximately 25 additional individuals who had low-level internal P–32 contamination.

The second incident, also involving internal contamination with P–32, was discovered during a routine survey by the researcher. The licensee performed urine bioassays and confirmed that the researcher was internally contaminated with P–32. Both incidents are still under investigation at this time.

These two recent incidents raise the following issues. First, the current reporting requirements may not capture potentially intentional events such as these if the events did not involve quantities of material or potential exposures that exceeded the current regulatory thresholds that trigger the requirements to file reports. Second, prompt NRC attention to these types of events is needed to assure that the appropriate corrective actions will or have been taken by the licensee and to determine any need for the NRC to take action in addition to any action taken by the licensee. Therefore, the NRC has determined that a new reporting requirement is needed to address incidents such as these.

II. Discussion of Proposed Rule Changes

The intent of the proposed rule is to provide the NRC with an early notification of the intentional use of licensed radioactive material for a purpose that is not authorized by the applicable NRC license or the regulations. The rationale for such a requirement is that, even though the potential exposures involved may not result in harm to an individual, incidents involving intentional misconduct or a disregard for safety requirements raise a great concern about the loss of control of materials that could lead to potential harm. The NRC needs to have the assurance that timely corrective action will be taken by the licensee and needs to determine whether further NRC actions may be appropriate. Further NRC action might be appropriate, for example, if an individual is identified as having intentionally acted in violation of the regulations and the individual has access to or is working with other licensees and/or licensed materials.

A new section would be added (§ 20.2205) to require a licensee to notify the NRC Operations Center within 24 hours after discovering that licensed radioactive material was used for a purpose not authorized by the applicable NRC license or regulations if the use causes or has the potential to cause an exposure to an individual, regardless of whether or not it exceeds the regulatory exposure limit as identified in 10 CFR 20.2202, and if the use was intentional or the licensee has received information that the use was allegedly intentional. If the licensee cannot rule out that the use was intentional, they must notify the NRC Operations Center within 48 hours of discovery of the event. A separate telephone report under § 20.2205 would not be needed if a telephone report was made under §§ 20.2201 and 20.2202.

Examples where a notification would be required include events similar to the ones that precipitated this rulemaking as well as the following types of events:

In an effort to add realism to an emergency drill, a drill coordinator used Na-24 (a short-lived gamma emitter) without getting permission from facility

management. The source was spread on the floor and participants tracked through and spread the contamination. The drill participants were not informed of this use of radioactive material. Workers had a potential for uptake. This use of the isotope is for a purpose that is not authorized by the license or regulations.

A worker was being surveyed for contamination as part of the routine surveillance program at a licensed facility. A sealed radiation source (used to response check radiation survey instruments) was found in the worker's pocket. Apparently, someone had removed this strontium-90 source from its storage place without authorization and deliberately hidden it in the worker's pocket (in the change room) while the worker was inside a contaminated area. The worker received a calculated dose to the skin of approximately 20 rem.

In an effort to entrap a suspected thief who had been stealing workers' valuables from a dressing/change room at a licensed facility, health physics technicians fixed low levels of radioactive contamination onto some dollar bills and left this contaminated money in a wallet in an inviting manner to lure the suspected thief. While this baiting activity did successfully lead to the apprehension of the thief (alarmed the sensitive portal exit contamination monitor), this use of licensed radioactive material was for a purpose that was not authorized by the license or regulations.

A laboratory assistant, who had reported the vandalism of a hematology laboratory, was found to have iodine-125 contamination on her lab coat. Subsequent analysis also showed iodine-125 in her urine. Consequently, the laboratory assistant confessed her responsibility for the vandalism and the ingestion. This use of licensed radioactive material was for a purpose that was not authorized by the license or regulations.

Laboratory personnel were scanning samples for disposal when they discovered that a post-doctorate researcher was radioactive. Later analysis determined that the researcher was internally contaminated with P–32. Surveys of the laboratory and surroundings revealed only one instance of contamination, which was isolated to a food item. This use of licensed radioactive material was for a purpose that was not authorized by the license or regulations.

Examples of events that have occurred and that would not be covered by this requirement include the following incidents:

In an effort to add realism to radiation worker training for surveying materials, a qualified instructor used small, sealed radioactive sources attached to objects that, when surveyed, provide the trainee with realistic instrument responses. This controlled use of radioactive materials had been properly reviewed by the facility health physicist, conforms with the ALARA principle, and was part of a documented, management approved training program. This use of licensed radioactive material was used for a purpose that was authorized by the license or regulations.

The routine loose surface contamination (smearable or swipe) survey inside the radiologically controlled area at a licensed facility revealed detectable loose surface contamination on the passageway floor of an area not controlled as a contaminated area. The location, level, and type of contamination leads the radiation protection staff to conclude that it was likely that workers exiting the immediate worksite had inadvertently tracked contamination outside the posted loose-surface contaminated area into the unposted, ''clean'' passageway. The contamination was determined not to be intentional.

A radiographer who intentionally fails to survey and subsequently receives an overexposure while performing radiographic operations would not be covered under this rule because radiography is a purpose authorized by the license and regulations.

This reporting requirement is being proposed to ensure that the NRC is made aware of any intentional or allegedly intentional activities for a purpose not authorized by the applicable license or regulations in order to take the necessary follow-up actions or to conduct investigations in a timely manner. The NRC needs to have prompt assurance that the licensee is taking the appropriate actions to assess the consequences of the situation and to take the necessary steps to reduce any likelihood that further exposures would occur. These actions could consist of identifying the causes of the event, securing the affected area and accounting for all licensed radioactive material, surveying the area and the personnel working in that area, processing the dosimetry worn by personnel working in that area, performing bioassays of the personnel in the affected area, taking the appropriate actions to prevent a recurrence of the event, and notifying law enforcement agencies.

The reporting requirement is not based on an exposure threshold because the NRC is concerned about any intentional unnecessary exposure to workers or members of the public that could occur unless effective corrective actions are promptly taken. It is recognized that, as a licensee analyzes an event such as this, it may not be immediately obvious whether the exposure was the result of an intentional use of licensed material for a purpose not authorized by the applicable license or regulations or was the result of an accident. A notification to the NRC Operations Center would be required for any event that had the potential for radiological exposure whenever the licensee cannot promptly classify the exposure to be the result of either an operation permitted under the license or an accident. Therefore, the NRC is particularly interested in receiving comments on the proposed requirement for licensees to inform the NRC within 48 hours of discovery of the event that the licensee cannot rule out that the use was intentional.

A medical administration to any individual is subject to the regulations in part 35 and is specifically excluded from the scope of Part 20 regulations. However, the administration of licensed radioactive material to individuals outside the scope of Part 35's definition of ''medical use'' is for a purpose not authorized by the regulations and would therefore be reportable. An example of such a situation would be the administration of material by one technician to another technician to test their imaging skills.

The NRC has considered the impact on licensees from these new requirements and has weighed them against the benefits. In those instances where exposures of individuals cannot be ruled out as resulting from operations permitted under the license or from accidents, licensees will have to notify the NRC Operations Center. Such events are expected to be rare. However, by reporting this information early, the NRC will be able to assess promptly the licensee's actions to prevent further exposures and possible harm to other individuals, as well as determine whether it needs to be involved in the matter. With this in mind, the NRC is specifically requesting comments regarding the burden associated with the proposed reporting requirement. Specifically, the NRC is interested in receiving an estimate of the likely number of notifications licensees would have to make of cases where they could not promptly rule out whether or not the use was intentional.

III. Electronic Access

Comments on the proposed rule, 10 CFR part 20 Reporting Requirements may be submitted electronically as indicated below.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use ANSI or VT–100 terminal emulation. The NRC rulemaking subsystems can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using the ''Home Page'': www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the NRC's toll free number to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting ''F—Regulatory, Government Administration and State Systems'' or by entering the command ''/go nrc'' at a FedWorld command line. At the next menu select ''A—Regulatory Information Mall,'' and then select ''A—U.S. Nuclear Regulatory Commission'' at the next menu. If you access NRC from FedWorld's ''Regulatory, Government Administration'' menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the ''NRC Main Menu.'' However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

IV. Enforcement Policy

In light of the purpose of this proposed rule, the NRC intends, if this rule becomes final, to consider amending the NRC Enforcement Policy, NUREG–1600, (60 FR 34381, June 30, 1995), to state that a failure to meet 10 CFR 20.2205 may be considered a violation of significant regulatory concern. Such a violation could be characterized as a Severity Level III violation and be subject to an assessment of civil penalties.

V. Agreement State Compatibility

This rulemaking will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency of State with Federal safety requirements. The NRC is considering whether Division 2 or 3 level of compatibility should be assigned. Comments are specifically requested on the appropriate level of compatibility.

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this revised regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(ii), recordkeeping requirements. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this revised regulation.

VII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0014), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by March 1, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. Regulatory Analysis

The NRC has considered the impact on licensees from these new requirements and has weighed them against the benefits. Under the proposed rule, the licensee would be required to report promptly to NRC those instances in which exposures of individuals are intentional, are alleged to be intentional, or in which intentional and unauthorized use cannot be ruled out. These types of events are expected to be rare. By reporting this information promptly, the NRC would be able to assess quickly the licensee's actions to prevent further exposures and possible harm to other individuals.

The NRC has considered three alternatives: (1) Take no action, (2) amending each license, and (3) amend the regulations.

The first alternative is not acceptable because the NRC would not be made aware promptly of any intentional or deliberate activities. Thus, the NRC would not be able to take the necessary

follow-up actions or to conduct investigations in a timely manner.

Under the second alternative, the only benefit of amending licenses would be in the resources saved in promulgating a new regulation. However, the costs to amend licenses for the more than 6,600 NRC licensees could be much higher than the costs for amending the regulation.

The third alternative would be acceptable because it would provide regulations for prompt reporting of the affected events. The NRC needs to have prompt assurance that the licensee is taking the appropriate actions to assess the consequences of the situation and to take the necessary steps to reduce any likelihood that further exposures would occur. Furthermore, the rulemaking process involves public participation and provides NRC the opportunity to consider any public comments. The NRC believes that this benefit outweighs the costs to the licensees if the proposed rule is adopted.

The costs to licensees of the proposed rule, if adopted, could be estimated as follows: Based on the past experience, the occurrence of events that would be affected by this rule is expected to be rare. The number of such events is estimated at 20 per year. The NRC further estimates that 20 hours would be required to determine the cause of the event, prepare the report, complete management review, and make a telephone call to the NRC Operations Center. The total estimated burden to all licensees would be 400 hours per year. Assuming administration and labor costs of approximately $116 per hour, the total cost would be about $46,400 per year.

The NRC is requesting specific comments regarding the burden associated with the proposed reporting requirement. Specifically, the NRC is interested in receiving an estimate of the likely number of events that must be reported under the proposed rule and the number of events in which the licensee could not promptly rule out that the use was intentional and unauthorized. Comments may submitted to the NRC as indicated under the **ADDRESSES** heading.

This rule, if adopted, will be published in the Federal Register as a final rule which would include an effective date for implementation of the changes to allow licensees time to make the required changes. The NRC intends to make the final rule effective 30 days after the publication in the Federal Register. The NRC is also requesting comments regarding the effective date.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects all licensees. The anticipated cost of the proposed requirement is indicated in the Regulatory Analysis. This cost would be incurred only by a licensee who is required to report an event. The estimated cost of reporting a single event is $2,320.

The potential gains in protection of the public health and safety significantly outweigh the economic impact on small licensees. However, the NRC is seeking comments and suggested modification because of the widely differing conditions under which small licensees operate.

Any small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the NRC of this in a comment that indicates—

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

X. Backfit Analysis

The NRC has determined that the proposed rule is not a backfit under the backfit rule, 10 CFR 50.109. The NRC has determined that recordkeeping and reporting requirements are not backfits.

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, (U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1009, paragraph (b) is revised to read as follows:

§ 20.1009 Reporting, recordkeeping, and application requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1101, 20.1202, 20.1204, 20.1206, 20.1301, 20.1302, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2109, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, and appendices F and G to 10 CFR part 20.

* * * * *

3. Section 20.2205 is added to read as follows:

§ 20.2205 Reports of unauthorized use of licensed radioactive material.

(a) The licensee shall notify the NRC Operations Center by telephone as soon as practical but not later than 24 hours after discovering that—

(1) Licensed radioactive material was used for a purpose not authorized by the applicable NRC license or regulations; and

(2) Such use listed in paragraph (a)(1) of this section causes, or has the potential to cause an exposure to an individual, regardless of whether or not it exceeds the regulatory exposure limit as identified in 10 CFR 20.2202; and

(3) Such use listed in paragraph (a)(1) of this section was intentional or the licensee receives information that the use was allegedly intentional.

(b) The licensee shall notify the NRC Operations Center by telephone as soon as practical but not later than 48 hours after discovering that provisions (a)(1) and (a)(2) of this section have occurred

and the licensee cannot rule out that the use was intentional.

(c) Reports made by licensees in response to the requirement of this section must be made as follows:

(1) Licensees having an installed Emergency Notification System shall make reports to the NRC Operations Center, and

(2) All other licensees shall make reports by telephone to the NRC Operations Center (301–816–5100).

(d) Reporting events under §§ 20.2201 and 20.2202 continue to apply. A report is not required by paragraphs (a) or (b) of this section if a notification has already been made under §§ 20.2201 or 20.2202.

Dated at Rockville, MD, this 19th day of January 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–1867 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–60–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) Models PA31, PA31–300, PA31–325, and PA31–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–22–04, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes: Repetitively inspecting the upper section of Fuselage Station (FS) 317.75 bulkhead for cracks, and incorporating a certain reinforcement kit if any crack is found. The proposed action would require inspecting (one-time) the upper section of the FS 317.75 bulkhead for cracks, and incorporating one of two reinforcement kits depending on whether cracks are found in the FS 317.75 bulkhead area. Cracks found on airplanes in compliance with the inspection requirements of AD 80–22–04 and the Federal Aviation Administration's policy on aging commuter-class aircraft prompted the proposed action. The actions specified in the proposed AD are intended to prevent structural failure of the vertical fin forward spar caused by cracks in the FS 317.75 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before April 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–60–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 relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications 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. 90–CE–60–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. 90–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 80–22–04, Amendment 39–3943, currently requires the following on Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes:

—Repetitively inspecting the upper section of Fuselage Station (FS) 317.75 bulkhead for cracks; and

—Incorporating Piper Kit part number (P/N) 764–028 if any crack is found in the upper section of the FS 317.75 bulkhead.

AD 80–22–04 also allows for the option of incorporating Piper Kit P/N 763–917 as terminating action for the repetitive inspection requirement. Accomplishment of these inspections is in accordance with Piper Service Bulletin (SB) No. 636A, dated August 26, 1980.

The FAA has received several reports of cracks in the upper section of FS 317.75 bulkhead on airplanes in compliance with the repetitive inspection requirements of AD 80–22–04. These reports prompted the FAA to consider mandating the installation of a reinforcement kit in the area of the FS 317.75 bulkhead on Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes.

In addition, AD 80–22–04 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.

These factors have led the FAA to establish an aging commuter-class

aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to require the incorporation of a reinforcement kit in the FS 317.75 bulkhead area in order to prevent structural failure of the vertical fin forward spar caused by cracks in this area, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes of the same type design, the proposed AD would supersede AD 80–22–04 with a new AD that would require inspecting (one-time) the upper section of the FS 317.75 bulkhead for cracks in accordance with Piper SB No. 636A, dated August 26, 1980, and accomplishing one of the following, as applicable:

—If any crack is found, incorporating Piper Kit 764–028 in accordance with the instructions to that kit, revised June 18, 1990; or

—If no crack is found, incorporating Piper Kit 763–917 in accordance with the instructions to that kit, revised June 18, 1990.

The FAA estimates that 2,810 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours (average of 8 workhours for Kit 763–917 and 16 workhours for Kit 764–028) per airplane to accomplish the proposed installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,866,200 or $1,020 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed installation.

Piper has informed the FAA that bulkhead reinforcement kits have been distributed to equip at least 15 of the affected airplanes. Assuming that each of the kits has been incorporated on an affected airplane, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $15,300 from $2,866,200 to $2,850,900.

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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–22–04, Amendment 39–3943, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–60–AD. Supersedes AD 80–22–04, Amendment 39–3943.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have either Piper Kit 764–028 or Piper Kit 763–917 incorporated at the Fuselage Station (FS) 317.75 bulkhead area:

Models	Serial Nos.
PA31, PA31–300, and PA31–325.	31–2 through 31–7912039.
PA31–350	31–5001 through 31–7952071.

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 (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 within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural failure of the vertical fin forward spar caused by cracks in the FS 317.75 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the upper section of the FS 317.75 bulkhead for cracks in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 636A, dated August 26, 1980.

(1) If any crack is found, prior to further flight, incorporate Piper Kit 764–028 in accordance with the instructions included with that kit, revised June 18, 1990.

(2) If no crack is found, prior to further flight, incorporate Piper Kit 763–917 in accordance with the instructions included with that kit, revised June 18, 1980.

(b) 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.

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 3: Alternative methods of compliance approved in accordance with AD 80–22–04 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach,

Florida 32960; 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.

(e) This amendment supersedes AD 80–22–04, Amendment 39–3943.

Issued in Kansas City, Missouri, on January 24, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1760 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–154–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped with Pratt & Whitney Model JT9D–7R4 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 certain Boeing Model 767 series airplanes. This proposal would require a visual inspection to verify proper clearance between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine, and various follow-on actions. The proposal would also require installation of clamps and associated fasteners between the environmental control system (ECS) controller tube and the pylon drain tube. This proposal is prompted by reports of chafing of the number 18 fuel nozzle secondary transfer fuel tube of the engine due to an improperly installed or loose pylon drain tube. The actions specified by the proposed AD are intended to prevent such chafing, which could lead to subsequent fuel leakage and a possible engine fire.

DATES: Comments must be received by March 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Monica Gandara Merritt, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2683; fax (206) 227–1181.

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–154–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–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of chafing of the number 18 fuel nozzle secondary transfer fuel tube, which resulted in excessive fuel leakage on one airplane and an engine fire on another airplane. These incidents occurred on Boeing Model 767 series airplanes equipped with Pratt & Whitney Model JT9D–7R4 engines. In the engine fire incident, investigation revealed that the cause of the chafing was attributed to the installation of the wrong engine fuel manifold, which did not provide for adequate clearance for the fuel tube. In the fuel leakage incident, investigation revealed that the cause of the chafing was attributed to an improperly installed or loose pylon drain tube, which contacted the fuel transfer tube and subsequently chafed against it. Chafing of the number 18 fuel nozzle secondary transfer fuel tube of the engine, if not detected and corrected in a timely manner, could lead to fuel leakage and, consequently, a possible engine fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995, which describes procedures for installation of clamps and associated fasteners between the environmental control system (ECS) and the pylon drain tube. The installation will ensure that proper clearance between the engine fuel manifold and the pylon drain line is maintained.

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 installation of clamps and associated fasteners between the ECS controller tube and the pylon drain tube. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Additionally, the proposed AD would require a visual inspection to verify that proper clearance (0.5 inch) exists between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine; and follow-on actions (i.e., visual inspection for damage, relocation of the pylon tube, and repair or replacement of a damaged tube). The FAA has determined that accomplishing only the installation of clamps and associated fasteners, as described previously, would not eliminate any damage from chafing that may currently exist on the fuel tube. The FAA has determined that any existing chafing damage must be identified and corrected.

There are approximately 93 Model 767 series airplanes equipped with Pratt & Whitney Model JT9D–7R4 engines of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts

would cost approximately $31 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,130, or $271 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.

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), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–154–AD.

Applicability: Model 767 series airplanes having line position 1 through 329 inclusive; equipped with Pratt & Whitney Model JT9D–7R4 engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 chafing of the number 18 fuel nozzle secondary transfer fuel tube of the engine, and subsequent fuel leakage and possible engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection to verify proper clearance (0.5 inch) between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine.

(1) If the clearance is equal to or greater than 0.5 inch, prior to further flight, install clamps and associated fasteners between the environmental control system (ECS) and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(2) If the clearance is less than 0.5 inch, prior to further flight, perform a visual inspection to detect damage of the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube.

(i) If no damage is detected, or if any damage to the number 18 fuel nozzle secondary transfer tube is less than or equal to 0.002 inch deep and if any damage to the drain tube is less than or equal to 0.010 inch deep, prior to further flight, relocate the pylon drain tube to meet the 0.5 inch specification. After accomplishing the relocation, prior to further flight, install the clamps and associated fasteners between the ECS and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(ii) If any damage to the number 18 fuel tube is greater than 0.002 inch deep, or if any damage to the drain tube is greater than 0.010 inch deep, prior to further flight, repair or replace the damaged tube, in accordance with Section 28–00–10 of the Overhaul Manual. After accomplishing the repair or replacement, prior to further flight, install the clamps and associated fasteners between the ECS and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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 January 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1876 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–185–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and Model C–9 (Military) 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 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model C–9 (military) series airplanes. This proposal would require modification of the slant panel insulation blankets on the slant pressure panel of the main landing gear. The proposal would also require a visual inspection to detect discrepancies of the left and right seal assemblies of the overwing emergency exit door, and replacement of any discrepant door seal. This proposal is prompted by a report that the flaps and landing gear did not extend or retract properly due to water accumulation in the slant pressure panel area. The actions specified by the proposed AD are intended to prevent such water accumulation, which could result in the failure of the flaps or landing gear to properly extend or retract.

DATES: Comments must be received by March 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–185–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–185–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–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that the flaps and landing gear did not extend or retract properly in flight on a Model DC–9–31 series airplane. Investigation revealed that the potable water lines over the center section had frozen and ruptured. The potable water leaked from the water lines through the door seals of the overwing exit door and accumulated in the slant pressure panel area. The water then dripped and froze on various cables in the main wheel well area, which prevented the flaps and landing gear from operating properly. If not corrected, the possibility of water pooling in the slant pressure panel area could continue, and consequently could drip and freeze on the cables in the main wheel well area; this situation could then prevent the flaps and landing gear form operating properly.

The potable water line installation, overwing exit door seals, and slant pressure panel area on certain Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes are essentially identical in configuration to that of Model DC–9 series airplanes. Therefore, those airplanes may be subject to the same unsafe condition identified on the Model DC–9 series airplanes.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995, which describes procedures for modification of the slant panel insulation blankets on the slant pressure panel of the main landing gear. The modification involves trimming the insulation blankets, sealing the trimmed area, and reidentifying the insulation blankets. Accomplishment of the modification will allow the water to drain out through the drain holes and minimize the possibility of water accumulating in the slant pressure panel area. The service bulletin also describes procedures for a visual inspection to detect discrepancies (i.e., defects and constant gap) of the left and right seal assemblies of the overwing emergency exit door, and replacement of any discrepant door seal.

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 modification of the slant panel insulation blankets on the slant pressure panel of the main landing gear. The proposed AD would also require a visual inspection to detect discrepancies of the left and right seal assemblies of the overwing emergency exit door, and replacement of the discrepant door seal. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,500 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,000 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $480,000, or $480 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.

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), 40113, 44701.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95–NM–185–AD.

Applicability: Model DC–9–10, -20, -30, -40, and -50 series airplanes; Model DC–9–81 (MD–81), -82 (MD–82), -83 (MD–83), -87 (MD–87) series airplanes; Model MD–88 airplanes; and Model C–9 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 water accumulation in the slant pressure panel area, which could result in the failure of the flaps or landing gear to properly extend or retract, accomplish the following:

(a) Within 24 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995.

(1) Modify the slant panel insulation blankets on the slant pressure panel of the main landing gear.

(2) Perform a visual inspection to detect discrepancies (i.e., defects and constant gap) of the left and right seal assemblies of the overwing emergency exit door. If any discrepancy is detected, prior to further flight, replace door seal in accordance with the 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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with 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 January 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1875 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–102–AD]

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. This action would require revising the supplemental structural inspection program, including changing some of the inspection techniques, changing some of the thresholds and intervals for inspections, expanding the area to be inspected for some of the inspections, and revising the Fleet Leader Program. This proposal is prompted by a review of in-service history and reports received from the current supplemental structural inspections program required by the existing AD. The actions specified by the proposed AD are intended to prevent reduced structural integrity of these airplanes due to fatigue cracking.

DATES: Comments must be received by March 11, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; 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 94–NM–102–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. 94–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 15, 1993, the FAA issued AD 93–01–24, amendment 39–8478 (58 FR 6703, February 2, 1993), applicable to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes. That AD requires supplemental structural inspections to detect fatigue cracking, and repair or replacement of cracked structure, if necessary. That action was prompted by a structural re-evaluation, which identified certain significant structural components that are to be inspected to detect fatigue cracking as these airplanes approach or exceed the design service goal. The requirements of that AD are intended to prevent reduced structural integrity of these airplanes.

Since the issuance of that AD, Airbus has issued ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994. This revision of the SSID includes the following changes:

a. changes to some of the inspection techniques,

b. changes to some of the thresholds and intervals for certain inspections,

c. expands the area to be inspected for some of the inspections, and

d. revises the Fleet Leader Program.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this document as mandatory and issued French airworthiness directive 89–109–097(B)R7, dated June 7, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France 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 French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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 supersede AD 93–01–24 to continue to require supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. This proposed AD would require revising the supplemental structural inspection program, including changing some of the inspection techniques, changing some of the thresholds and intervals for certain inspections, expanding the area to be inspected for some of the inspections, and revising the Fleet Leader Program. The actions would be required to be accomplished in accordance with the SSID described previously.

Although paragraph 6.2, ''Complete RR Method,'' of Section 9 of the SSID provides operators the option of calculating inspection thresholds and intervals using the ''risk ratio (RR),'' operators should note that the proposed AD does not permit operators the option of using the RR in their calculations. This is in consonance with actions taken by the DGAC; it is no longer approving maintenance inspection programs that have used the RR to calculate the inspection thresholds and intervals.

The FAA estimates that approximately 26 Model A300 series airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 93–01–24 take approximately 564 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $879,840, or $33,840 per airplane.

Implementation of the inspections, repairs, or replacements specified in Revision 2 of the SSID into an operator's maintenance program is estimated to require approximately 597 work hours (including removal, inspection, and installation work hours) per airplane per year, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $931,320, or $35,820 per airplane.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under 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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8478 (58 FR 6703, February 2, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 94–NM–102–AD. Supersedes AD 93–01–24, Amendment 39–8478.

Applicability: All Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 series airplanes, and A300 B4–2C, B4–103, and B4–203 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (m) 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 reduced structural integrity of these airplanes due to fatigue cracking, accomplish the following:

(a) Within one year after March 9, 1993 (the effective date of AD 93–01–24, amendment 39–8478), incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance inspections, modifications, repair, or replacement of the significant structural details (SSD) and significant structural items (SSI) specified in ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), dated September 1989 (hereafter referred to as ''the SSID'').

(b) Within one year after the effective date of this AD, replace the revision of the FAA-approved maintenance program required by paragraph (a) of this AD with the inspections, inspection intervals, repairs, and replacements defined in ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994 (hereafter referred to as ''Revision 2 of the SSID''). Accomplish the actions specified in the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, at the times specified in those service bulletins. The actions are to be accomplished in accordance with those service bulletins.

(1) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID: Accomplish the actions specified in those service bulletins within the grace period specified in that service bulletin. The grace period is to be measured from the effective date of this AD.

(2) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, and a grace period is not specified in that service bulletin: Accomplish the actions specified in that service bulletins within 1,500 flight cycles after the effective date of this AD.

(c) If any cracked structure is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, permanently repair the cracked structure in accordance with either paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Note: A permanent repair is defined as a repair that meets the certification basis of the airplane, and does not require additional modification at a later date.

(1) The service bulletins listed in Section 6, ''SB Reference List,'' of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, if a permanent repair is not specified in any of these service bulletins. Or

(2) The service bulletins listed in Section 6, ''SB Reference List,'' of Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD]; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, if a permanent repair is not specified in any of these service bulletins. Or

(3) Other permanent repair data meeting the certification basis of the airplane which is approved by the Manager, Standardization Branch, ANM–113, or by the Direction Générale de l'Aviation Civil (DGAC) of France.

(d) For airplanes identified as Fleet Leader Program (FLP) in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Inspect according to the instructions and intervals specified in paragraph 4.4, ''Adjustment of Inspection Requirements and DSG,'' of Section 4, or Section 9, as applicable, of the SSID [for airplanes inspected in accordance with paragraph (a) of this AD], or Revision 2 of the SSID [for airplanes inspected in accordance with paragraph (b) of this AD], for each SSD.

(e) For the purpose of accomplishing paragraphs (d), (f), (g), and (i) of this AD, operators shall not use paragraph 6.2, ''Complete RR Method,'' of Section 9 of the SSID to calculate inspection thresholds and intervals.

(f) For Model A300–B2 and B2K–3C series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, ''Inspection Threshold and Intervals,'' Section 9 of the SSID, inspect at the time specified in either paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes inspected in accordance with paragraph (a) of this AD: Inspect within 2,000 landings after March 9, 1993, in accordance with the SSID. Or

(2) For airplanes inspected in accordance with paragraph (b) of this AD: Inspect within 2,000 landings after the effective date of this AD, in accordance with Revision 2 of the SSID.

(g) For Model A300–B4 series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, ''Inspection Threshold and Intervals,'' Section 9 of the SSID, inspect at the time specified in either paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes inspected in accordance with paragraph (a) of this AD: Inspect within 1,500 landings after March 9, 1993 [the effective date of AD 93–01–24, amendment 39–8478]. Or

(2) For airplanes inspected in accordance with paragraph (b) of this AD: Inspect within 1,500 landings after the effective date of this AD.

(h) For airplanes identified as FLP in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Within one year after the effective date of this AD, apply the basic requirements given in Revision 2 of the SSID.

(i) For airplanes that are subject to the requirements of paragraph (b) of this AD, and have exceeded the initial inspection threshold specified in paragraph 4.4, ''Adjustment of Inspection Requirements and DSG,'' of Section 4, or paragraph 6, ''Inspection Threshold and Intervals,'' of Section 9, for each SSD: Perform the initial inspection prior to the accumulation of the number of flight cycles specified in paragraph 7, ''Additional Information,'' Section 9, of Revision 2 of the SSID.

Note 3: Fatigue ratings are not applicable to these allowances; therefore, no adjustment is required.

Note 4: Paragraph (i) of this AD provides the ''grace'' periods for those airplanes that are new to the FLP or that have newly added or revised SSID requirements in accordance with paragraph (b) of this AD.

(j) The grace period provided by paragraph (i) of this AD is also applicable to the thresholds and/or repeat intervals for each SSD for which the inspection interval or threshold was reduced in accordance with the requirements of paragraph (b) of this AD.

(k) For FLP airplanes identified in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID that are listed in Section 7, ''SSI Limitation List,'' of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD], or Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD]: Inspect at intervals not to exceed the interval specified for each SSI, in accordance with the values given in Section 7, ''SSI Limitation List,'' of the SSID or Revision 2 of the SSID, as applicable.

(l) For all airplanes: All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with either paragraph (l)(1) or (l)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For FLP airplanes, identified in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Submit reports in accordance with the instructions in paragraph 5.2, ''SSIP Inspection Reporting,'' of Section 5, and paragraph 7.1, ''General,'' of Section 7 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or Revision 2 of the SSID [for airplanes inspected in accordance with paragraph (b) of this AD].

(2) For all airplanes that are subject to Section 6, ''SB Reference List,'' of the SSID: Submit reports in accordance with the instructions in the applicable service bulletins identified in Section 6 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD].

(m) 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. 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 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Standardization Branch, ANM–113.

Note 6: Alternative methods of compliance previously granted for AD 93–01–24, amendment 39–8478, continue to be considered as acceptable alternative methods of compliance with this amendment.

(n) 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 January 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1874 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–4]

Removal of Class D Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove Class D airspace at K.I. Sawyer (AFB), MI. On August 31, 1995, the Air Force closed Sawyer AFB and ceased all operations. As a result, Class D airspace at this location is no longer necessary.

DATES: Comments must be received on or before March 16, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Peter H. Salmon, 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class D airspace at K.I. Sawyer (AFB), MI. On August 31, 1995, the Air Force closed Sawyer AFB and ceased all operations. As a result, Class D airspace is no longer necessary.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI D K.I. Sawyer, MI [Removed]

K.I. Sawyer, AFB, MI
(lat. 46°21′45″ N, long. 87°23′45″W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.5 miles radius of the K.I. Sawyer AFB.

* * * * *

Issued in Des Plaines, Illinois on January 16, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–1946 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–03]

Proposed Revision of Class E Airspace; Arkadelphia, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Arkadelphia, AR. A new nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to Runway (RWY) 04 at Arkadelphia Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the NDB SIAP to RWY 04 at Arkadelphia, AR.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–03, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–03.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Arkadelphia Municipal Airport, Arkadelphia, AR. A new NDB SIAP to RWY 04 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB SIAP to Rwy 04 at Arkadelphia, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Arkadelphia, AR [Revised]

Arkadelphia Municipal Airport, AR
(lat. 34°05′59″ N., long, 93°03′58″W.)
Arkadelphia RBN
(lat. 34°03′19″ N., long. 93°06′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Arkadelphia Municipal Airport and within 2.6 miles each side of the 222° bearing from the Arkadelphia RBN extending from the 6.6-mile radius to 10.7 miles southwest of the airport.

* * * * *

Issued in Forth Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1947 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–02]

Proposed Revision of Class E Airspace; Portales, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Portales, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 01 at Portales Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 01 at Portales Municipal Airport, Portales, NM.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–02, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–02.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Portales Municipal Airport, Portales, NM. A new GPS SIAP to RWY 01 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 07 at Zuni, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(lat. 34°22′58″ N., long. 108°19′20″ W.)
Portales Municipal Airport, NM

(lat. 34°08′43″ N., long. 103°24′37″ W.)
Texico VORTAC
(lat. 34°29′42″ N., long. 102°50′23″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of Cannon AFB and within an 8-mile radius of Portales Municipal Airport and within 8 miles north and 4 miles south of the 072° radial of the Texico VORTAC extending from the 20-mile radius to 16 miles east of the VORTAC.

* * * * *

Issued in Forth Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1948 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–31]

Proposed Revision of Class E Airspace; Las Vegas, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Las Vegas, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 02 at Las Vegas Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 02 at Las Vegas Municipal Airport, Las Vegas, NM.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–31, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An information docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited Q02

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–31.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Las Vegas Municipal Airport, Las Vegas, NM. A new GPS SIAP to RWY 02 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 02 at Las Vegas, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Las Vegas, NM [Revised]

Las Vegas Municipal Airport, NM
(Lat. 35°39′15″ N., long. 105°08′33″ W.)
Las Vegas VORTAC
(Lat. 35°39′27″ N., long. 105°08′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Las Vegas Municipal Airport and within 2.6 miles each side of the 025° radial of the Las Vegas VORTAC extending from the 6.7-mile radius to 8.4 miles northeast of the airport and within 2.4 miles each side of the 220° radial of the Las Vegas VORTAC extending from the 6.7-mile radius to 7.5 miles southwest of the airport and within 1.6 miles each side of the 215° bearing from the airport extending from the 6.7-mile radius to 8.2 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX on January 17, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1949 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–34]

Proposed Revision of Class E Airspace; Truth or Consequences; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Truth or Consequences, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 31 at Truth or Consequences Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 31 at Truth or Consequences Municipal Airport, Truth or Consequences, NM.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–34, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–34.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Truth or Consequences Municipal Airport, Truth or Consequences, NM. A new GPS SIAP to RWY 31 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate class E airspace for aircraft executing the GPS SIAP to Rwy 31 at Truth or Consequences, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Truth or Consequences, NM [Revised]

Truth or Consequences Municipal Airport, NM
(Lat. 33°14′07″N., long. 107°16′10″W.)
Truth or Consequences VORTAC
(Lat. 33°16′57″N., long. 107°16′50″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Truth or Consequences Municipal Airport and within 1.4 miles each side of the 013° radial of the Truth or Consequences VORTAC extending from the 6.7-mile radius to 7.5 miles northeast of the airport and within 1.6 miles each side of the 145° bearing from the airport extending from the 6.7-mile radius to 8.4 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX on January 17, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1950 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–33]

Proposed Revision of Class E Airspace; Tucumcari, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Tucumcari, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 03 at Tucumcari Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 03 at Tucumcari Municipal Airport, Tucumcari, NM.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–33, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–33.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Tucumcari Municipal Airport, Las Vegas, NM. A new GPS SIAP to RWY 03 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 03 at Tucumcari, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Tucumcari, NM [Revised]

Tucumcari Municipal Airport, NM
(Lat. 35°10′58″ N., long. 103°36′12″ W.)
Tucumcari VORTAC
(Lat. 35°10′56″ N., long. 103°35′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Tucumcari Municipal Airport and within 2.4 miles each side of the 033° radial of the Tucumcari VORTAC extending from the 6.7-mile radius to 7.1 miles northeast of the airport and within 2.4 miles each side of the 078° radial of the Tucumcari VORTAC extending from the 6.7-mile radius to 7.4 miles east of the airport and within 1.9 miles each side of the 225° bearing from the airport extending from the 6.7-mile radius to 9 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1951 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–01]

Proposed Revision of Class E Airspace; Zuni, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Zuni, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 07 at Zuni Pueblo, Black Rock Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 07 at Zuni Pueblo, Black Rock Airport, Zuni, NM.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–01, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–01.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Zuni Pueblo, Black Rock Airport, Zuni, NM. A new GPS SIAP to RWY 07 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 07 at Zuni, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7499,9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Naviagation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designation and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Zuni, NM [Revised]

Zuni Pueblo, Black Rock Airport, NM
(Lat. 35°05′00″N., long. 108°47′30″W.)
Zuni VORTAC
(Lat. 34°57′57″N., long. 109°09′16″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Black Rock Airport and within 1.8 miles each side of the 252° bearing from the airport extending from the 6.4-mile radius to 8.4 miles southwest of the airport and that airspace extending upward from 8,200 feet MSL within 6 miles north and 8.5 miles south of Zuni VORTAC 248° and 068° radials extending from 10.2 miles east to 17 miles west of the VORTAC, excluding that airspace in the state of New Mexico.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1952 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–36]

Proposed Revision of Class E Airspace; Burns Flat, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Burns Flat, OK. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 Right (R) at Clinton-Sherman Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17R at Clinton-Sherman Airport, Burns Flat, OK.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–36, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–36.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also requested a copy of Advisory Circular No. 11–2A that describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700

feet AGL, at Clinton-Sherman Airport, Burns Flat, OK. A new GPS SIAP to RWY 17R has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 17R at Clinton-Sherman Airport, Burns Flat, OK.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Burns Flat, OK [Revised]

Clinton-Sherman Airport, OK
(Lat. 35°20′23″ N., long. 99°12′02″ W.)
Burns Flat VORTAC
(Lat. 35°14′13″ N., long. 99°12′22″ W.)

That airspace extending upward from 700 feet above the surface within a 8.2-mile radius of Clinton-Sherman Airport and within 8 miles west and 4 miles east of the 183° radial of the Burns Flat VORTAC from the 8.2-mile radius to 22.3 miles south of the airport and within 1.8 miles each side of the 360° bearing from the airport extending from the 8.2-mile radius to 10 miles north of the airport; excluding that airspace within the Elk City, OK, and the Hobart, OK, Class E airspace areas.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1953 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–32]

Proposed Establishment of Class E Airspace; Sallisaw, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Sallisaw, OK. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 35 and a SIAP, utilizing the Sallisaw Nondirectional Radio Beacon (NDB) have made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 35 and the NDB or GPS SIAP to RWY 35 at Sallisaw Municipal Airport, Sallisaw, OK.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, docket No. 95–ASW–32, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Doanald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–32.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System

Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL, at Sallisaw Municipal Airport, Sallisaw, OK. A new GPS SIAP to RWY 35 and a NDB or GPS approach to RWY 35 have made this proposal to establish controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 35 and NDB or GPS SIAP to RWY 35 at Sallisaw, OK.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C. dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Sallisaw, OK [New]

Sallisaw Municipal Airport, OK
(Lat. 35°26′18″ N., long. 94°48′08″ W.)
Sallisaw NDB
(Lat. 35°23′55″ N., long. 94°47′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sallisaw Municipal Airport and within 3.2 miles each side of the 165° bearing of the Sallisaw NDB extending from the 6.5-mile radius to 9.5 miles south of the airport.

* * * * *

Issued in Fort Worth, TX on January 17, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1954 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–35]

Proposed Revision of Class E Airspace; Alice, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Alice, TX. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 31 at Alice International Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 31 at Alice International Airport, Alice, TX.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–35, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–35.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest

Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Alice International Airport, Alice, TX. A new GPS SIAP to RWY 31 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 31 at Alice, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, a CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17,1 995, and effective September 16, 1995, as amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Alice, TX [Revised]

Alice International Airport, TX
(Lat. 27°44′27″N., long. 98°01′38″W.)
Orange Grove NALF, TX
(Lat. 27°54′04″N., long. 98°03′06″W.)
Navy Orange Grove TACAN
(Lat. 27°53′43″N., long. 98°02′33″W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33′03″N., long. 98°01′51″W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport and within 2 miles each side of the 135° bearing from Alice International Airport extending from the 7.mile radius to 9.8 miles southeast of the airport and within a 7.2-mile radius of Orange Grove NALF and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 11.7 miles southeast of the airport and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 9.7 miles northwest of the airport and within a 6.5-mile radius of Kleberg County Airport.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1955 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–29]

Proposed Revision of Class E Airspace; Brownfield, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Brownfield, TX. A new Global Positioning System (GPS) standard instrument approach procedures (SIAP) to Runway (RWY) 02 at Terry County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 02 at Terry County Airport, Brownfield, TX.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–29, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–29.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Terry County Airport, Brownfield, TX. A new GPS SIAP to RWY 02 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 02 at Brownfield, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Brownfield, TX [Revised]

Brownfield, Terry County Airport, TX
(Lat. 33°10′45°″N., long 102°11′32″W.)
Brownfield RBN
(Lat. 33°10′45″N., long 102°11′32″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Terry County Airport and within 2.5 miles each side of the 201° bearing from the Brownfield RBN extending from the 6.6-mile radius to 7.1 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1956 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–30]

Proposed Revision of Class E Airspace; Dumas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Dumas, TX. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 19 at Moore County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 19 at Moore County Airport, Dumas, TX.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–30, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–30.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Moore County Airport, Dumas, TX. A new GPS SIAP to RWY 19 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 19 at Dumas, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Dumas, TX [Revised]

Dumas, Moore County Airport, TX
(Lat. 35°51′28″N., long. 102°00′48″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Moore County Airport and within 1.9 miles each side of the 023° bearing from the airport extending from the 6.8-mile radius to 8.9 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX on January 23, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1957 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC36

Appalachian National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing this rule to allow hang gliding use along the Appalachian National Scenic Trail by licensed persons at the Fox Gap, Pennsylvania, launch site pursuant to the terms and conditions of a Special Use Permit.

The Project Manager will be provided the discretion to require that all hang gliders using the designated site identified in the Special Regulation be qualified pilots licensed by the United States Hang Gliding Association. The terms and conditions of a Special Use Permit (SUP) will prohibit stunt flying, commercialization, advertising, publicity, contests, meets, demonstrations and motor vehicular access.

DATES: Written comments will be accepted through March 1, 1996.

ADDRESSES: Comments should be addressed to: Project Manager, Appalachian Trail Project Office, National Park Service, c/o Harpers Ferry Center, Harpers Ferry, WV 25425.

FOR FURTHER INFORMATION CONTACT: Virginia F. Williams, Appalachian Trail Project Office, National Park Service, c/o Harpers Ferry Center, Harpers Ferry, WV 25425, (304) 535–6278 phone, (304) 535–6270 fax.

SUPPLEMENTARY INFORMATION:

Background

The Appalachian National Scenic Trail (AT) is a north-south hiking trail that stretches nearly 2,200 miles from Mt. Katahdin, Maine to Springer Mountain, Georgia along the crest of the

Appalachian Mountains. The AT is administered by the Secretary of the Interior through the National Park Service as part of the National Trails System.

At its inception, the AT traversed mostly private lands. Use of the private lands was enjoyed not only by hikers, but also by other types of outdoor enthusiasts. In the late 1970's, hang gliders in the area of Fox Gap, Pennsylvania, with the permission of the landowner, began launching from the ridgetop known as Kirkridge, along the crest of the Appalachian Mountains. The hang gliders formally organized and established the Water Gap Hang Gliding Club (WGHGC) for the purpose of promoting the safety of hang gliding and addressing liability issues.

Originally, the WGHGC used the area with the express permission of the landowner and, after the area was acquired by the NPS, the WGHGC requested permission from the NPS and was issued a SUP to continue using the AT area as a launch site. During the review process conducted by the NPS in 1995 for the renewal of the SUP for the WGHGC, the NPS discovered that a 1983 revision to the general regulations found at 36 CFR 2.17 had created the requirement of a special regulation before the NPS could renew the WGHGC permit. Private managing partners were consulted and they endorsed seeking the special regulation.

An interim rule was published in the Federal Register on July 14, 1995 (60 FR 36224) to allow the continuation of the existing hang gliding activity on the Appalachian Trail while the agency developed a special regulation to address the activity through public notice and comment rulemaking.

The hang gliding launch site known as Kirkridge is located near Fox Gap, Pennsylvania. The WGHGC believes this site is the best launch site in the region. It has been well maintained for approximately 7 years. A private landowner immediately adjacent to the site endorses the continued use by the hang gliders. The hang gliding club has displaced a non-compatible user group that historically misused the site and caused serious management problems.

The WGHGC has proven by past conduct to be a good steward of these public lands. The WGHGC has assumed shared responsibility for maintenance of this popular section of the AT along with the local trail club. The WGHGC has a published maintenance schedule for its individual club members to provide trash pick-up in the general area. The WGHGC works with the local trail club to protect the resource qualities of the area and to ensure the area is safe for public use by other outdoor enthusiasts. The private landowners adjacent to the site have endorsed the continued use of the area by the WGHGC. Based upon a review of the past years use by WGHGC and the experience of others (including the landowners and local hiking club) in the area, the NPS has determined that there are no known adverse impacts caused by the WGHGC activities.

Based on available data and experience at this site, there are no known adverse impacts caused by hang gliding use to the Appalachian Trail. In fact, the results of past use by hang gliders at the location have shown that the net result is generally positive with small benefits to the Trail and its resources.

This proposed rule is virtually identical to the interim rule that was published on July 14, 1995 (60 FR 36224). The comment period for the interim rule was 60 days (through September 12, 1995). Because of this, the agency has determined that a 30 comment period for this proposed regulation is adequate.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking. The NPS will review comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information: The primary authors of this proposed rulemaking are Acting Project Manager Donald T. King and Landscape Architect Virginia F. Williams at the Appalachian Trail Project Office.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

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

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

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

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

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

Based on this determination, this proposed regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

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

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

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

2. Section 7.100 is amended by revising paragraph (c) to read as follows:

§ 7.100 Appalachian National Scenic Trail

* * * * *

(c) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at a site known as Fox Gap, Pennsylvania, located near longitude 75°11′0″ W and latitude 40°56′17″ N, pursuant to the terms and conditions of a permit.

Dated: November 7, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–1749 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–70–M

36 CFR Part 7

RIN 1024–AC23

Voyageurs National Park; Aircraft Operations, Designation of Areas

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing this rule to amend the special regulations for Voyageurs National Park by replacing the interim rule (60 FR 39257) that was published on August 2, 1995, designating certain areas open to aircraft use within the park. This rulemaking is necessary to comply with NPS general regulations that require special regulatory designations for areas in parks open to the operation or use by aircraft. The intended effects of this rule are to increase safety, protect resources and provide appropriate enjoyment to park users.

DATES: Written comments will be accepted through April 1, 1996.

ADDRESSES: Comments should be directed to: Superintendent, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904.

FOR FURTHER INFORMATION CONTACT: Chief Ranger, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904. Telephone (218) 283–9821.

SUPPLEMENTARY INFORMATION:

Background

The enabling legislation for Voyageurs National Park states ''The Secretary may, when planning for development of the park, include appropriate provisions for * * * use by seaplanes * * * .'' 16 U.S.C. Section 160h. The 1980 Master Plan for the park states that float planes and ski planes will be allowed upon all lakes deemed safe by the Minnesota Department of Transportation. It also stated that this allowance would be subject to the findings of the wilderness study. The 1992 wilderness study recommended that planes be allowed on the four major lakes (Rainy, Kabetogama, Namakan and Sand Point), as well as the following interior lakes: Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda. Each year the park receives an increasing number of inquiries for permission to land float planes in the park.

Public aircraft use on park waters occurred prior to the designation of the park in 1971. This use is primarily related to fishing, camping, transportation to resorts and summer dwellings and is typical for the area. Float plane use is mainly associated with the four major lakes with use of the interior lakes constituting less than one percent of the park's use. Aircraft are currently prohibited from using about 22 small interior lakes that have been determined to be too small to use safely by the Minnesota Department of Transportation. Three other lakes that have been used periodically and are accessible by hiking trails will not be opened to float plane use by this regulation. The closing of these three interior lakes will allow the park to manage the interior lakes on an equitable basis since other motorized uses are prohibited.

This rule will increase public safety by identifying where and under what conditions aircraft are allowed to operate and improve information to the public on where they may expect to see aircraft within the park. This will lessen potential conflicts among user groups and encourage those that do not want to associate with aircraft operations to select areas within the park that are closed to aircraft use. There will be an increased enjoyment among users by delineating areas appropriate to specialized uses. By identifying areas open to aircraft use, the park is able to limit use to less sensitive areas and improve protection of resources. The park will also be able to improve information to pilots as what areas are open and what areas are closed to aircraft operations as well as information on sensitive areas that would be affected by aircraft use. This regulation will allow the park to identify those areas where appropriate use may occur, improve public information and protect area resources.

The NPS is proposing this rule to allow an activity that has been identified as compatible with the establishment of the park and an activity that was specifically identified in the park's enabling legislation as an acceptable activity. 36 CFR 2.17 prohibits the operation or use of aircraft on lands and waters within park areas except at locations designated through the special rulemaking process. This requirement, as complied with here, ensures that aircraft use and activities are only undertaken in park areas subsequent to full public participation and the review that is accorded rulemaking documents.

Public Participation

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review comments and consider making changes to the final rule based upon an analysis of the comments.

During the 1992 wilderness study process, all of the options for aircraft use were presented and discussed. Each of the six alternatives specifically identified which lakes would be open to aircraft use. The public was informed of these options during three public hearings. Extensive public involvement has taken place as a requirement of the ''Master Plan'', ''Trail Plan'' and ''Wilderness Recommendation'', all of which had complete public review and environmental review and analysis under applicable law.

Drafting Information: The primary authors of this rulemaking are Bruce D. McKeeman, Chief Ranger, Voyageurs National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

Pursuant to the Act of January 3, 1968, 84 Stat. 1972, 16 U.S.C. Section 160f(b), the NPS prepared a Wilderness Recommendation and, pursuant to the National Environmental Policy Act, 42 U.S.C. 4332 *et seq.*, prepared an Environmental Impact Statement (EIS) assessing the effects of the Wilderness Recommendation. On page 30 of the EIS, the section titled ''Provisions Common To All Alternatives'' states: ''Under all alternatives motorized vehicles and aircraft would be allowed on Rainy, Kabetogama, Namakan and Sand Point lakes, subject to established regulations. Special regulations for aircraft access in the park will be required, * * *''. On page 35, the section titled ''Alternatives'' also states that the alternatives address the appropriateness of motorized use in the park, specifically the location of snowmobile routes and portages, as well as the lakes open to aircraft and motorboat use. Each of the six alternatives specifically lists the lakes that will be open to motorized and aircraft use. The NPS consulted with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536 and they issued a ''No Jeopardy Opinion'' as part of their biological opinion. Public input was provided during a series of public hearings. Extensive public comment, both oral and written, was received regarding the matter of snowmobile use

and wilderness designation. There were very few comments received concerning aircraft use.

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effect of this rulemaking are local in nature and negligible in scope.

In accordance with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental guidelines in 516 DM 6 (49 FR 21438), an Environmental Assessment (EA) which included consultation with the U. S. Fish and Wildlife Service and a Finding of No Significant Impact (FONSI) have been prepared. These documents can be obtained by contacting the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

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

1. The authority citation continues to read as follows:

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

2. Section 7.33, is amended by revising paragraph (c) to read as follows:

§ 7.33 Voyageurs National Park.

* * * * *

(c) *Aircraft.* (1) Aircraft may be operated on the entire water surface and frozen lake surface of the following lakes, except as restricted in paragraph (c)(4) of this section and § 2.17 of this chapter: Rainy, Kabetogama, Namakan, Sand Point, Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda.

(2) Approaches, landings and take-offs shall not be made within 500 feet of any developed facility, boat dock, float, pier, ramp or beach.

(3) Aircraft may taxi to and from a dock or ramp designated for their use for the purpose of mooring and must be operated with due care and regard for persons and property and in accordance with any posted signs or waterway markers.

(4) Areas within the designated lakes may be closed to aircraft use by the Superintendent taking into consideration public safety, wildlife management, weather and park management objectives.

Dated: October 20, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–1747 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5406–4]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed extension of stay.

SUMMARY: In the Rules Section of today's Federal Register, EPA is announcing a three-month administrative stay and reconsideration of a certain reporting requirement in the petition process for the import of used class I controlled substances promulgated under sections 604 and 606 of the Clean Air Act Amendments of 1990. 40 CFR 82.13(g)(2)(viii) requires the importer to certify that the purchaser of the controlled substance is liable for the tax.

This document proposes, pursuant to Clean Air Act section 301(a)(1), to stay temporarily the effectiveness of this provision, and applicable compliance dates, beyond the three-month administrative stay, but only to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question.

DATES: Written comments on this proposal must be received by March 1, 1996. Requests for a hearing should be submitted to Tom Land by February 12, 1996. Interested persons may contact the Stratospheric Ozone Hotline at the phone number given below to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–92–13, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. All supporting materials are contained in Docket A–92–13. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, Stratospheric Protection Division, Office of Air and Radiation, U.S. Environmental Protection Agency (6205–J), 401 M Street, SW., Washington, DC 20460, (202)-233–9185. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: In the rules Section of today's Federal Register, EPA announces that pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of 40 CFR 82.13(g)(2)(viii), which requires an importer petitioning to import used class I controlled substances to certify that the purchaser of the controlled substance is liable for the tax. Readers should refer to that rule for a complete discussion of the background and rules affected. In that rule EPA also announces a three-month stay of that provision during reconsideration. However, if EPA cannot complete reconsideration (including appropriate regulatory action) within the three-month period expressly provided by Clean Air Act Amendments of 1990 § 307(d)(7)(B), then it may be appropriate to extend the stay of this provision until EPA completes reconsideration. By this action, EPA proposes a temporary extension of the stay beyond the three-month administrative stay to the extent necessary to complete reconsideration of the rule in question. If EPA takes final action to impose this proposed stay, the stay will extend until the effective date of EPA's final action following reconsideration of this rule.

By this notice EPA hereby proposes, pursuant to Clean Air Act sections 301(a)(1), 42 U.S.C. 7601(a)(1), a temporary stay of the effectiveness of 40 CFR 82.13(g)(2)(viii) promulgated as a final federal rule (60 FR 24970, May 10, 1995). Please refer to the notice of stay and reconsideration in the Rules section of today's Federal Register for EPA's statement of its reasons for staying and reconsidering this provision. Pursuant to the rulemaking procedures set forth in section 307(d) of the Clean Air Act, EPA hereby requests comment on such a proposed stay.

EPA is proposing this temporary stay of the rule and associated compliance date in order to complete reconsideration of this rule, and,

following the notice and comment procedures of section 307(d) of the Clean Air Act, take appropriate action. If, after reconsideration of these provisions, EPA determines that it is appropriate to impose new requirements that are stricter than the existing rules, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. EPA expects that any EPA proposal regarding changes to the tax liability certification requirement for a petition for the import of used class I controlled substances would be subject to the notice and comment procedures of Clean Air Act section 307(d).

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 11, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.13 is amended by staying paragraph (g)(2)(viii) from April 30, 1996 until the completion of the reconsideration of 40 CFR 82.13(g)(2)(viii).

[FR Doc. 96–1554 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–154–7092b; FRL–5328–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions To Process Emission Standards for New and Existing Cotton Gins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of revising the current regulations for process emission standards for new and existing cotton gins. These revisions also provide an optional method of using selected controls to demonstrate compliance with the emission standards. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 1, 1996.

ADDRESSES: Written comments on this action should be addressed to Karen Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4197. Reference file TN154–01–7092.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: October 17, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–1838 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH66–1–6499b OH76–1–6900b; FRL–5405–7]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the redesignation to attainment requests and maintenance plans submitted by the State of Ohio for the Canton (Stark County), and Youngstown (Mahoning and Trumbull Counties), marginal ozone nonattainment areas as revisions to Ohio's State Implementation Plan (SIP) for ozone. In the final rules section of this Federal Register, USEPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. The ''direct final'' approval shall be effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 1, 1996. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on April 1, 1996. The USEPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received on or before March 1, 1996.

ADDRESSES: Written comments should be mailed to: Jay Bortzer, Chief,

Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Engineer, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this Federal Register.

Dated: December 15, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–1849 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 152

[OPP–250110; FRL–4984–9]

RIN 2070–AC18

Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation under section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule (OPP–300350A) exempts certain substances from regulation under FIFRA. This action is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Robert S. Brennis, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7501), e-mail Brennis.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the Federal Register. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the Federal Register anytime thereafter.

Authority: 7 U.S.C. 136 et seq.

Dated: January 22, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–1718 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3853/P640; FRL–4993–6]

RIN 2070–AC18

Pesticide Tolerance for Hexaconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance, to expire on (*3*) years after the signature date of the final rule), for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichloro-phenyl)-1*H*-1,2,4-triazole-1-ethanol)], in or on the imported raw agricultural commodity bananas at 0.1 part per million (ppm). Zeneca Agrochemicals Products (Zeneca) petitioned for this regulation to establish a maximum permissible level for residues of the fungicide.

DATES: Comments, identified by the document control number [PP 0E3853/P488], must be received on or before March 1, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-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 data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, ''[PP 0E3853/P640].'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, (703) 305–6900, e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to establish a time-limited tolerance for residues of the fungicide hexaconazole, [(alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol)], in or on the raw agricultural commodity bananas at 0.1 part per million (ppm). The proposed regulation to establish a maximum permissible level of the fungicide pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, by amending 40 CFR part 180 to include this commodity was requested in a petition (0E3853) submitted by Zeneca, New Murphy Road, Concord Pike, Wilmington, DE 19897. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data

considered in support of the proposed tolerance include the following:

1. In a 2-year feeding study in rats, hexaconazole was tested at 10, 100 and 1,000 ppm (equivalent to 0.47, 4.7 and 47 mg/kg/day in females and 0.61, 6.1 and 61 mg/kg/day in males). The no-observed-effect level (NOEL) was established at 100 ppm (equivalent to 0.61 and 0.47 mg/kg/day in males and females, respectively) for body weight gain reduction and liver pathology (centrilobular fatty changes and hypertrophy).

2. A 1-year dog feeding study using doses of 2, 10 and 50 mg/kg/day, tested hexaconazole in male and female Beagle dogs. The chemical was administered in gelatin capsules. The NOEL was established at 2 mg/kg/day based upon fatty infiltration of the liver and increased liver weight.

3. In a developmental toxicity study, hexaconazole was tested at 2.5, 25 and 250 mg/kg/day in Wistar rats. The NOEL/LOEL for maternal toxicity were considered to be 25 and 250 mg/kg/day based upon reduced body weight gain. The LOEL for developmental toxicity was established at 25 mg/kg/day based upon delayed skeletal ossification and increased incidence of the 14th rib (bilateral). The NOEL for developmental toxicity was found to be 2.5 mg/kg/day.

In two developmental toxicity studies involving New Zealand White rabbits, hexaconazole was tested at 25, 50 and 100 mg/kg/day. The NOEL/LOEL for maternal toxicity were established at 50 and 100 mg/kg/day based upon reduced maternal body weight gain. The NOEL/LOEL for developmental toxicity were considered to be 25 and 50 mg/kg/day based upon decreased mean fetal body weight.

The Agency is requiring an occupational exposure risk assessment based on the NOEL of 2.5 mg/kg/day demonstrated in the developmental toxicity study in rats, as well as, an acute dietary exposure study in rats.

4. In a 2-generation reproduction study in Wistar rats, the chemical was tested at 20, 100 and 1,000 ppm (equivalent to 1, 5 and 50 mg/kg/day). On the basis of abnormal liver pathology, a systemic NOEL was set at 20 ppm. The NOEL/LOEL for reproductive toxicity were established at 100 and 1,000 ppm based upon decreased weight gain and survival in pups. Reproductive toxicity of hexaconazole was considered minimal.

5. From a 2-year carcinogenicity study in Wistar rats, hexaconazole was classified as a Group C (possible Human) carcinogen with a Q_1* of 0.023 mg/kg/day based on testicular Leydig cell tumors. This classification was recommended based upon a statistically significant increase in benign Leydig cell tumors, with a positive dose-related trend in rats. Moreover, the Leydig cell tumor is an uncommon tumor in this strain of rats, and occurred at an accelerated rate and at a dose level below what would be considered an adequate level to determine the carcinogenic potential of hexaconazole. There was also some indication of marginal increases in liver cell tumors in mice. The classification was further supported by structural similarity of hexaconazole to other triazole pesticides known for their potential as liver carcinogens in mice.

6. The Reference Dose (RfD) value for use in dietary exposure analysis was 0.02 mg/kg body weight(bwt)/day, basis of a NOEL of 2 mg/kg bwt/day and an uncertainty factor of 100. This NOEL was derived from a 1-year feeding study in dogs that showed increased liver weight accompanied by fatty infiltration of the liver observed at 10 mg/kg/day.

7. A chronic dietary exposure analysis for use of hexaconazole in/on imported bananas was performed to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 population subgroups. Results show the TMRC and %RfD for the U.S. population is 0.023 µg/kg/day and 0.11% for the RfD, respectively. The highest exposed subgroup is non-nursing infants (<1 year old) for which TMRC and %RfD are 0.108 µg/kg/day and 0.45%, respectively.

The Agency concluded from this analysis that chronic dietary risk is not a concern.

8. From cancer risk assessment, the upper-bound carcinogenic risk from food uses of hexaconazole for the general U.S. population as calculated using the following equation:

$$\text{Upper Bound Cancer Risk} = \text{Dietary Exposure (TMRC)} \times Q_1^*$$

Based on a Q_1* of 0.023 $(\text{mg/kg/day})^{-1}$ the upper bound cancer risk was calculated to be 5.3×10^{-7}, contributed by the upper bound excess lifetime carcinogenic risk appears to be below the range that the Agency generally considers to be negligible.

9. Mutagenicity assays including an Ames test, an invitro cytogenetics assay in human lymphocytes, an assay for unscheduled DNA synthesis in rat hepatocytes, and a micronucleus assay in mice were conducted on this chemical. The results of these tests produced no evidence of mutagenicity due to hexaconazole.

Acute toxicity testing is not required for import tolerances and those data are not presented here.

The nature of the residue in bananas is adequately understood. The residue to be regulated is parent hexaconazole. Based on the residue data submitted which reflected application to bagged bananas (the typical agricultural practice in the countries of origin), residue levels in bananas treated with hexaconazole are not likely to exceed the requested 0.1 ppm tolerance. However, the Agency's current practice is to review data on unbagged bananas as well as bagged bananas to insure that a worst case scenario is examined. Therefore, the petitioner is required to conduct at least four residue trials on unbagged bananas. Ample time is provided for completion of these trials over the duration of this proposed time-limited tolerance.

Adequate analytical methodology is available for enforcement. Prior to their publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 1128C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5232.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by these pesticides.

Public Docket

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. A record has been established for this rulemaking under docket number [PP 0E3853/P640] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Administrative Assessment Requirements

A. Executive Order 12866

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

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

B. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.488, to read as follows:

§ 180.488 Hexaconazole; tolerance for residues.

A tolerance is established for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichloro-phenyl)-1*H*-1,2,4-triazole-1-ethanol)], in or on the imported raw agricultural commodity bananas at 0.1 part per million. This tolerance will expire on [*3 years after the signature date of the final rule*]. There are no U.S. registrations as of January 31, 1996 for use on bananas.

[FR Doc. 96–1917 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5403–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List for Uncontrolled Hazardous Waste Sites; Notice of Intent to Delete 29th and Mead Ground Water Contamination Site from the National Priorities List (NPL): Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the 29th and Mead Ground Water Contamination Site in Wichita, Sedgwick County, Kansas, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

Because of the unique circumstances surrounding the 29th and Mead Ground Water Contamination Site, the Agency has determined that no further federal steps under CERCLA are appropriate. The Site will instead, in a pilot project, be deferred to the State of Kansas and addressed by the Kansas Department of Health and Environment (KDHE). EPA will consider the effectiveness and efficiency of the Site cleanup as well as the likelihood that a similarly favorable outcome could be reproduced elsewhere before determining whether such a policy will be considered for other sites. The rationale supporting this action is explained in the Basis for Intended Site Deletion section.

DATES: Comments concerning the proposed deletion of the 29th and Mead Ground Water Contamination Site should be submitted on or before March 1, 1996.

ADDRESSES: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, D.C. 20460; (703) 603–8917.

Comprehensive information on the 29th and Mead Ground Water Contamination Site is maintained in the public docket, which is available for public review at the information

repositories in three locations. Requests for appointments or copies of the background information from the public docket should be directed to:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office (Mail Code 5201G); Crystal Gateway #1, 1st Floor; 1235 Jefferson Davis Highway; Arlington, VA 22202. Phone: (703) 603–9232; Hours: 9:00 a.m. to 4:00 p.m. Monday through Friday excluding Federal holidays. (Please note this is viewing address only. Do not mail documents to this address.)

U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101. Phone: (913) 551–7959. Hours: 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.

Wichita District Office; Kansas Department of Health and Environment; 130 S. Market St., Suite 6050; Wichita, Kansas 67202–3802. Phone: (316) 337–0620; Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.

FOR FURTHER INFORMATION CONTACT: Site-specific questions should be directed to Kenneth Rapplean; U.S. Environmental Protection Agency; Region VII; 726 Minnesota Avenue, Superfund Division; Kansas City, Kansas 66101; Tel. (913) 551–7769. General questions should be directed to Mary Ann Rich; Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, D.C. 20460; Tel. (703) 603–8825.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency announces its intent to delete the 29th and Mead Ground Water Contamination Site in Wichita, Sedgwick County, Kansas from the NPL, which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions should future conditions at the Site warrant such action. EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this Notice in the Federal Register.

Section II of this Notice explains the criteria for the deletion of this Site from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with the NCP at 40 CFR 300.425(e), sites may be deleted from the NPL where no further Fund-financed CERCLA response action is appropriate. EPA typically considers, in consultation with the State, whether any of the following criteria has been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or (iii) the remedial investigation has shown that the release poses no significant threat to public health or the environment, and therefore, taking of remedial measures is not appropriate.

In light of the planned State action in this case, EPA finds that all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties under CERCLA is appropriate. Deletion under this approach does not indicate that the cleanup has been completed, but rather that no further Superfund involvement is necessary, and that the Agency expects the response to be completed under an Agreement between the City of Wichita and the Kansas Department of Health and Environment (KDHE). In the event such response action is not taken under KDHE oversight, EPA retains the right to take further remedial action at this site, and to restore this Site to the NPL. CERCLA 105(e); 40 CFR 300.425(e)(3).

III. Deletion Procedures

The NCP at 40 CFR 300.425(e) specifies the procedures to be followed in deleting sites from the NPL. It directs that Notice and an opportunity to comment must be given before deleting sites from the NPL. By this Notice, EPA intends to notify the public of its proposal to delete the 29th and Mead Ground Water Contamination Site from the NPL, and it will accept comments from the public on this proposal for a period of thirty (30) days after the date of publication in the Federal Register. The following procedures were used for the intended deletion of this Site:

(1) EPA has recommended deletion and has prepared the relevant documents.

(2) The State has concurred with the proposed deletion decision after reviewing the deletion Notice and providing comments to EPA before its publication in the Federal Register. The State reviewed the Notice in less than the usual 30 days allotted for such review.

(3) A notice has been published in a major local newspaper and has been distributed to appropriate Federal, State, and local officials, and other interested parties.

(4) EPA has made all relevant documents available in the Regional Office and local Site information repository.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA will accept and evaluate public comments before making a final decision to delete, and will address them in a Responsiveness Summary, which EPA will place in the docket for this decision.

Because the deletion of this site presents nationally significant issues, the Federal Register Notice proposing to delete this Site from the NPL will be signed by the Assistant Administrator, Office of Solid Waste and Emergency Response. The NPL will reflect any deletions in the next final rule. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VII.

IV. Basis for Intended Site Deletion

The 29th and Mead Ground Water Contamination Site is located in northern Wichita, Kansas and includes a mixture of residential, commercial, and industrial development. The Site is a ground water plume that covers approximately 1,440 acres. Among contaminants detected in significant concentrations in the ground water are volatile organic compounds (VOCs), including trichloroethylene, carbon tetrachloride, toluene, benzene, ethylbenzene, methylene chloride, trans- and/or cis-1,2-dichloroethylene, vinyl chloride, and 1,1,1-

trichloroethane. The Site was placed on the NPL on February 21, 1990 (55 FR 6154).

On July 30, 1994, the City of Wichita, Kansas, petitioned the Administrator of the Environmental Protection Agency to remove the 29th and Mead Ground Water Contamination Site from the NPL, in effect, by revising the Site's Hazard Ranking System (HRS) score. On November 29, 1994, EPA denied the petition, in part because there was no reason to change the HRS scoring of the Site.

The Agency, however, recognizes that legitimate issues were raised regarding the overall process for Site cleanup developed by the City and State, and has reconsidered its decision not to delete the Site from the NPL. This decision is not based on any re-evaluation of the Site or the Hazard Ranking System score but rather on the City's previous successful development of a strategy for cleanup of the Gilbert and Mosley Site, a site that was deferred to the State, and the expectation that the City and the State, through their enforceable agreement, can accomplish the same results at the 29th and Mead Ground Water Contamination Site without additional federal intervention. The reasoning for this decision is described below. EPA will use the results of this pilot project to evaluate the efficiency and effectiveness of the Site cleanup before determining whether to grant future deletions of final NPL sites based on deferrals to states.

EPA finds that, because the City and the State have agreed to address the contamination at the 29th and Mead Site, no further response action under CERCLA is necessary at this Site due to the following circumstances:

First, Kansas is one of seven states to pilot and successfully implement EPA's state deferral program. The purpose of the deferral program is to encourage qualified, interested States to address, under State laws, the large number of sites now in EPA's listing queue, thereby accelerating cleanup. Kansas has worked actively with EPA and Potentially Responsible Parties (PRPs) to ensure successful cleanup of these sites.

Second, the cleanup of the 29th and Mead Ground Water Contamination Site will be patterned after another pilot site, Gilbert and Mosley, one of ten sites that was deferred to the State prior to proposal to the NPL under EPA's Superfund Administrative Improvements Program. The City of Wichita, in partnership with KDHE, successfully developed a strategy for cleanup of that site. Specifically, the City:

(1) Entered into an enforceable agreement with KDHE;

(2) Has secured agreement from one of the principal PRPs at Gilbert and Mosley (Coleman Company) to pay their part of the cleanup;

(3) Issued Certificates of Release to property owners participating in the cleanup strategy which ensure that no contribution suits will be filed by parties participating in the settlement;

(4) Developed an agreement with financial institutions to re-establish lending in the area, and obtained up-front financial commitments to fund the capital investment of the clean-up costs and studies required;

(5) Implemented a tax increment financing (TIF) district where, after improvements were made, the higher restored property values provided the tax base to pay for the improvements; and

(6) Established a Technical Advisory Committee and a Citizens Steering Committee to facilitate citizen involvement;

(7) Agreed to plan and ensure implementation of a remedial investigation, remedial design and cleanup of the site.

The City of Wichita received the 1992 Ford Foundation and Kennedy School of Government Innovations in State and Local Government Award for its creative solutions to the Gilbert and Mosley Superfund site. The remedial design for an interim groundwater containment and treatment system is now being developed pursuant to the Gilbert and Mosley agreement, and the project is ahead of the schedule proposed in that agreement.

Third, the two sites are adjacent and the principal PRP has been cooperative at both sites.

Fourth, based on this experience, EPA expects that KDHE and the City of Wichita will undertake similar efforts that will be protective of human health and the environment at the 29th and Mead Ground Water Contamination Site.

The City of Wichita has now entered into an enforceable agreement with KDHE under which the City will assume responsibility for funding and developing a cleanup strategy at the 29th and Mead site. A copy of the Agreement is available for review at the three docket locations listed in the **ADDRESSES** section above.

This action is consistent with EPA's reinvention of environmental regulation to achieve the best results at the least cost through emphasis on performance-based management. In particular, this action reflects the goals of the XL Program (FRL–5197–9; May 23, 1995) by providing flexibility to replace current requirements with alternative strategies that achieve better bottom line environmental results. This action also reflects the goals of EPA's community-based environmental protection initiative by empowering state and local officials to better meet the needs and priorities of the communities.

For these reasons EPA proposes to delete the 29th and Mead Ground Water Contamination Site from the NPL.

Should conditions change (i.e., insufficient progress toward cleanup), nothing shall preclude the Environmental Protection Agency from restoring this facility to the NPL in the future should the Agency determine, after consultation with the State, that such listing will facilitate the implementation of response actions in a timely manner. Should that be deemed necessary and EPA determines that there is a significant release from the Site, the Agency may take remedial action at the site, and may restore the Site to the NPL without application of the HRS under 40 CFR 300.425(e)(3).

Dated: December 14, 1995.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 96–1715 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 15

[ET Docket 95–177; FCC 95–488]

Biomedical Telemetry Devices

AGENCY: Federal Communication Commission.

ACTION: Proposed Rule.

SUMMARY: By this action, the Commission proposes to expand the available frequencies and increase the permitted power for unlicensed biomedical telemetry devices operating on VHF and UHF television channels. This is in response to a petition for rule making, filed on December 23, 1994, by the Critical Care Telemetry Group (CCTG). The Commission seeks to provide reasonable access to additional spectrum to meet the needs of CCTG and the health care industry while protecting existing television and future advanced digital television services from potential interference.

DATES: Comments are due on or before April 16, 1996. Reply comments are due on or before May 16, 1996.

FOR FURTHER INFORMATION CONTACT: Anthony Serafini, Office of Engineering and Technology, (202) 418–2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* adopted December 5, 1995, and released January 25, 1996. The full text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. By this action, the Commission proposes to amend Part 15 of the its rules to expand the available frequencies and increase the permitted power for unlicensed biomedical telemetry devices operating on VHF and UHF television channels. We recognize the need for additional spectrum for biomedical telemetry devices and believe that TV spectrum may be appropriate for use by biomedical telemetry devices. We request comment on the extent to which sharing between TV operations and biomedical devices is feasible. We note that UHF channel 37 (608–614 MHz) is reserved exclusively for the radio astronomy service, and we seek comment on whether sharing this spectrum with biomedical telemetry devices is viable and/or preferable to sharing with the television broadcast service. Additionally, we note that Land Mobile services are authorized to operate in parts of the 470–512 MHz band in some localities, and invite comment on the ability of biomedical telemetry devices to share this spectrum without creating or receiving harmful interference. We seek comment on the total amount of spectrum that is needed to support biomedical telemetry devices and whether there may be a range of operating frequencies that may be more favorable than others.

2. We note that any effort to accommodate biomedical telemetry devices in TV spectrum during the DTV transition period will require flexibility that could include changing of the frequency used by an existing biomedical telemetry device to avoid interfering with DTV channels. Therefore, we propose that biomedical telemetry devices be designed to be frequency selectable to operate over a given range of television channel frequencies. This proposal is intended to help avoid interference and minimize the economic impact of requiring biomedical telemetry device users to purchase new equipment due to changes in television frequency usage during the DTV transition period. We seek comment on this proposal and whether devices should be required to implement a minimum number of selectable channels. We also propose that biomedical telemetry devices be required to vacate existing TV spectrum that is reallocated to other use as a result of the implementation of DTV.

3. The low operating field strength allowed in the 512–566 MHz band does not appear to be adequate for a viable service. We propose to allow biomedical telemetry devices to operate, as proposed by CCTG, at transmitter power levels not to exceed 5 milliwatts. We note that this power level is considered high compared to other operating limits for unlicensed Part 15 devices. We seek comment on the appropriateness of this power level considering the intended use of these devices. The proposed operating power necessitates provisions to protect the television broadcast service. We propose to adopt the co-channel separation requirements proposed by CCTG.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

PART 15 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 is revised to read as follows:

Authority: 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

2. Section 15.209 is amended by revising paragraph (g) to read as follows:

§ 15.209 Radiated emission limits; general requirements.

* * * * *

(g) Perimeter protection systems may operate in the 54–72 MHz and 76–88 MHz bands under the provisions of this section. The use of such perimeter protection systems is limited to industrial, business and commercial applications.

3. Section 15.241 is revised to read as follows:

§ 15.241 Operation in the bands 174–216 MHz, 470–608 MHz and 614–806 MHz.

(a) Operation under the provisions of this section is restricted to biomedical telemetry devices.

(b) Emissions from a biomedical telemetry device operating under the provisions of this section shall be confined within a 200 kHz band which shall lie wholly within the frequency ranges of 174–216 MHz, 470–608 MHz and 614–806 MHz.

(c) The maximum peak transmitter output power of any biomedical telemetry device operating under the provisions of this section shall not exceed five (5) milliwatts. The field strength of emissions radiated on any frequency outside of the specified 200 kHz band shall not exceed 150 microvolts/meter at 3 meters.

(d) Biomedical telemetry devices shall be designed to include a frequency selection mechanism that permits selection or retuning of operating frequencies. Biomedical telemetry devices must not cause harmful interference to licensed TV broadcast stations or to land mobile stations operating in the 470–512 MHz band. If interference occurs, the device must immediately cease operation on the occupied frequency. If an alternate frequency meeting the requirements of paragraph (e) of this section can be found, the biomedical telemetry device, may be retuned to operate on the alternate frequency. The user is responsible for resolving any interference that occurs subsequent to installation of these devices.

(e) Biomedical telemetry device installers and users must ensure that the following minimum distance separations are maintained between a biomedical telemetry device operating under the provisions of this section and television broadcast stations, authorized under part 73 of this chapter, operating within the same channel bandwidth (minimum distance separations vary depending upon the frequency and zone, within which the relevant television station is operated, as specified in § 73.609 of this chapter):

Frequency	Zone(s)	Separation (km)
174–216 MHz band	I	107.1
174–216 MHz band	II, III	131.8
470–806 MHz band	I, II, III	113.2

(f) The marketing and the use of biomedical telemetry devices operating under the provisions of this section

shall be confined to hospitals or other healthcare facilities.

[FR Doc. 96–1854 Filed 1–30–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the comment period for the proposed special rule.

SUMMARY: On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule in the Federal Register (60 FR 9484, February 17, 1995) pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The comment period was scheduled to end on January 26, 1996. The intent of this document is to reopen the comment period to March 1, 1996.

DATES: The comment period for written comments is reopened until March 1, 1996.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Ron Crete, Manager, Habitat Protection and Restoration, Office of Technical Support-Forest Resources, P.O. Box 3623, Portland, Oregon 97204–3623 (503/326–6700).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina,* was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the ''take'' prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR Part 17, on February 17, 1995, in the Federal Register, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: January 25, 1996.

Curt Smitch,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 96–1829 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 960123012-6012-01; I.D. 011995A]

RIN 0648–AF78

Reef Fish Fishery of the Gulf of Mexico; Red Grouper Size Limits

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the Gulf of Mexico Fishery Management Council's (Council) proposed regulatory amendment under the framework procedure for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), NMFS proposes to change the minimum allowable size of red grouper, currently 20 inches (50.8 cm), to 18 inches (45.7 cm) for persons not subject to the bag limit. The intended effect of this rule is to facilitate harvest of the annual commercial quota for the shallow-water grouper complex, thereby achieving optimum yield.

DATES: Written comments must be received on or before March 1, 1996.

ADDRESSES: Comments on the proposed rule should be sent to Michael E. Justen or Robert Sadler, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, and for copies of a minority report submitted by five members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen or Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented by regulations at 50 CFR part 641.

Proposed Management Measures

The 9.8–million lb (4.4–million kg) shallow-water grouper quota for the commercial fishery has not been taken in recent years. The shallow-water grouper complex includes red grouper, which historically (1986–91) comprised 62 percent of the commercial catch before the current minimum size limit became effective on February 21, 1990. Grouper fishermen testifying to the Council requested the proposed reduction in the minimum allowable size of red grouper from 20 inches (50.8 cm) to 18 inches (45.7 cm) for persons not subject to the bag limit to facilitate the harvest of the quota. These fishermen also noted that wastage occurred in the fishery from discarding dead 18- and 19-inch fish and from using undersized grouper for bait. Utilization of undersized grouper for bait is illegal since § 641.7(f) prohibits the possession of fish smaller than the minimum size limit. Most of these hidden sources of fishing mortality would be counted against the quota under an 18–inch minimum size limit, thereby providing a more accurate estimate of fishing mortality.

The Council reviewed a red grouper stock assessment completed in September 1994 by the Southeast Fisheries Science Center, NMFS,

indicating that the spawning potential ratio (SPR) is above the 20 percent level, the threshold below which the stock would be considered overfished. At its November 1994 meeting, the Council voted to reduce the commercial and recreational minimum size limit for red grouper to 18 inches (45.7 cm) and subsequently submitted a regulatory amendment to NMFS for review, approval, and implementation. NMFS informed the Council that the regulatory amendment would be held in abeyance until the Council considered new scientific information regarding the effects of the proposed change in size limits on the stock.

The Council accepted public comment on the new scientific information and the red grouper size limit issue in two hearings on March 9, 1995, and also at its March 13–16, 1995, meeting. After considering the public testimony and recommendations of its Stock Assessment Panel (SAP), and Scientific and Statistical Committee (SSC), the Council approved a red grouper minimum size of 20 inches (50.8 cm) for the recreational sector and 18 inches (45.7 cm) for commercial sector. The Council subsequently submitted a revised regulatory amendment (first revised) to NMFS for review, approval, and implementation.

On April 12, 1995, NMFS rejected the revised regulatory amendment primarily because of the uncertainty of the impacts the reduced commercial size limit would have on the long-term productivity of the stock. Given uncertainties at that time with the available scientific information about the condition of the red grouper resource, NMFS informed the Council that approval of the measure would pose an unacceptable risk of allowing overfishing.

The Council voted at its meeting of July 17–20, 1995, in Key West, Florida, to submit to NMFS another revised regulatory amendment (second revised) proposing the change in the commercial minimum size limit. The Council's action was based on its review of new scientific information available since NMFS' disapproval of the first revised regulatory amendment. Also, the Council's action was based on a review of the new information by its Scientific and Statistical Committee (SSC) and Reef fish Stock Assessment Panel. After considering the new information, the SSC withdrew its previous opposition to the 18–inch size limit for the commercial fishery.

For the second revised regulatory amendment that this rule would implement, the Council determined that the less restrictive commercial size limit of 18 inches (45.7 cm) is needed to achieve harvest of red grouper at the optimum yield level on an annual basis while ensuring that the SPR remains above 20 percent. In addition, the Council expects that movement of fishing effort to nearshore waters, where smaller red grouper are more common, will reduce operating costs in the fishery.

The Council's recommended changes are within the scope of the management measures that may be adjusted under the FMP's framework procedure referred to at 50 CFR 641.28; accordingly, the Council's proposal is published herein for comment. Consistent with the framework procedures, the Director, Southeast Region, NMFS, will make a final decision regarding whether the proposed action is consistent with the objectives of the FMP, the National Standards and other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law after considering the public comment received on the proposed rule and regulatory amendment. If this decision is affirmative, he will approve the regulatory amendment and forward an implementing final rule for publication in the Federal Register.

Comments Requested

Since the Council adopted the first revised regulatory amendment in March 1995, NMFS has received more than 200 comments from recreational and commercial fishermen, representatives of environmental interests groups, and interested members of the public expressing their views about the proposed minimum size reduction for the Gulf of Mexico commercial red grouper fishery. This rule invites additional public comments on the Council's proposal. On July 20, 1995, the Council took final action to adopt the second revised regulatory amendment. Those parties who have provided NMFS with comments since July 20, 1995, on the appropriate commercial minimum size limit for red grouper need not repeat their comments during the comment period on this rule. NMFS will consider these earlier comments in taking final action on the Council's proposal.

While NMFS is inviting comments on all relevant aspects of the reduced commercial fishery minimum size limit, comments are specifically invited on the following concerns that reflect issues raised by public comments to date: (1) What are the long- and short-term economic and social effects of the proposed rule on the commercial and recreational fishing sectors? (2) What are the possible conflicts between the commercial and recreational fishing sectors that may result from having different size limits for each sector, particularly where the smaller size limit for the commercial fishery may result in its harvesting more of the resource than in the past? (3) Is use of an 18–inch (45.7–cm) minimum size limit for the commercial fishery consistent with the Magnuson Act's National Standards and with the FMP's management objectives, particularly with FMP Objective 4 that calls for minimizing conflicts between user groups of the resource and with Objective 2 (under FMP Amendment 8) that calls for avoiding, to the extent practicable, the derby-type fishing season? (4) What are the associated difficulties with enforcing different minimum size limits for the commercial and recreational sectors and different commercial fishery size limits for Federal and adjacent state waters (i.e., 18 inches in the EEZ and 20 inches in Florida's waters)? NMFS is particularly interested in any data or other reliable information that would substantiate public views regarding the expected impacts of this proposal.

Minority Report

A minority report signed by five Council members raises numerous objections and concerns about: (1) Difficulties of enforcing different red grouper size limits for Federal and state waters; (2) adverse impacts in the marketplace based on the expected increased rate of red grouper landings; and (3) inconsistency with several of the Magnuson Act's National Standards and with the FMP's management objectives. Copies of the minority report are available (see **ADDRESSES**). If issued, a final rule will respond to: (1) Comments received by NMFS since July 20, 1995, on the appropriate minimum commercial size limit for red grouper, (2) the minority report, and (3) comments received by NMFS during the comment period on this proposed rule and regulatory amendment.

Additional Measure Proposed by NMFS

Section 641.4(a)(1)(i) specifies that a vessel permit is required as a prerequisite to selling reef fish. NMFS proposes a revision of the prohibition at § 641.7(s) regarding the sale of fish without a vessel permit to provide a specific reference to § 641.4(a)(1)(i) in this regard.

Classification

This proposed rule has been determined to be not significant under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the

Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because it would not reduce annual gross revenues, increase production costs or Federal compliance costs, or force small business entities to cease operation. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 25, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.7, paragraph (s) is revised to read as follows:

§ 641.7 Prohibitions.

* * * * *

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish harvested aboard a vessel for which a valid permit has not been issued, as specified in § 641.4(a)(1)(i), or possessed under the bag limits, as specified in § 641.24(g).

* * * * *

3. In § 641.21, paragraphs (a)(2) through (a)(6) are revised and paragraph (a)(7) is added to read as follows:

§ 641.21 Harvest limitations.

(a) * * *

(2) Gray, mutton, and yellowtail snappers—12 inches (30.5 cm) total length.

(3) Lane and vermilion snappers—8 inches (20.3 cm) total length.

(4) Red grouper—20 inches (50.8 cm) total length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(3) and 18 inches (45.7 cm) total length for a fish taken by a person not subject to the bag limit.

(5) Nassau, yellowfin, and black groupers and gag—20 inches (50.8 cm) total length.

(6) Greater amberjack—28 inches (71.1 cm) fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches (91.4 cm) fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches (20.3 cm) total length.

* * * * *

[FR Doc. 96–1945 Filed 1–30–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 21
Wednesday, January 31, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Schneider (IN) Area and the State of Georgia

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Schneider Inspection Service, Inc. (Schneider), and the Georgia Department of Agriculture (Georgia) will end July 31, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Schneider and Georgia areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before February 28, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Schneider, main office located in Lake Village, Indiana, and Georgia, main office located in Tifton, Georgia, to provide official inspection services under the Act on August 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Schneider and Georgia end on July 31, 1996.

The geographic area presently assigned to Schneider, in the States of Illinois, Indiana, and Michigan, pursuant to Section 7(f)(2) of the USGSA, which may be assigned to the applicant selected for designation is as follows.

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

Berrien, Cass, and St. Joseph Counties, Michigan.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Frick Service and Farmers Grain, both in Winamac, Pulaski County, Indiana (located inside Titus Grain Inspection, Inc.'s, area).

Schneider's assigned geographic area does not include the export port locations inside Schneider's area which are serviced by FGIS.

The geographic area presently assigned to the State of Georgia, pursuant to Section 7(f)(2) of the USGSA, which may be assigned to the applicant selected for designation is as follows:

The entire State of Georgia, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Schneider and Georgia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning August 1, 1996, and ending July 31, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 24, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 96–1757 Filed 1–30–96; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012396B]

Pacific Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Salmon Technical Team will hold a public meeting.

DATES: The meeting will begin at 10 a.m. on February 13, 1996, and continue from approximately 8 a.m. to 5 p.m. each day through February 16, 1996.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The meeting is a work session of the Salmon Technical Team to draft the 1996 stock status report, ''Preseason I: Stock Abundance Analysis for 1996 Ocean Salmon Fisheries.'' The final report will be distributed to the public and reviewed by the Council at its March meeting in Portland, OR.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 25, 1996.

Richard W. Surdi,

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

[FR Doc. 96–1819 Filed 1–30–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012396C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on February 20 beginning at 1 p.m. and may go into the evening until business for the day is completed, and on February 21 from 8:00 a.m. until 5:00 p.m., and on February 22 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's October 1995 instructions to the team, review its organization and prepare a schedule of team activities for 1996, and elect a new chair. The team will review the status of the interim stock assessment for Pacific whiting and develop an acceptable biological catch recommendation for 1996. The agenda also includes reviews of the inseason catch tracking process for 1996, development of a new stock assessment process, management of thornyheads south of Pt. Conception, the pace of open access sablefish and thornyhead landings, and status reports on whiting and sablefish analyses.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 25, 1996.

Richard W. Surdi,

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

[FR Doc. 96–1820 Filed 1–30–96; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Public Meeting on G–7 Ministerial Conference in the Information Society and Developing Countries

AGENCY: National Telecommunications and Information Administration (NTIA) Commerce

ACTION: Notice of public meeting.

SUMMARY: NTIA is convening a public meeting on February 8, 1996, to discuss U.S. government goals and objectives for the upcoming G–7 Ministerial Conference on the Information Society and Developing Countries. The Conference is scheduled for May 13–15, 1996 in South Africa.

The public meeting will be chaired by Larry Irving, Assistant Secretary of Commerce for Communications and Information and Administrator of NTIA. The purpose of the meeting is to brief the public and obtain input on U.S. government goals and objectives for the Conference.

DATES: The public meeting will be held from 11 a.m. to 12 noon on Thursday, February 8, 1996, in Room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. The main entrance on 14th Street between Pennsylvania and Constitution Avenues should be used.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Echols, Senior Advisor, NTIA; U.S. Department of Commerce, Room 4898; 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Telephone: 202/482–1304; Fax: 202/482–1865. E-mail: eechols@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: At the G–7 Ministerial Conference on the Information Society held on February 25–26, 1995 in Brussels, the G–7 Ministers reached consensus on the fundamental principles underlying the development of the Global Information Infrastructure (GII). During this Conference, Executive Deputy President of South Africa, Mr. Thabo Mbeki, invited the G–7 partners to South Africa for a telecommunications ministerial conference on development issues.

Ministers from approximately 40 developed and developing countries, including the G–7 countries, are expected to attend the Conference. Although the Conference will be conducted at the ministerial level, the private sector is expected to play an important role. Preliminary plans indicate that the private sector, government representatives, and selected international organizations will address the needs and challenges of the developing world through Conference workshops designed to initiate concrete actions. In addition, it is expected that the private sector will have the opportunity to demonstrate the potential of information technologies and services to address issues of interest to developing countries through a technology exhibition.

The United States delegation will be led by U.S. Secretary of Commerce Ronald H. Brown.

Dated: January 25, 1996.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 96–1815 Filed 1–30–96; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information, Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of walk-behind power lawn mowers. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than April 1, 1996.

ADDRESSES: Written comments should be captioned ''Walk-Behind Power Lawn Mowers'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR Part 1205, call or write Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of amputations, avulsions, lacerations, and other serious injuries which have resulted from the accidental contact of some part of an operator's body with the rotating blade of a power lawn mower. The standard contains performance and labeling requirements for walk-behind power lawn mowers to address risks of blade-contact injuries.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power mowers. These regulations also require manufacturers, importers, and private labelers of walk-behind power mowers to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part 1205, Subpart B.

The Commission uses the information compiled and maintained by manufacturers and importers of walk-behind power mowers to protect consumers from risks of injuries associated with walk-behind power lawn mowers. More specifically, the Commission uses this information to determine whether the mowers they produce and import comply with the applicable standard. The Commission also uses this information to obtain corrective actions if walk-behind power mowers fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information requirements for walk-behind mowers under control number 3041–0091. OMB's most recent extension of approval will expire on March 31, 1996. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The Commission staff estimates that about 75 firms are subject to the testing and recordkeeping requirements of the certification regulations. The Commission staff estimates further that the annual testing and recordkeeping burden imposed by the regulations on each of these firms on average is approximately 390 hours. Thus, the total annual burden imposed by the certification regulations on all manufacturers and importers of walk-behind power mowers is about 29,250 hours.

The Commission staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $12, and that the annual total cost to the industry is approximately $351,000.

During a typical year, the Commission will expend approximately two weeks of professional staff time reviewing records required to be maintained by the certification regulations for walk-behind power mowers. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $2,800.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the certification and recordkeeping regulations for walk-behind power mowers. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: January 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–1763 Filed 1–30–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Clearance Request Entitled Overtime

AGENCY: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0065).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Overtime. A request for public comments was published at 60 FR 54220, October 20, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Office, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy of the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000—0065, Overtime, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,270; responses per respondent, 1*; total annual responses, *1,270*; preparation hours per response, *.5*; and total response burden hours, *635*.

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: January 22, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1766 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0068]

Request for Public Comments Regarding OMB Clearance Entitled Economic Price Adjustment

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0068).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Price Adjustment. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *7,200;* responses per respondent, *1;* total annual responses, *7,200;* preparation hours per response, *.25;* and total response burden hours, *1,800*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1767 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Conrol No. 9000–0069]

Request for Public Comments Regarding OMB Clearance Entitled Indirect Cost Rates

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0069).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Indirect Cost Rates. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *9,770;* responses per respondent, *1;* total annual respondents, *9,770;* preparation hours per response, *1;* and total response burden hours, *9,770.*

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1768 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0070]

Request for Public Comments Regarding OMB Clearance Entitled Payments

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (900–0070).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Payments. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute for small purchases and fixed-price contracts, and *30* minutes for T&M and Labor Hour contracts per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *80,000;* responses per respondent, *120;* total annual responses, *9,600,000;* preparation hours per response, *.025;* and total response burden hours *240,000*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1769 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0071]

Request for Public Comments Regarding OMB Clearance Entitled Price Redetermination

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Price Redetermination. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *3,500*; responses per respondent, *2*; total annual responses, *7,000*; preparation hours per response, *1*; and total response burden hours, *7,000*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1770 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0072]

Request for Public Comments Regarding OMB Clearance Entitled Contract Cost Principles and Procedures—Automatic Data Processing Equipment Leasing Costs

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0072).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contract Cost Principles and Procedures—Automatic Data Processing Equipment Leasing Costs. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0072, Contract Cost Principles and Procedures—Automatic Data Processing Equipment Leasing Costs, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 31, Contract Cost Principles and Procedures, contains cost principles and procedures for (1) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed; and (2) the determination, negotiation, or allowance of costs when required by a contract clause. However, certain cost elements that are reviewed pursuant to this part require supporting documentation. One of these involves a justification of automatic data processing equipment leasing costs under FAR 31.205–2. The information is used by the contracting officer to determine the allowability of a cost element.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per completion, including the time for reviewing instruction, searching existing data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,172;* responses per respondent, *1;* total annual responses, *3,172;* preparation hours per response, *.5;* and total response burden hours, *1,586.*

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1771 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0035]

Clearance Request Entitled Claims and Appeals

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0035).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals. A request for public comments concerning this burden estimate was published at 60 FR 54220, October 20, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *7,500* responses per respondent, *20* total annual responses, *150,000* preparation hours per response, *1*; and total response burden hours, *150,000*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1764 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0059]

Clearance Request Entitled North Carolina Sales Tax Certification

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification. A request for public comments was published at 60 FR 54059, October 19, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1765 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0073]

Request for Public Comments Regarding OMB Clearance Entitled Advance Payments

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0073).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Advance Payments. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

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

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

Dated: January 29, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1772 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0074]

Request for Public Comments Regarding OMB Clearance Entitled Limitation of Costs/Funds

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0074).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Limitation of Coast/Funds. This OMB clearance currently expires on May 31, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0074, Limitation of Coast/Funds, in all correspondence.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy F. Olson, Office of Federal Acquisition Policy, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *63,456;* responses per respondent, *1;* total annual responses, *63,456;* preparation hours per response, *5;* and total response burden hours, *31,728.*

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1773 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0119]

Request for Public Comments Regarding OMB Clearance Entitled Performance Bond for Other Than Construction (Standard Form 1418)

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0119).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Performance bond for Other Than Construction (Standard Form 1418). This OMB clearance currently expires on June 30, 1996.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0119, Performance Bond for Other Than Construction (Standard Form 1418), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such, Office of Federal Acquisition Policy, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

The new Standard Form (SF) 1418, Performance Bond for Other than Construction, is being proposed for establishment. This coincides with the proposed rule, FAR case 91–27, providing a contract clause governing performance bonds for other than construction. The terms and conditions governing performance bonds for construction and other than construction may vary. The SF 1418 is being created to reflect these different terms and conditions.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *25* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *5*; total annual responses, *2,500*; preparation hours per response, *.5*; and total response burden hours, *1,250.*

Dated: January 23, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1774 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0139]

Request for Public Comments Regarding OMB Clearance Entitled Federal Acquisition and Community Right-to-Know

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

ACTION: Notice; withdrawal.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have decided to withdraw a notice concerning Request for Public Comments Regarding OMB Clearance Entitled Federal Acquisition and Community Right-to-Know. This notice was published in the Federal Register on January 24, 1996 (61 FR 1898).

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755.

Dated: January 25, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1887 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0031]

Clearance Request Entitled Contractor Use of Government Supply Sources

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0031).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Government Supply Sources. A request for public comments concerning this burden estimate was published at 60 FR 54219, October 20, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *300*; responses per respondents, *7*; total annual responses, *2,100*; preparation hours per response, *.25*; and total response burden hours, *525*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1888 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0032]

Clearance Request Entitled Contractor Use of Interagency Motor Pool Vehicles

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0032).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments concerning this burden estimate was published at 60 FR 54219, October 20, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to requests the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determined that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimates as follows: Respondents, *70*; responses per respondent, *2*; total annual responses, *140*; preparation hours per response, *.5*; and total response burden hours, *70*.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1889 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0041]

Clearance Request Entitled Technical Proposal—Two-Step Sealed Bidding

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0041).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Technical Proposal—Two-Step Sealed Bidding. A request for public comments concerning this burden estimate was published at 60 FR 53916, October 18, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0041, Technical Proposal—Two-Step Sealed Bidding, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Two-step sealed bidding is a method of contracting designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step 1 consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word ''technical'' has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step 2 involves the submission of sealed price bids by those who submitted acceptable technical proposals in step 1.

The requested information is needed, in the absence of adequate specifications, to develop a sufficiently descriptive and not unduly restrictive statement of the Government's requirements and to determine the acceptability of proposals received. The contracting officer evaluates the acceptability of the information received, based on the criteria in the request for proposals.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *3,225;* responses per respondent, *1;* total annual responses, *3,225;* preparation hours per response, *8;* and total response burden hours, *25,800*.

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0041, Technical Proposal—Two-Step Sealed Bidding, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1890 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0044]

Clearance Request Entitled Bid/Offer Acceptance Period

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0044).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid/Offer Acceptance Period. A request for public comments concerning this burden estimate was published at 60 FR 53914, October 18, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by filling in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidder to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *3,220;* responses per respondent, *40;* total annual responses, *128,800;* preparation hours per response, *.017;* and total response burden hours, *2,190.*

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1891 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0046]

Clearance Request Entitled Type of Business

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0046).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Type of Business. A request for public comments concerning this burden estimate was published at 60 FR 53913, October 18, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0046, Type of Business, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure that any subsequent contracts contain the proper provisions and clauses. This information is used by the Government in preparation of the contract and is then placed in the contract file and becomes a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes (.07 hr.) per response, including the time for reviewing instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14*; total annual responses, *1,111,558;* preparation hours per response, *.07;* and total response burden hours, *77,810.*

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0046, Type of Business, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1892 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0047]

Clearance Request Entitled Place of Performance

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0047).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Place of Performance. A request for public comments concerning this burden estimate was published at 60 FR 53913, October 18, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* preparation hours per response, *.07;* and total response burden hours, *77,810.*

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1893 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0048]

Clearance Request Entitled Authorized Negotiators

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators. A request for public comments concerning this burden estimate was published at 60 FR 54058, October 19, 1995. No public comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1894 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0056]

Clearance Request Entitled Report of Shipment

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0056).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Report of Shipment. A request for public comments was published at 60 FR 54220, October 20, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments en route from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *250*; responses per respondent, *4*; total annual responses, *1,000*; preparation hours per response, *.167*; and total response burden hours, *167*.

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: January 24, 1996.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 96–1895 Filed 1–30–96; 8:45 am]
BILLING CODE 6820–EP–M

[OMB Control No. 9000–0058]

Clearance Request Entitled Schedules for Construction Contracts

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Schedules for Construction Contracts. A request for public comments was published at 60 FR 54058, October 19, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0058, Schedules for Construction Contractor, in all correspondence.

Dated: January 24, 1996.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 96–1896 Filed 1–30–96; 8:45 am]
BILLING CODE 6820–EP–M

[OMB Control No. 9000–0089]

Clearance Request Entitled Standard Form 1444, Request for Authorization of Additional Classification and Rate

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 1444, Request for Authorization of Additional Classification and Rate. A request for public comments was published at 60 FR 54059, October 19, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0089, Standard Form 1444, Request for Authorization of Additional Classification and Rate, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

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

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

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please city OMB Control No. 9000–0089, Standard Form 1444, Request for Authorization of Additional Classification and Rate, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1897 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0091]

Clearance Request Entitled Anti-Kickback Procedures

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Anti-Kickback Procedures. A request for public comments was published at 60 FR 54060, October 19, 1995. No comments were received.

DATES: Comment Due Date: March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503; and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1898 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–ED–M

[OMB Control No. 9000–0101]

Clearance Request Entitled Drug-Free Workplace

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Drug-Free Workplace. A request for public comments was published at 60 FR 54060, October 19, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

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

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

B. Annual Reporting Burden

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

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

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please

cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1899 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0107]

Clearance Request Entitled Notice of Radioactive Materials

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0107).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has been submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notice of Radioactive Materials. A request for public comments was published at 60 FR 54480, October 24, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *5*; total annual responses, *2,500*; preparation hours per response, *1*; and total response burden hours, *2,500*.

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: January 24, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1900 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0139]

Request for Public Comments Regarding OMB Clearance Entitled Federal Acquisition and Community Right-to-Know

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance received pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13) (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection approved pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This OMB clearance (9000–0139) currently expires on January 31, 1996. The requirement was published in the Federal Register as an interim rule (60 FR 55306, October 30, 1995) and public comments were solicited. One comment has been received to date. It will be considered along with all substantive comments on the rule in finalization of the rule.

DATES: *Comment Due Date:* April 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

The interim rule added FAR Subpart 23.9 and its associated solicitation provision and contract clause which implement the requirements of Executive Order (E.O.) 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing Executive Order 12969; Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The interim rule requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). The rule does not apply to acquisitions of commercial items under FAR Part 12 or contractor facilities located outside the United States. This rule does not apply to subcontractors beyond first-tier.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *0.50* minutes per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents (includes first-tier subcontractors), *167,487;* responses per respondent, *1;* total annual responses, *167,487;* preparation hours per response, *0.50;* and total response burden hours, *83,744*.

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: January 25, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1902 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0108]

Clearance Request Entitled Bankruptcy

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0108).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bankruptcy. A request for public comments was published at 60 FR 54221, October 20, 1995. No comments were received.

DATES: *Comment Due Date:* March 1, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform its Government contract. The Government often does not receive adequate and timely notice of this event. The subject contract clause requires contractors to notify the contracting officer within five days after the contractor enters into bankruptcy.

B. Annual Reporting Burden

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

The annual reporting burden is estimated as follows: Respondents, *1,000*; responses per respondent, *1*; total annual responses, *1,000*; preparation hours per response, *1*; and total response burden hours, *1,000*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *1,000*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *250*.

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

Dated: January 26, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–1901 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Notice

AGENCY: I Corps, Fort Lewis, WA.

ACTION: Notice of open meeting .

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.

Date of Meeting: February 15, 1996.

Place of Meeting: Yakima Training Center, Building 266, Yakima, Washington.

Start Time of Meeting: 1:30 p.m.

Proposed Agenda. After action review of Cascade Sage 95 and Cultural and Natural Resources Management Plan update. All proceedings are open.

FOR FURTHER INFORMATION CONTACT; Stephen Hart, Chief, Civil Law, (206) 967–0793.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–1825 Filed 1–30–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Revised Record of Decision on the Upgrade of the Wastewater Treatment System at Marine Corps Base, Camp Lejeune, NC

Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA), and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announced, on August 8, 1994, its decision to upgrade the wastewater treatment system at Marine Corps Base (MCB) Camp Lejeune, North Carolina. The upgrade involves removing three discharge points from the most nutrient sensitive waters of the upper New River, removing two discharge points in proximity to high quality shellfishing waters of the lower New River, and removing a discharge point to the Atlantic Intracoastal Waterway at Onslow Beach. The first phase requires construction of approximately 35 miles of new wastewater transmission pipelines, and consolidates flows at an outfall located in the New River near the existing Hadnot Point treatment plant. Phase I also includes construction of rapid infiltration system facilities at Onslow Beach to handle 120,000 gallons per day (gpd) of wastewater currently discharged to the Atlantic Intracoastal Waterway. Phases II and III involve construction of a new 15 million gallons per day (MGD) advanced wastewater treatment plant capable of a high degree of nutrient removal, and a new outfall diffuser pipe located about 13 miles upstream from the mouth of the New River. The new advanced wastewater treatment plant will be in operation by December 31, 1998.

The alternative to treat all base effluent (including Onslow Beach effluent) at a new advanced treatment plant with discharge to the New River was identified as the preferred alternative in the Draft Environmental Impact Statement (DEIS). In response to comments on the DEIS, additional analysis was undertaken to examine options for land application of Camp Lejeune wastewater. The environmentally preferred alternative identified in the Final Environmental Impact Statement (FEIS) was a combination of a new advanced wastewater treatment facility located in the French Creek area of Camp Lejeune with discharge into the New River and a new rapid infiltration facility at Onslow Beach.

In coordination with the North Carolina Department of Environment, Health and Natural Resources (NCDEHNR), four sites were initially identified in the FEIS as candidate sites for the Onslow Beach rapid infiltration system facility. One site was eliminated because of evidence of poor percolation. Another site had been a disposal area for dredged material from the Atlantic Intracoastal Waterway, and accordingly did not possess subsurface conditions that allowed effluent to move at a proper pace through the soil, thus not allowing for proper treatment. The third site was located on a narrow portion of the island and would impact the seaward dune line and wetlands. The final site, which was identified in the Record of Decision (ROD), offered the best conditions, appeared to have sufficient land area, and was of sufficient elevation.

Geological investigations conducted subsequent to publication of the ROD revealed that the site selected for the Onslow Beach rapid infiltration system facility has a high water table and soils not conducive to such a facility. These investigations concluded that the water table of the site selected occurs within a few feet of the surface. Furthermore, modeling results indicate that effluent would emerge at ground surface within and around the recharge areas in a matter of days after effluent application began, resulting in failure of the system as defined by NCDEHNR. Therefore, based on the failure criterion of NCDEHNR, land disposal of treated domestic wastewater effluent at this site is not feasible. Other areas of the island have characteristics similar to the four sites investigated. Therefore, no suitable sites are available anywhere on Onslow Beach.

Because operation of a rapid infiltration system at Onslow Beach is not feasible from an engineering perspective, the Department of the Navy announces its decision to pump the estimated 120,000 gpd of effluent from Onslow Beach to the new advanced treatment plant. The treated effluent will be discharged through the new diffuser. Prior to completion of the new advanced treatment plant and diffuser, the Onslow Beach effluent will be discharged at an existing outfall in the New River.

Impacts of the construction and operation of the 15 MGD advanced treatment plant were identified in the ROD published on August 8, 1994. The additional flow from the Onslow Beach area is minimal in relation to the plant size (less than 1% of projected flows). The design capacity of the new plant will remain at 15 MGD. Accordingly, impacts discussed in the DEIS and FEIS of the advanced treatment plant will be the same. The discussion below summarizes the impact of the construction of the approximately 5 miles of 8 inch pipeline required to pump effluent from Onslow Beach to the new plant.

The pipeline will be constructed generally along existing utility and road rights-of-way. The pipeline will be submerged as it crosses the Atlantic Intracoastal Waterway. To minimize impacts on the aquatic environment, the crossing will be accomplished using directional drilling. No tidal wetland areas adjacent to the Atlantic Intracoastal Waterway will be disturbed as the directional drilling will tunnel beneath wetland areas. Closing of the Atlantic Intracoastal Waterway will not be required during construction. All necessary permits will be obtained from the U.S. Army Corps of Engineers prior to construction of the pipeline. Construction will not begin prior to receipt of a concurrence by the North Carolina Division of Coastal Management on the Marine Corps coastal consistency determination.

The pipeline will require crossing a freshwater wetland. This crossing is authorized under Nationwide Permit Number 12. The U.S. Army Corps of Engineers will be notified of the crossing prior to construction.

The pipeline will generally follow existing rights-of-way and will follow the contour of existing topography. The pipeline will be buried and post construction contours will be returned to their original condition. Some compaction of soils and removal of vegetation may occur creating a potential for soil erosion impacts. However, compliance with erosion and sedimentation control regulations will minimize the potential for impacts.

Some minor clearing may be involved resulting in minimal impacts to terrestrial wildlife. No rare plant species were located during the survey of this pipeline segment. The pipeline will pass near a red-cockaded woodpecker colony along Sneads Ferry Road. The existing right-of-way along Sneads Ferry Road will be used and no impacts to any existing cavity trees of foraging habitat will occur. No impacts due to construction activities (e.g., noise) will occur to this endangered species. The U.S. Fish and Wildlife Service concurs with this finding.

One archeological site was identified along the pipeline corridor during a Phase I archeological investigation. Additional testing confirmed that this site is outside pipline construction boundaries. Therefore, pipeline construction will not affect cultural resources listed or determined eligible for listing on the National Register of Historic Places. The North Carolina Department of Cultural Resources concurs with this finding. Construction in the vicinity of the site will be conducted so as to avoid ground disturbing activities outside of the pipeline corridor.

The Department of the Navy believes that there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Robert Warren, Environmental Management Department, MCB Camp Lejeune, NC 28542, telephone (910) 451–5003.

Dated: January 26, 1996.

Duncan Holaday,

Deputy Assistant Secretary of the Navy, (Installations and Facilities).

[FR Doc. 96–1818 Filed 1–30–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 1, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should

be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 25, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Federal-State Cooperative system for the collection of data from public libraries and their outlets, state library agencies and public library administrative entities.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting and Recordkeeping Hour Burden:

Responses: 57.
Burden Hours: 1710.

Abstract: The National Education Statistics Act of 1994 mandates the collection of data on the condition and progress of education in the U.S. NCES is to fulfill this duty by ''acquiring, compiling, and dissemination statistics on the condition of education . . . including data on libraries.'' The Public Library Survey is a national census of public libraries which provide a national census of libraries for each state and each individual library.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: SE Caseload Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:

Responses: 82
Burden Hours: 164

Abstract: Vocational Rehabilitation; disabled persons. This form serves to collect data on severely disabled clients served by State supported employment services programs, as required by secs. 636 and 13 of the Rehabilitation Act, as amended. The RSA commissioner must collect and report data on supported employment clients served under title I and title VI, Part C, of the Act, and submit an annual report to the President and Congress within 120 days each FY. The affected public will be 82 State agencies.

[FR Doc. 96–1805 Filed 1–30–96; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Implementation of Remediation Technologies at the INEL

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy's (DOE) Office of Environmental Management through the Idaho Operations Office intends to negotiate and award on a noncompetitive basis, Grant No. DE–FG07–96ID13420 to the University of Idaho, Idaho Water Institute (Primary Grantee). The final definitive award has an estimated overall total value of $1.5 Million, to be funded 100% by DOE. The efforts under the grant will include several proposed cooperative research projects at the Idaho National Engineering Laboratory (INEL) to further evaluate and assess geologic, hydrogeologic and geochemical/biochemical characteristics that may enhance remediation efforts and/or assist future siting of waste storage facilities. These projects will involve research scientists from the University of Idaho, Boise State University, Idaho State University, and the Idaho Geological Survey in cooperation with the INEL's Prime Contractor, Lockheed Idaho Technologies Company (LITCO).

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, Contract Specialist, (208) 526–0014; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The anticipated sole-source award is justified in accordance with 10 CFR 600.7(i), as follows:

(C) The applicant is a unit of (state) government and the activity to be supported is related to performance of a government function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, and (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications. The Statutory Authority for the new award are Public Laws 95–224 and 97–258.

Procurement Request Number: 07–96ID13420.000

Dated: January 24, 1996.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 96–1921 Filed 1–30–96; 8:45 am]
BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Availability of Record of Decision for Short-Term Marketing and Operating Arrangements

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: BPA has decided to enter into short-term marketing and operational arrangements in order to participate continuously in the open electric power market. These arrangements would enable BPA to achieve the best reliability and expected economic outcome, as well as to best meet its environmental responsibilities, given diverse market conditions. This decision would support power cost control, enhance BPA competitiveness, and provide public benefits. The amount of hydropower available to BPA will be defined by the System Operation Review, a separate process underway to determine future hydro operations. The decision documented in this ROD is a direct application of BPA's earlier decision to use a market-driven approach for participation in the increasingly competitive electric power market.

This notice announces the availability of the ROD to enter into these short-term contractual arrangements. This decision is consistent with BPA's Business Plan, the Business Plan Environmental Impact Statement (BP EIS) (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 15, 1995).

ADDRESSES: Copies of this ROD, the BP EIS, and the Business Plan ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce, Environmental Specialist, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5699.

Issued in Portland, Oregon, on January 22, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–1922 Filed 1–30–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Electric and Magnetic Field Effects Research and Public Information Dissemination; Solicitation for Non-Federal Financial Contributions for Fiscal Year 1996

AGENCY: U. S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy today solicits financial contributions from non-Federal sources to at least match $3,835,000 in Federal funding, in support of the national, comprehensive Electric and Magnetic Fields (EMF) Research and Public Information Dissemination Program, described in the Notice of Intent to Solicit Non-Federal Contributions, published November 9, 1993 (58 FR 59461). The Department of Energy has responsibility for program administration, engineering research and the dissemination of relevant information to the public. The National Institute of Environmental Health Sciences directs research on possible health effects of exposure to electric and magnetic fields and will disseminate health information to the public. Section 2118 of the Energy Policy Act of 1992 (42 U.S.C. 13475) requires the Department of Energy to solicit funds from non-Federal sources to offset at least 50 percent of the total funding for all activities under this program. Section 2118 also precludes the Department of Energy from obligating funds for program activities in any fiscal year unless funds received from non-Federal sources are available in an amount at least equal to 50 percent of the amount appropriated by Congress. Appropriations for expenditure under section 2118 have been enacted under the Energy and Water Development Appropriations Act, 1996 (Pub. Law 104–46) in the amount of $3,835,000 for fiscal year 1996.

DATES: Non-Federal contributions are requested as soon as possible in order to implement the fiscal year 1996 program in a timely manner. No portion of the $3,835,000 in appropriated funds may be expended for fiscal year 1996 program activities until DOE has received from non-Federal sources at least the aggregate sum of $1,917,500.

ADDRESSES: Contributions are to be in the form of a check (wire-transfers acceptable from our main contributors) payable to ''U.S. Department of Energy'' and should include the following annotation: ''For EPAct 2118, EMF Program.'' Contributions are to be mailed to: U.S. Department of Energy, Office of Headquarters Accounting Operations, Fiscal Operations Division, CR–54, P.O. Box 500, Germantown, MD 20875–0500.

FOR FURTHER INFORMATION CONTACT: Mr. Roland E. George, Utility Systems Division, EE–141, U. S. Department of Energy, Washington, DC 20585, telephone (202) 586–9398.

Issued in Washington, DC, on January 26, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–1923 Filed 1–30–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL96–16–000 , et al.]

Public Service Company of New Mexico, et al.; Electric Rate and Corporate Regulation Filings

January 24, 1996.

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

1. Public Service Company of New Mexico

[Docket No. EL96–16–000]

Take notice that on October 30, 1995, Public Service Company of New Mexico (PNM) tendered for filing a Request for Waiver of Certain Provisions of the Fuel and Purchased Economic Power Adjustment Clauses and the Refund Requirements Under Suspension Orders Regulations, in association with a recent FERC Audit Recommendation. In the Request, PNM seeks such waivers of the Commission's Regulations, as are or may be necessary to accommodate its past efforts to refund to its firm-requirements wholesale customers certain refunds received from the Department of Energy (DOE) for over collection (by DOE) of charges for spent nuclear fuel disposal costs. PNM also seeks approval of the methodology employed to make these refunds, as well as, approval of PNM's plan to correct an error detected in its refund methodology. PNM states that this Request is being made in order to comply with a FERC audit recommendation made in accordance with the FERC audit of PNM Books and Records covering the period 1/1/90 through 12/31/93, Docket No. FA94–21–000. PNM states that the firm-requirements wholesale customers affected by this request include City of Gallup, New Mexico, City of Farmington, New Mexico, Texas-New Mexico Power Company and Plains

Electric Generation and Transmission Cooperative Inc.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. JEB Corporation National Power Management Company, ICPM, Inc., K Power Company, Power Clearinghouse, Inc., Stalwart Power Company, and VTEC Energy Inc.

[Docket Nos. ER94–1432–005, ER95–192–005, ER95–640–003, ER95–792–001, ER95–914–003, ER95–1334–001, and ER95–1855–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 8, 1995, JEB Corporation filed certain information as required by the Commission's September 8, 1994 order in Docket No. ER94–1432–000.

On January 5, 1996, National Power Management Company filed certain information as required by the Commission's January 4, 1995 order in Docket No. ER95–192–000.

On January 11, 1996 ICPM, Inc. filed certain information as required by the Commission's March 31, 1995 order in Docket No. ER95–640–000.

On December 11, 1995, K Power Company, Inc. filed certain information as required by the Commission's June 19, 1995, order in Docket No. ER95–792–000.

On January 17, 1996, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On January 11, 1996, Stalwart Power Company filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1334–000.

On January 18, 1996, VTEC Energy Inc. filed certain information as required by the Commission's November 6, 1995, order in Docket No. ER95–1855–000.

3. Citizens Utilities Company

[Docket No. ER95–1586–002]

Take notice that on January 2, 1996, Citizens Utilities Company tendered for filing revised tariff pages in the above-referenced docket in compliance with the Commission's order issued on November 30, 1995 in Docket No. ER95–1586–000. In addition, on January 3, 1996, Citizens Utilities Company submitted a Certificate of Service to its January 2, 1996 filing in this docket.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER96–753–000]

Take notice that on January 4, 1996, PECO Energy Company (PECO), tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Public Service Electric and Gas Company (PSE&G) and PECO dated December 28, 1995. This contract sets forth the terms under which PECO will sell PJM installed capacity credits to PSE&G. In order to maximize the economic advantages to both PSE&G and PECO, PECO requests that the Commission waive its customary notice period and permit this Agreement to become effective January 8, 1996.

Copies of the filing have been sent to PSE&G and the Pennsylvania Public Utility Commission.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER96–755–000]

Take notice that on January 4, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Hoosier Energy Rural Electric Cooperative, Inc. and Virginia Power, dated December 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Hoosier Energy Rural Electric Cooperative, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER96–756–000]

Take notice that on January 4, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, two signed service agreements under FERC Electric Tariff Volume No. 4 with Eastex Power Marketing, Inc. and Energy Services, Inc. Also submitted with this filing is a Certificate of Concurrence for each company with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of February 1, 1996.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER96–757–000]

Take notice that on January 4, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Northern Indiana Public Service Company.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Northern Indiana Public Service Company* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER96–758–000]

Take notice that on January 5, 1996, UtiliCorp United, Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Louis Dreyfus Electric Power Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Louis Dreyfus Electric Power Inc.* pursuant to the tariff, and for the sale of capacity and energy by Heartland Energy Services to Missouri Public Service pursuant to *Louis Dreyfus Electric Power Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Louis Dreyfus Electric Power Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER96–759–000]

Take notice that on January 5, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division,

WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Louis Dreyfus Electric Power Inc. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Louis Dreyfus Electric Power Inc. pursuant to the tariff, and for the sale of capacity and energy by Heartland Energy Services to WestPlains Energy-Kansas pursuant to Louis Dreyfus Electric Power Inc.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Louis Dreyfus Electric Power Inc.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER96–760–000]

Take notice that on December 21, 1995, The Montana Power Company (Montana), tendered with the Federal Energy Regulatory Commission, as an informational filing, an executed copy of Montana Rate Schedule FERC No. 224, a Firm Transmission Agreement Between Montana and Western Area Power Administration (Western).

A copy of the filing was served upon Western.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Company

[Docket No. ER96–761–000]

Take notice that on January 5, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission revised exhibits regarding capacity demands with retard to the following wholesale and/or transmission agreements: Agreement for Supply of Power and Energy with UAMPS, dated February 10, 1988; IPC's Agreement for Supply of Power and Energy with Washington City, Utah, dated July 6, 1987; IPC's Agreement for Supply of Power and Energy with Sierra Pacific Power Company, dated October 30, 1989; IPC's Transmission Services Agreement with the City of Seattle, City Light Department, dated January 1, 1988; and Bonneville Power Administration Service Agreement, dated June 6, 1989 and Oregon Trail Electric Consumers Cooperative, dated December 21, 1990.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New York Power Pool

[Docket No. ER96–762–000]

Take notice that on January 5, 1996, the Member Systems of the New York Power Pool (NYPP), tendered for filing a rate schedule for coordinated service with Enron Power Marketing, Inc. (EPMI). The rate schedule would enable the Member Systems of NYPP to enter into purchases and sales of specified services, including economy energy transactions, with EPMI. Included with the filing was a certificate of concurrence signed by EPMI. NYPP requested an effective date of December 15, 1995, and accordingly, requested waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served on EPMI and the New York State Public Service Commission.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. City of College Station, Texas

[Docket No. TX96–2–000]

Take notice that on January 18, 1996, the City of College Station amended its December 1, 1995 filing filed in the above-referenced docket.

Comment date: February 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Sierra Pacific Power Company v. PacifiCorp

[Docket No. EL96–23–000]

Take notice that on December 8, 1996, Sierra Pacific Power Company (Sierra) tendered for filing a complaint against PacifiCorp to establish a refund effective date with respect to rates PacifiCorp charges pursuant to FERC Rate Schedule 258 and 267, which are two PacifiCorp contracts with Sierra for wholesale power sales service.

Comment Date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before February 23, 1996.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1807 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–742–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 23, 1996.

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

1. Wisconsin Public Service Corporation

[Docket No. ER96–742–000]

Take notice that on January 2, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to its February 22, 1993, Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service requests waiver of the Commission's Regulations to permit the amendment to become effective on January 1, 1996.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER96–743–000]

Take notice that on January 2, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 4, 1995, between KCPL and Cenergy, Inc. (Cenergy). KCPL proposes an effective date of December 4, 1995; and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Cenergy.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duquesne Light Company

[Docket No. ER96–746–000]

Take notice that on January 2, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated July 28, 1995 with Electric Clearinghouse, Inc. (ECI) under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds ECI as a customer under the Tariff. DLC requests an effective date of July 28, 1995 for the Service Agreement.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER96–747–000]

Take notice that on December 18, 1995 Minnesota Power & Light Company tendered for filing a signed Service Agreement with LG&E Power Marketing Inc., under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER96–748–000]

Take notice that on January 3, 1996, Wisconsin Public Service Corporation (WPSC), filed to close its T–1 Transmission Service Tariff to new service requests.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power Company

[Docket No. ER96–749–000]

Take notice that on January 3, 1996, Pennsylvania Power Company (Penn Power), tendered for filing, in unexecuted form, a transmission, distribution and partial requirements service agreement and related rate schedule, pursuant to which Penn Power proposes to provide service to the Borough of Zelienople, Pennsylvania (Zelienople). Penn Power requests that the arrangement, although unexecuted by Zelienople, be placed into effect on January 5, 1996 in order to allow Zelienople to begin receiving third-party power supply service on such date. Penn Power states that it and Zelienople are in disagreement regarding the rates, charges and other terms of service.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas City Power & Light Company

[Docket No. ER96–750–000]

Take notice that on January 3, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 8, 1995, between KCPL and JPower Inc. (JPower). KCPL proposes an effective date of December 8, 1995 and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and JPower.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER96–752–000]

Take notice that on January 4, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Montaup Electric Company (Montaup). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Montaup and Montaup will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on January 5, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Massachusetts Department of Public Utilities and Montaup.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. James R. Lientz, Jr.

[Docket No. ID–2932–000]

Take notice that on January 3, 1996, James R. Lientz, Jr. (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Georgia Power Company
President, NationsBank of Georgia, National Association
Director, NationsBank of Georgia, National Association

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Mid-Georgia Cogen, L.P.

[Docket No. QF96–26–000]

On January 4, 1996, Mid-Georgia Cogen, L.P., (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the steam thermal agreement of the cogeneration facility.

Comment date: February 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1806 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. OR96–10–000]

ARCO Products Company, Complainant v. SFPP, L.P., Respondent; Notice of Complaint

January 25, 1996.

Take notice that on January 16, 1996, pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR Section 385.206 and Sections 8, 9, 13(1) and 15(1) of the Interstate Commerce Act (ICA), as applied to interstate common carrier oil pipelines, 49 U.S.C. app. Sections 9 and 13(1) (1988), ARCO Products Company (ARCO) tendered for filing a Petition and Complaint against SFPP, L.P. (SFPP). ARCO asserts that SFPP, a common carrier interstate oil pipeline subject to the jurisdiction of the FERC, has violated and continues to violate the

ICA, including but not limited to Sections 1(5)(a), 2,3(1), 6, 8, of the ICA, 49 U.S.C. app. Sections 6 and 15(a) (1988), by:

—transporting refined petroleum products in interstate commerce without having a tariff on file at the FERC setting forth the rates, terms, and conditions of service, and

—charging an unjust and unreasonable rate for the transportation of refined petroleum products in interstate commerce, a charge for which no legal rate has been established at the FERC, and

—granting an undue discrimination and preference to shippers, and

—overcharging more than the maximum filed rate for transportation in interstate commerce from California origins to destinations in California and Arizona.

ARCO requests that the Commission act upon this Complaint, by (1) requiring SFPP to file rates, terms, and conditions for the transportation of oil in interstate commerce on all SFPP pipelines and related facilities; (2) establishing and requiring that the rates, terms, and conditions filed be in all respects just and reasonable and non-discriminatory; (3) ordering refunds and damages to those who have been subjected to unlawful rates, terms, and conditions, together with interest; and (4) reasonable attorneys and fees and expenses.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or 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. Answers to this complaint shall be due on or before February 26, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1808 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–M

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Notice of Public Briefing

January 25, 1996.

In response to a request by the U.S. Department of the Interior (Interior), the Commission will host a second public briefing on the status of negotiations under the Memorandum of Agreement for the Central Platte River Basin Endangered Species Recovery Implementation Program (MOA). The briefing will be held on Wednesday, February 14, 1996, in the Commission Meeting Room, located on the second floor of 888 First Street, N.E., Washington, D.C. If time permits, the briefing will begin immediately following completion of business at the regularly-scheduled Commission meeting, which commences at 10:00 a.m. Otherwise, the briefing will begin at 1:00 p.m. Additional information about when the anticipated starting time for the briefing will be made available as the meeting date draws nearer and a schedule for the Commission meeting is prepared.

At the briefing, representatives from each of the parties to the MOA, including Interior and the States of Nebraska, Colorado, and Wyoming, will be permitted to make a presentation to the Commission on the Platte River Basin, the status of negotiations, and activities under the MOA.

The briefing is neither a hearing nor a settlement conference. It will provide an opportunity for the Commission, staff, and interested persons to obtain a fuller understanding of the MOA and the activities under it.

The briefing will be recorded by a stenographer, and all briefing statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the briefing may contact Ann Riley & Associates by calling (202) 293–3950 or by writing to 1612 K Street, N.W., Suite 300, Washington, D.C. 20006.

Anyone wishing to comment in writing on the briefing may do so no later than March 15, 1996. Comments should clearly reference the Kingsley Dam Project No. 1417 and the North Platte/Keystone Diversion Dam Project No. 1835. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1809 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–116–000]

South Georgia Natural Gas Company; Notice of Interruptible Transportation Revenue Crediting Report

January 25, 1996.

Take notice that on January 16, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing information which South Georgia states is being filed to comply with the Enforcement Staff inquiry concerning the manner in which South Georgia determined and credited interruptible transportation (IT) revenues accrued during the 1994–95 winter season.

South Georgia states that its report shows the IT revenues accrued during the 1994–95 winter season that it credited to its firm transportation shippers pursuant to Section 27.1 of the General Terms and Conditions of South Georgia's FERC Gas Tariff, Second Revised Volume No. 1.

South Georgia states that a copy of the filing will be served on all affected shippers.

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 385.211 and 385.214 of the Commission's Regulations. All such motions or protests must be filed on or before February 1, 1996. 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. 96–1811 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–005]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 25, 1996.

Take notice that on January 18, 1996, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective February 17, 1996:

First Revised Sheet No. 314A
First Revised Sheet No. 314B
First Revised Sheet No. 314C

Tennessee states that it is filing the instant tariff sheets to correct an oversight that occurred with respect to the Stipulation and Agreement filed in Docket No. RP95–396 on July 25, 1995 (Stipulation). Tennessee further states that the tendered tariff sheets will allow shippers under Tennessee's IS Rate Schedule to retain hourly nomination rights, which IS customers enjoyed prior to the implementation of the Stipulation.

Any person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are in file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1810 Filed 1–30–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5411–5]

Agency Information Collection Activities Up for Renewal; Hazardous Waste Industry Studies Information Collection Request

AGENCY: U.S. 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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Hazardous Waste Industry Studies ICR Number 2050–0042. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 1, 1996.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–96–ISIP–FFFFF, RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW, Washington, DC. To hand-deliver comments, or to review docket materials, the address is U.S. EPA, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Jim Kent, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202–260–6946, FAX # 202–260–0225.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those generating, transporting, storing or disposing the wastes of interest, or using the materials of interest in the following industries:

- Paint Production
- Inorganics
- Solvents (users of 21 specific solvents)
- Petroleum Refining
- Chlorinated Aliphatics
- Dyes and Pigments
- Pulp and Paper

Title: Hazardous Waste Industry Studies ICR Number 2050–0042, expires July 31, 1996.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries during the rest of this fiscal year through FY 1999, primarily for the purpose of developing hazardous waste listing determinations as part of a rulemaking effort under Sections 3001 and 3004 of the Resource Conservation and Recovery Act (RCRA). Information collected under authority of this ICR will be used to establish and expand an information data base with regard to hazardous waste generation and management by industry to support a goal of more effective regulation under Sections 3001 and 3004 of RCRA.

The information acquired through the Industry Studies Program has contributed to the effective development and implementation of the hazardous waste regulatory program. The ICR renewal, once approved, will allow continued and expanded data collection for the following program areas:

- Listing
- Land Disposal Restrictions (LDR) and Capacity
- Source Reduction and Recycling
- Risk Assessment

To support these hazardous waste program areas, EPA has been conducting surveys and site visits for various industries over the past 12 years under authority granted under RCRA Section 3007 and OMB #2050–0042. Responses to these surveys are mandatory and required by EPA to collect data for development of hazardous waste rulemakings as required by a consent decree signed December 9, 1994, which resulted from the *EDF* v. *Reilly* case.

These surveys will collect data on the following:

- Corporate/facility data—name, location, EPA hazardous waste identification number, and facility representative.
- Feedstock and product information—chemical and physical identification of feedstocks and raw materials.
- General process information—types of processes in place, and on-site wastewater treatment and disposition.
- Specific manufacturing processes, residuals—flow sheets, including types and points of introduction and generation of feedstocks, products, co-products, by-products, and residuals.
- General residuals management information—on-site and/or off-site management of residuals of concern.
- Residuals characterization—chemical/physical properties of the residuals, regulatory status (*i.e.*, whether the waste already is a hazardous waste).
- Residuals management units/facility-wide exposure pathway risk assessment information—management units that manage residuals of concern, operating and design information on units, potential releases from units, environmental descriptors surrounding management units, environmental monitoring in place, and past releases.
- Residual source reduction/recycling information—voluntary source

reduction and recycling plans, barriers to pollution prevention/waste minimization, cost savings.

The information collected will be used primarily to determine if wastes from specific industries should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

Depending on the size and scope of the industry, the information collection will consist either of a census or a representative sample of all the facilities that are included in the specific industries.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR Part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

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, including the validity of the methodology and assumptions used;

(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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Burden Statement: 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 purposes 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.

The average annual burden imposed by the survey is approximately 38.4 hours per respondent. The average number of responses for each respondent is 1.14. The estimated number of likely respondents is 2,446.

Data will be collected from several industries that generate wastes that may be listed as hazardous. The industries EPA plans to survey during the period of this ICR are:

- Paint Production
- Inorganics
- Solvents (users of 21 specific solvents)
- Petroleum Refining
- Chlorinated Aliphatics
- Dyes and Pigments
- Pulp and Paper

Dated: January 25, 1996.

David Bussard,

Director, Hazardous Waste Identification Division.

[FR Doc. 96–1910 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5410–4]

Request for Comments: Combined Sewer Overflow Control Policy

Information Collection Activities being amended (OMB Control Number 2040–0170)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA plans to submit the following amended Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the amended information collection as described below.

DATES: Comments must be submitted on or before April 1, 1996.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management (Mail Code 4203), 401 M Street SW., Washington, DC 20460. Interested persons may obtain a copy of the ICR amendment and supporting analysis without charge by contacting the individual listed below.

FOR FURTHER INFORMATION CONTACT: Timothy Dwyer, EPA Office of Wastewater Management (Mail Code 4203), 401 M Street SW., Washington, DC20460. Telephone: (202) 260–6064. Fax: (202) 260–1460.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are municipalities with combined sewer systems, which are covered by EPA's Combined Sewer Overflow (CSO) Control Policy.

Title: Amendment—ICR for the Combined Sewer Overflow Policy.

Abstract: EPA is amending its ICR for the Combined Sewer Overflow (CSO) Policy to include the burden associated with third-party notification provisions under the Policy. This amendment is being prepared to reflect changes to ICR requirements identified in the Paperwork Reduction Act of 1995. Specifically, it addresses the expanded scope of the Act in redefining ''collection of information'' to include ''disclosure to third parties or the public.'' Information collection burden other than third-party notification is reflected in the existing ICR for the CSO Control Policy (ICR 1680.01; OMB control number 2040–0170).

Combined sewer systems (CSSs) serve approximately 1,100 municipalities with approximately 43 million people, primarily in the Northeast and Great Lakes regions. CSOs occur when these systems overflow and discharge to receiving waters prior to treatment in a publicly owned treatment works (POTW).

The CSO Control Policy, published on April 19, 1994 (59 FR 18688), is a national framework for controlling CSOs through the National Pollutant Discharge Elimination System (NPDES) permitting program. The Policy represents a comprehensive national strategy to ensure that municipalities with CSSs, NPDES permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives, including compliance with water quality standards. The Policy recognizes the site-specific nature of

CSOs and their impacts, and provides the flexibility necessary to tailor controls to local situations. The Policy is based on a framework negotiated by stakeholders, and EPA has recommended that it be incorporated into revisions of the Clean Water Act (CWA).

Among the provisions in the CSO Policy are the ''nine minimum controls'' (NMC), which are technology-based actions or measures designed to reduce the magnitude, frequency, and duration of CSOs and their effects on receiving water quality. The NMC should not require significant engineering studies or major construction, and municipalities are expected to implement them as soon as practicable but no later than January 1, 1997. Many municipalities have already made significant progress in implementing the NMC.

One of the NMC is public notification of CSO occurrences and impacts. Public notification is of particular concern at beach and recreation areas directly or indirectly affected by CSOs, where public exposure is likely to be significant. Although the information collection burden associated with implementing and documenting the NMC is included in the ICR for the CSO Control Policy, that ICR does not include any burden associated with third-party notification.

The CSO Control Policy and EPA's guidance provide considerable flexibility to municipalities in implementing the public notification provision, because the most appropriate mechanism for public notification will vary with local circumstances, such as the character and size of affected water bodies, their uses, and means of public access. The selected mechanism should be the most cost-effective method that provides reasonable assurance that the affected public is informed in a timely manner. Municipalities will choose from methods that include posting signs at affected use areas, posting signs at CSO outfalls, and notices in newspapers or radio broadcasts.

Many municipalities already provide public notification to affected citizens of CSO events and other public health issues, particularly in areas with heavy beach and shellfishing activity. Specific conditions regarding public notification under the CSO Policy will be contained in NPDES permits or other enforceable mechanisms issued to CSO municipalities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments on its ICR amendment. Specifically, we would like comments to help us 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, including the validity of the methodology and assumptions used;

(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.

Burden Statement: The existing ICR for the CSO Policy covers a total annual recordkeeping and reporting burden of 681,429 hours. This amendment adds 7,905 hours, or a total of approximately one percent, bringing the total burden to 704,354 hours. The cost burden reflected in this amendment is $399,690. The changes in this amendment are necessary in order to reflect the third-party notification provisions in the CSO Control Policy, as required in the 1995 reauthorization of the Paperwork Reduction Act.

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 purposes 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.

Interested parties may obtain a copy of the draft supporting statement, including the burden analysis, from Timothy Dwyer, EPA Office of Wastewater Management, at (202) 260–6064.

Dated: December 1, 1995.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 96–1911 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5411–7]

Agency Information Collection Activities Under OMB Review; Pesticides

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 three Information Collection Requests (ICRs) described below have been forwarded to the Office of Management and Budget (OMB) for review to extend the existing OMB approval. These three ICRs from the Office of Prevention, Pesticides and Toxic Substances, are individually abstracted below: (1) Data Call-In for Special Review Chemicals (OMB Control No. 2070–0057; EPA ICR No. 922.05), (2) Export Policy: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides (OMB Control No. 2070–0027; EPA ICR No. 161.07), and (3) Notice of Pesticide Registration by States to meet a Special Local Need under FIFRA Section 24(c) (OMB Control No. 2070–0055; EPA ICR No. 595.06). These ICRs describe the nature of the information collections and their expected burden and cost; where appropriate, they include the actual data collection instrument. A Federal Register notice proposing this submission and seeking public comments on these three ICRs was published on September 29, 1995 (60 FR 50577). EPA did not receive any comments in response to that notice.

DATES: Comments must be submitted on or before March 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and reference the appropriate EPA ICR number (ICR No. 922.05, ICR No. 161.07, or ICR No. 595.06).

SUPPLEMENTARY INFORMATION:

(1) *Title:* Data Call-In for Special Review Chemicals (OMB Control No. 2070–0057; EPA ICR No. 922.05). This is a request for extension of a currently approved information collection which expires on March 31, 1996.

Abstract: The Federal Insecticide, Fungcide, and Rodenticide Act as amended (FIFRA) mandates that EPA register pesticide products. Under

FIFRA, EPA may require pesticide registrants to generate and submit data to the Agency where such data are needed to assess whether registration of an existing pesticide causes an unreasonable adverse effect on human health or the environment. Pesticide registrants must generate and report the required data.

The purpose of this information collection activity is for EPA's Office of Pesticide Programs (OPP) to obtain data to assess whether certain pesticides pose unreasonable adverse effects on human health or the environment, and therefore should continue to be registered. Data may consist of toxicology studies, fish and wildlife studies, environmental fate studies, chemistry studies or other data needed to analyze the potential risks and benefits associated with pesticide chemicals. EPA gathers much of the additional information needed to reassess a chemical by requesting data from the registrant under FIFRA sec. 3(c)(2)(B).

No third party notification or public disclosure burden is associated with this collection.

Respondents/Affected Entities: Manufacturers of pesticide chemicals.

Estimated Number of Respondents: 32.

Frequency of Response: Once per event.

Estimated Annual Burden per Respondent: 920 hours.

Estimated Total Annual Hour Burden: 29,440 hours.

(2) *Title:* Export Policy: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides. (OMB Control No. 2070–0027; EPA ICR No. 161.07). This is a request for extension of a currently approved information collection which expires on March 31, 1996.

Abstract: Section 17 of FIFRA requires an exporter of any pesticide not registered under FIFRA to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in the United States and cannot be sold in the United States. The purpose of the foreign purchaser acknowledgment statement (FPAS) requirement is to ensure that the government of the importing country is notified that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted by the exporter in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticides.

EPA is also including in this renewal of the ICR an estimate of the burden imposed by export labeling requirements, which meet the definition of third party labeling. The labeling requirement may be met by supplemental labeling attached to either the product container or the shipping container.

Respondents/Affected Entities: Exporters of pesticides.

Estimated Number of Respondents: 2,000.

Frequency of Response: Once per event.

Estimated Annual Burden per Respondent: 14.6 hours.

Estimated Total Annual Hour Burden: 24,217 hours.

(3) *Title:* Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA Section 24(c) (OMB Control No. 2070–0055; EPA ICR No. 595.06). This is a request for extension of a currently approved information collection which expires on April 30, 1996.

Abstract: FIFRA Section 24(c) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need. A State-issued registration under FIFRA section 24(c) is deemed a federal registration, for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes, a state registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant. EPA requires this information to ensure that the States do not issue any registrations that might conflict with other requirements in FIFRA, or with the Federal Food, Drug, and Cosmetic Act which require that a tolerance exist for any pesticide used on a food or feed commodity. The States are required by federal regulation to collect from the manufacturer, or grower group, adequate information to support the section 24(c) application for registration or amendment. Both the State and the applicant are required to keep records for as long as the registration is active. In this case, the manufacturer, or grower group, represents a third party. The information collected from the third party is required to obtain a benefit, while that collected from the States by EPA is mandatory.

Respondents/Affected Entities: The States, which are defined to include Washington, D.C., Puerto Rico, the U.S. Virgin Islands, Guam and the islands of the Pacific Territory, and American Samoa; Manufacturers of pesticide chemicals; and Grower groups.

Estimated Number of Respondents: 550.

Frequency of Response: Once per event.

Estimated Annual Burden per Respondent: 70.5 hours.

Estimated Total Annual Hour Burden: 38,775 hours.

Burden Statement: 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. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on these collections of information was published on September 29, 1995 (60 FR 50577). No comments were received.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to the appropriate EPA ICR number or OMB Control Number in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street, S.W., Washington, D.C. 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: January 25, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–1909 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5411–6]

The Joint EPA/CMA Training Module and Self-Auditing Checklist on Section 608 Leak Repair Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Training Module and Self-auditing Checklist for Industrial Process Refrigeration Leak Repair Regulations under Section 608 of the Clean Air Act.

SUMMARY: The Environmental Protection Agency announces the availability of a training module and a self-auditing checklist developed jointly by EPA and the Chemical Manufacturers Association (CMA) to supplement the ''Compliance Guidance for Industrial Process Refrigeration Leak Repair Regulations Under Section 608 of the Clean Air Act'' (Document number: EPA 300–B–95–010). This guidance document was developed based on the recently promulgated amendments to the leak repair requirements under Section 608 of the Clean Air Act Amendments of 1990. In addition to the guidance document, we developed the training module and the self-auditing checklist as part of the compliance assistance effort EPA piloted with CMA. EPA believes that the combination of the guidance document, training module and the self-auditing checklist provides a complete, well balanced compliance assistance package that will facilitate early and substantial compliance.

Both the training module and the checklist are developed based on the content of the guidance document. Therefore, they are providing the same guidance in slightly different formats.

Hard copies of the training module and the auditing checklist are available free of charge to the public through the EPA Stratospheric Ozone Information Hotline. Electronic copies of both the training module and the checklist are available at cost from CMA.

DATES: These two documents will be available to the public in early February 1996.

ADDRESSES: Hard copies of the training module (EPA 300–B–96–001) and the self-auditing checklist (EPA 300–B–96–002) may be obtained by calling the Stratospheric Protection Hotline at (1–800–296–1996) from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. Electronic copies can be obtained at cost from CMA at (703) 741–5232.

FOR FURTHER INFORMATION CONTACT: For general information contact the Stratospheric Ozone Information Hotline at (800) 296–1996. For information on specific aspects of these two documents, contact Tracy Back at (202) 564–7076, Chemical, Commercial, and Municipal Services Division (2224–A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Dated: January 19, 1996.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 96–1908 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5410–3]

Risk Assessment and Risk Management Commission; Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will meet on February 14, 1996 at the One Washington Circle Hotel at 1 Washington Circle, Washington, D.C. subject to availability of funding. Unexpected budget problems prevented the Commission from meeting during the months of October, November, December and January. If the Federal government shuts down, the meeting will be cancelled. If you need to call the hotel to ascertain if the meeting is still being held, please call 202–872–1680.

A copy of the agenda can be obtained by calling 202–233–9537 or fax a note to 202–233–9540. Please be sure to include your fax number when you call or fax a request to us. This will expedite your request for information.

Dated: January 22, 1996.

Gail Charnley,

Executive Director, Commission on Risk Assessment And Risk Management.

[FR Doc. 96–1912 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–34088; FRL–4995–5]

Certain Chemicals; Completion of Comment Period for Reregistration Eligibility Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the Reregistration Eligibility Decision (RED) documents for several chemical cases.

ADDRESSES: Copies of these REDS are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone no. (703) 487–4650. To obtain copies you must provide the publication number that has been assigned to the RED listed in the table below.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents listed below should be directed to the appropriate Chemical Review Managers:

Chemical Name	Chemical Review Manager	Telephone No.	E-mail Address
Piperalin	Jean Holmes	703–308–8008	Holmes.jean@epamail.epa.gov
Limonene	Emily Mitchell	703–308–8583	Mitchell.emily@epamail.epa.gov

SUPPLEMENTARY INFORMATION: During fiscal years 1994 and 1995, EPA published Notices in the Federal Register announcing the availability of RED documents for the listed pesticide active ingredients. These REDs were issued as final documents, with a 60–day comment period. In these REDs, EPA provided its regulatory position on the current registered uses of these pesticides and set forth certain requirements for product reregistration eligibility. There were no comments for the following REDs: Piperalin and Limonene.

The NTIS publication number for REDs subject to this notice are presented below:

Chemical Name	Case Number	RED Date	RED NTIS Number
Limonene	3083 .	12/30/94.	PB–95–16–9504
Piperalin	3114 .	01/23/95.	PB–95–17–9784

List of Subjects

Environmental protection.

Dated: January 23, 1996.

Richard D. Schmitt,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 96–1919 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34085; FRL 4991–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on April 30, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before April 30, 1996, to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000802–00138	Miller's MCP Amine 4	MCPA, dimethylamine salt	Peas, rice, flax
000802–00374	Miller's MCP Sodium Salt 2	MCPA, sodium salt	Peas, rice, flax
002935–00139	Premium Grade Malathion Grain Protectant	Malathion	Wheat, oats, rice, corn, rye, barley, grain sorghum
019713–00171	Drexel Simazat 4L	Atrazine	Sugarcane
042750–00024	MCPA Sodium Salt	MCPA, Sodium Salt	Established lawns & turf
045728–00008	UCB Ferbam Technical Fungicide	Ferbam	Almonds, apricots, blueberries, currants, dates, gooseberries, plums, prunes, quinces

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000802	The Chas. H. Lilly Co., P.O. Box 83179, Portland, OR 97283.
002935	Wilbur-Ellis Co., 191 W. Shaw Ave., Suite 107, Fresno, CA 93704.
019713	Drexel Chemical Co., 1700 Channel Ave., P.O. Box 13327, Memphis, TN 38113.
042750	Albaugh, Inc., 1517 N. Ankeny Blvd., Suite A, Ankeny, IA 50021.
045728	UCB Chemicals Corp., c/o Compliance Services International, 2001 Jefferson Davis Hwy, Suite 1010, Arlington, VA 22202.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations

Dated: December 7, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–1538 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–642; FRL–4992–9]

Zeneca AG Products; Notice of Filings of Petitions for Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Zeneca AG Products two petitions to establish food additive regulations for a pesticide on certain commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-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 data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–642]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM–25), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Initial Filings:

1. *FAP 6H5740.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458, proposes to amend 40 CFR part 185 by establishing a regulation to permit residues of Touchdown Herbicide, containing glyphosate-trimesium (formerly sulfosate), (trimethyl sulfonium carboxymethylamino methylphosphonate) in or on the soybean hulls (of which no more than 2 ppm is trimethylsulfonium) at 7.0 parts per million (ppm).

2. *FAP 6H5742.* Zeneca AG Products proposes to amend 40 CFR part 185 by establishing a regulation to permit residues of Touchdown Herbicide, containing glyphosate-trimesium (formerly sulfosate), (trimethyl sulfonium carboxymethylamino methylphosphonate) in or on prunes (of which no more than 0.05 ppm is trimethylsulfonium) at 0.2 ppm.

A record has been established for this rulemaking under docket number [PF–642] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: January 19, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–1720 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–645; FRL–4996–8]

Captan; Request for Comment on Petition to Revoke Food Additive Regulations for Raisins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and availability of petition.

SUMMARY: This document announces the receipt of and solicits comments on a petition proposing the revocation of the section 409 food additive regulation established under the Federal Food, Drug and Cosmetic Act (FFDCA), for captan in or on washed raisins. This notice sets forth the basis for the petitioner's proposal and provides opportunity for comment by the public.

DATES: Written comments, identified by the docket number [PF–645] must be received on or before March 1, 1996.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of

Pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the petition will be available for public inspection in the public docket from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The telephone number of the docket is 703–305–5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection at the address and hours given above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-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 data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–645]. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at any Federal Depository Library. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT:

By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8028, e-mail:nazmi.niloufar@epamil.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Food, Drug and Cosmetic Act (FFDCA) [21 U.S.C. 136 et seq.], authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RACs), and section 409 of the act authorizes promulgation of food additive regulations for pesticide residues in processed foods.

Under section 408, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in RACs. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409. Section 409 food additive regulations are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 food additive regulation is required if any pesticide residue in a processed food resulting from use on a RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on that RAC. This exemption in section 402(a)(2) is commonly referred to as the ''flow-through'' provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Federal Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be ''safe'' [21 U.S.C. 348(C)(3)]. Section 409 also contains the Delaney clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals [21 U.S.C. 348(C)(5)]

In setting both section 408 tolerances and section 409 food additive regulations, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be able both to cover residues likely to be left when the pesticide is used in accordance with its labeling, and to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a RAC based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 food additive regulation is needed depends on whether there is a possibility that the processing of a RAC containing pesticide residues would result in residues in the processed food at a level grater than the raw food tolerance.

Food additive regulations are currently established in 40 CFR 185.500 for captan on raisins resulting both from its preharvest application to grapes and from post-harvest application to raisins during the drying process.

II. Petition

The Captan Task Force and its members, Makhteshim Chemical Works, Ltd., and ZENECA, Inc., have submitted a petition requesting the revocation of the food additive regulation established under section 409 of the FFDCA for captan in or on washed raisins. The petition claims that: good manufacturing practice for producing raisins requires that the raisins be washed before they are ''ready-to-eat''; washing raisins substantially eliminates remaining captan residues because captan is highly susceptible to hydrolytic degradation; and therefore, captan residues do not concentrate in washed raisins above residue levels on treated grapes, and do not require a food additive regulation. The petition also claims that there is no registration for post-harvest use of captan directly on raisins, and therefore the food additive regulation covering that application method is unnecessary.

To support these claims, the petition cited the following: A processing study which was submitted in March, 1987 (MRID No. 40189812); a pamphlet from the California Raisin Advisory Board describing raisin production practices, which was submitted with this petition; hydrolysis data which was submitted in May, 1989 (MRID No. 41176301); and labels for Captan 50–WP products.

In regard to washed raisins, the petition claims that the processing study shows that captan residues do not concentrate in raisins above the level of the 408 tolerance for captan on grapes, currently established at 50 ppm (40 CFR 180.103). Therefore, the petition asserts that the section 409 food additive regulation is not needed for washed raisins.

In regard to post-harvest application to raisins, the petition claims that the section 409 food additive regulation is not needed because there are no registered products containing captan which include label directions for post-harvest use on raisins. For this reason, the Petitioner believes that the section 409 food additive regulation for captan on raisin due to post-harvest application is not needed.

It should be noted that on July 1, 1994 EPA published a proposed rule in the Federal Register to revoke the section

409 food additive regulation for captain in or on raisins (59 FR 33941). That proposal was based on a determination that captan induces cancer in animals, and thus, the regulation violates the Delaney clause in section 409 of the FFDCA. However, the Agency could finalize revocation of the captan raisin regulation on the grounds requested in the petition announced in this notice.

Pursuant to 40 CFR 177.125 and 177.130, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order, (40 CFR 178.20).

A record has been established for this document under docket number [PF–643] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Elecrtronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Dated: January 25, 1996.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

[FR Doc. 96–1904 Filed 1–26–96; 2:55 pm]

BILLING CODE 6560–50–M

[OPPTS–44620; FRL–4993–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on N-methylpyrrolidone (NMP) (CAS No. 872–50–4), and glycidyl methacrylate (GMA) (CAS No. 106–91–2), submitted pursuant to testing consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

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

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that the results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for N-methylpyrrolidone (NMP) were submitted by the NMP Producers Group pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on November 22, 1995. The submission includes three final reports entitled ''N-Methylpyrrolidone - Subchronic Oral Toxicity Study in B6C3F1 Mice, Administration in the Diet for 3 Months''; ''Subchronic Oral Toxicity: 90–Day Feeding and Neurotoxicity Study in Rats with N-Methylpyrrolidone (NMP)''; and ''Oral, Dermal, and Inhalation Pharmacokinetics and Disposition of [2–14C] NMP in the Rat''. This chemical is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymers. It is the preferred solvent in a variety of chemical reactions and the manufacture of numerous chemical intermediates and in products such as plastics, surface coatings, and pesticides. An important new use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylenes, olefins, and diolefins, in the removal of sulfur compounds from natural and refinery gases, and in the dehydration of natural gas.

Test data for glycidyl methacrylate were submitted by the GMA Industry Group pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on December 4, 1995. The submission includes two final reports entitled ''Evaluation of Glycidyl Methacrylate (GMA) in the Chinese Hamster Ovary Cell/Hypoxanthine-Guanine-Phosphoribosyl Transferase (CHO/HGPRT) Forward Mutation Assay''; and ''Evaluation of Glycidyl Methacrylate (GMA) in the Mouse Bone Marrow Micronucleus Test''. GMA, a glycidol derivative, is an epoxy resin additive used in paint coating formulations and adhesive applications.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44620). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: January 26, 1996.

Charles M. Auer,

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

[FR Doc. 96–1963 Filed 1–30–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5404–6]

Proposed General NPDES Permit for Placer Mining in Alaska

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a proposed general permit.

SUMMARY: This is a proposal to modify general permit regulating placer mining activities in the State of Alaska. On May 31, 1994, EPA Region 10 published a general permit for discharges of wastewater from placer mines in Alaska. 59 FR 28079, May 31, 1994. If issued, the proposed modified permit would modify effluent limitations, standards,

prohibitions and other conditions on wastewater discharges set forth in the Alaska placer miner general permit. These conditions are based on existing national effluent guidelines, state water quality standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed modified general permit, and especially of the basis for the proposed modifications, is given in the fact sheet.

EXECUTIVE ORDER 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866.

UNFUNDED MANDATES REFORM ACT: Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), EPA must prepare a written statement to accompany any rules with Federal mandates that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required, EPA must identify and consider alternatives that achieve the objective of such a rule. EPA must select the alternative that is the least costly, most cost-effective or least budensome, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Because the proposed modification will not impose costs in excess of $100 million, it imposes no unfunded mandate within the meaning of the Unfunded Mandates Act.

PUBLIC COMMENT PERIOD: Interested persons may submit comments on the proposed modified general permit to EPA, Region 10 at the address below. Comments must be received in the regional office by March 18, 1996.

PUBLIC HEARINGS: A public hearing will be held in Fairbanks, Alaska, on March 5, 1996 from 6:30 p.m. until 11:00 p.m at the offices of the State of Alaska Department of Natural Resources, Division of Mining and Water Management, 3700 Airport Way.

REQUEST FOR COVERAGE: Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.E. of the draft modified permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

ADDRESSES: Comments on the proposed general permit should be sent to Tim Hamlin; U.S. EPA, Region 10; 1200 Sixth Avenue SO–155; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Tim Hamlin at the Seattle address above or by telephone at (206) 553–8311.

Dated: January 11, 1996.

Phil Millam,

Acting Director, Office of Water.

Fact Sheet

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101, (206) 553–1214.

General Permit for Placer Miners No.: AKG–37–0000.

Proposed Modification of a General National Pollutant Discharge Elimination System (NPDES) Permit To Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) for Alaska Placer Miners

(except those identified in Part III of this Fact Sheet)

This fact sheet includes (a) the tentative determination of the Environmental Protection Agency (EPA) to modify the NPDES general permit issued on May 13, 1994 and published at 59 FR 28079 (May 31, 1994), (b) information on public comment, public hearings and appeal, (c) the description of the industry and proposed discharges, (d) other conditions and requirements.

Persons wishing to comment on the tentative determinations contained in the proposed modification to the general permit may do so before the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice. After the expiration date of the Public Notice, the Director, Office of Water, will make a final determination with respect to issuance of the permit. The modifications to the general permit will become effective 30 days after the final determination is made.

The proposed modifications to the NPDES general permit and other related documents are on file and may be inspected and copies made at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553–8332. This material is also available from the EPA Alaska Operations Office, Room 537, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513–7588 or Alaska Operations Office, 410 Willoughby Avenue, Suite 100, Juneau, Alaska 99801 or the Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, Alaska 99709.

Table of Contents

Technical Information

I. Background Information

A. History

Regulation of discharges from gold placer mining operations in Alaska has been a matter of extreme controversy since enactment of the Clean Water Act. Starting in 1976 and 1977, EPA issued approximately 170 individual NPDES permits to Alaskan gold placer miners. Those permits were challenged administratively. Some parties argued that the permits were not stringent enough, others argued that the permits were too stringent. EPA issued an additional 269 individual NPDES permits for gold placer mining in 1983. All of those permits were challenged judicially in *Trustees for Alaska* v. *EPA*, 749 F.2d 549 (9th Cir. 1984).

EPA issued a new round of individual permits (446 in total) in 1984 to replace

expiring permits and to incorporate new promulgated regulations. In 1985, EPA modified the 1984 permits, based on the *Trustee for Alaska* decision, and issued 93 additional permits. In 1987, EPA issued an additional 368 new permits. The 1987 permits were the subject of litigation based on allegations that EPA and the State unreasonably delayed acting on requests for hearings on those permits in *Stein* v. *Kelso, Case No. F89–21 Civil (D.Alaska)* (litigation against EPA). The case against EPA was eventually dismissed as moot on April 12, 1990.

The permits that EPA did issue in 1985 and 1987 were challenged administratively and, ultimately, judicially in *Ackels* v. *EPA*, 7 F.3d 862 (9th Cir. 1993). A decision by the State of Alaska to certify the 1985 permits was ultimately resolved by the Alaska Supreme Court in *Miners Advocacy Council, Inc.* v. *State Dep't of Envtl. Conservation*, 778 P.2d 1126 (Alaska 1989), *cert. denied*, 493 U.S. 1077 (1990). The State's certification of the 1987 permits was also challenged in *Stein* v. *Kelso*, 846 P.2d 123 (Alaska 1993).

During the pendency of the permit proceedings described above, EPA also was sued in the United States District Court for the District of Alaska in 1986. That case raised a variety of statutory and constitutional issues, which were ultimately dismissed or resolved in the federal courts. One of the concerns raised in the 1986 litigation, whether EPA had a duty to promulgate national effluent limitations guidelines for the gold placer mining point source category, was eventually resolved when EPA published such guidelines in 1988. See 40 CFR Part 440 Subpart M. Those guidelines also were the subject of litigation in *Rybachek* v. *EPA*, 904 F.2d 1276 (9th Cir. 1990).

On June 30, 1992, EPA received a notice of citizen suit which alleged that EPA failed to perform a non-discretionary duty to regulate suction dredge gold placer mining operations. At that time, EPA decided it would issue individual permits for mechanical placer mining operations (for the 1993 mining season) and that it would propose a general permit for suction dredge operations. On January 14, 1994, EPA did propose such a general permit, although permit coverage was proposed for mechanical, as well as suction dredge operations. 59 FR 2504 (Jan. 14, 1994). After responding to public comment, EPA issued the final general permit on May 13, 1994. 59 FR 28079 (May 31, 1994). On September 28, 1994, two environmental groups filed a petition for review of the general permit in the Ninth Circuit. Without any admission or denial of any of the Petitioners' allegations, EPA is proposing to modify the general permit today.

B. Permit Coverage

1. General Permit

a. Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although individual permits have been issued to individual dischargers on a case-by-case basis, EPA's regulations also authorize the issuance of ''general permits'' to categories of discharges [40 CFR 122.28] when a number of point sources are:

(1) Located within the same geographic area and warrant similar pollution control measures;

(2) Involve the same or substantially similar types of operations;

(3) Discharge the same types of wastes;

(4) Require the same effluent limitations or operating conditions;

(5) Require the same or similar monitoring requirements; and

(6) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

EPA finds that the placer mining discharges to be permitted under the modified general permit proposed for modification today meet these criteria. To the extent that any given placer mining operation warrants different effluent limitations because of site-specific factors pertaining to turbidity, such would be accounted for under Section II.A.1.c. of the permit.

b. Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Act and subjects the owner or operator of the permitted facility to the penalties specified in Section 309 of the Act.

c. A Notice of Intent (NOI) to be covered under this modified General Permit would be required [40 CFR 122.28(b)(2)(i)], including new NOIs from permittees already covered under the May 31, 1994 general permit (i.e., dischargers covered under the permit prior to today's proposed modification). The NOI requirements are outlined in Part I.F. of the permit. A State of Alaska Annual Placer Mining Application, or other document, would be acceptable if it contains all the items specified in the permit.

d. This modification would not affect the duration of the May 31, 1994 general permit. The modified permit would expire five (5) years from the date of issuance of the original permit, specifically, on June 30, 1999. Permittees covered under this modified general permit may continue to discharge according to its terms after expiration of the permit provided those permittees submit a timely and complete application for renewal—i.e., a new NOI—prior to expiration. Only those facilities authorized to discharge under the modified permit prior to its expiration who submit a NOI 90 days prior to the expiration may continue to claim coverage under the administratively continued permit. After expiration, no ''new dischargers'' may claim general permit coverage until it is reissued.

2. Types of Placer Mine Operations Covered by the Permit

EPA is proposing to modify the NPDES general permit for Alaska placer mining operations issued on May 31, 1994. The modified general permit would apply to certain facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore. Specifically, the modified general permit would not apply to certain types of mining operations currently authorized under the May 31, 1994 permit. Discharges from some suction dredge operations, discharges from operations using hydraulic removal of overburden, and discharges from operations into special use waters would no longer be eligible for coverage under the general permit as modified. Discharges from operations using certain beneficiation methods would continue to be ineligible for coverage under the general permit as modified. The modified permit would apply to all open-cut and mechanical dredge gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season and mechanical dredges that remove less than 50,000 cubic yards of placer ore per mining season. These operations are covered by the effluent guidelines and described in 40 CFR 440.140(b).

EPA previously completed a literature research project considering the environmental effects of suction dredge operation and potential controls that could be placed on them. (North, 1993.) This project considered effects of suction dredge operations and recommended that additional study be undertaken on the effects of suction dredging with intake hoses larger than eight inches in size. EPA has not had the opportunity to study the effects of larger operations. Thus, the modified general permit would only authorize

discharges by suction dredge operations with intake hoses of eight inches or less; it would not authorize discharges by suction dredge operations with intake hoses larger than eight inches. Any such discharges would require coverage under an individual permit. All suction dredge operations with intake hoses of eight inches and less would be eligible for coverage under the proposed modified general permit.

Discharges resulting from hydraulic removal of overburden would not be covered by this modified permit. Discharges from ponds containing both ''sluice water'' and wastewater from hydraulicking would not be authorized by the modified general permit. (Hydraulicking refers both to the hydraulic removal of overburden and the use of hydraulic power to move raw rock to the point of processing, *i.e.* to the gate of the sluice or other processing equipment).

Individual NPDES permits issued previously did not cover discharges associated with hydraulic removal of overburden. These permits were challenged administratively. The EPA Environmental Appeals Board in its September 3, 1992 Remand Order of NPDES Appeal No. 91–23 sanctioned EPA's position that a site-specific factual analysis is necessary to determine the precise terms of any permit that authorizes discharges from hydraulic removal of overburden. It also required EPA to consider an applicant's entire process when the applicant so requests.

Because of the site-specific analysis necessary for discharges associated with hydraulicking, EPA proposes not to authorize such discharges under the today's modified general permit. Thus, such discharges would also require coverage under an individual permit.

Finally, this permit would not authorize discharges resulting from beneficiation methods utilizing cyanidation, froth flotation, heap or vat leaching and mercury amalgamation. Such discharges were not authorized under the May 31, 1994 permit.

3. Limitations on Coverage

Certain streams and stream reaches in Alaska have been designated as Wild & Scenic Rivers or are located in State Parks, National Parks and Preserves, National Monuments, National Conservation Areas, National Wildlife Refuges and National Wildlife Areas. Under the proposed modification, this permit would not apply to facilities discharging to these special use waters.

For mining wastewaters discharged to these special use waters, the Agency has determined that it lacks sufficient information to assure that compliance with this modified general permit would also assure compliance with applicable legal requirements. Such discharges may be authorized under a future general permit or under an individual permit.

Like the May 31 1994 permit, this modified permit would not relieve a permittee of the requirements of other applicable federal, state or local laws; permittees should contact the appropriate state or federal agencies to inquire about additional permits that may be required.

Additional requirements may be imposed by the Alaska Department of Fish and Game in resident and anadromous fish streams. Also, ''The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish'' lists the streams in the State which require a Habitat permit from the Alaska Department of Fish and Game.

4. Individual Permits

Owners or operators authorized by a general permit may be excepted from coverage by a general permit by applying to the Director of the NPDES program for an individual permit. This request may be made by submitting an NPDES permit application, together with supporting documentation for the request no later than 90 days after publication by EPA of the final general permit in the Federal Register, or 180 days prior to the commencement of operation of a new source or new discharger. EPA also intends to give appropriate priority to those dischargers who would no longer be covered under the general permit as a result of the proposed changes. Specifically, permittees discharging to special use waters, including the Forty-Mile River, suction dredge permittees with intake hoses greater than 8 inches, and hydraulickers would be given appropriate priority in the individual permit process provided they make prompt application for such coverage.

Finally, EPA intends to give appropriate priority to those dischargers who wish to receive a site-specific turbidity limit based on a different approach than that proposed in the modified general permit. These dischargers must provide sufficient information to EPA to establish either that (1) their effluent does not exceed water quality criteria for metals other than arsenic or (2) the natural background level of turbidity of the receiving water is greater than zero. Sufficient information means analytical monitoring data that reflects at least three samples taken over the period of not less than three weeks. (A detailed explanation of the proposed modified general permit's approach to turbidity including its relationship to metals may be found at part III. C. of this fact sheet.)

The Director may require any person authorized by the modified general permit to apply for and obtain an individual permit, or any interested person may petition the Director to take this action. The Director may consider the issuance of individual permits when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved; or

f. The requirements listed in the previous paragraphs are not met.

C. Description of the Industry

Placer mining involves the mining and extraction of gold or other heavy metals and minerals primarily from alluvial deposits. These deposits may be in existing stream beds or ancient, often buried, stream deposits, i.e. paleo or fossil placers. Many Alaskan placer deposits consist of unconsolidated clay, sand, gravel, cobble and boulders that contain very small amounts of native gold or other precious metals. Most are stream deposits and occur along present stream valleys or on benches or terraces above existing streams. Beach placer deposits have been and continue to be important producers in Alaska. These deposits, most notable near Nome, include both submerged and elevated beach placer deposits.

Essential components of placer mining include overburden removal, mining of the gold placer gravels, and processing (gold recovery).

1. Overburden Removal

Various types of overburden include barren alluvial gravels, broken slide rock, or glacial deposits. In some parts of Alaska the pay gravels are overlaid by silty, organic-rich deposits of barren, frozen material generally comprised of wind-blown particles (loess). Particularly high ice content is common. Most facilities utilize mechanical methods for removal of overburden

because they generally use the same excavating equipment for mining.

Overburden can also be removed by hydraulicking. Hydraulicking consists of the loosening of material by water delivered under pressure through a hydraulic giant (monitor). This general permit does not authorize discharges from operations that use hydraulicking to remove overburden. Such discharges would be considered through the individual permit process.

2. Mining Methods

Placer mining methods include both dredging systems and open-cut mining. Dredging systems are classified as hydraulic or mechanical (including bucket dredging), depending on the methods of digging. Suction dredges, the most common hydraulic dredging system, are quite popular in Alaska with the small or recreational gold placer miner. Like all floating dredges, suction dredges consist of a supporting hull with a mining control system, excavating and lifting mechanism, gold recovery circuits, and waste disposal system. All floating dredges are designed to work as a unit to dig, classify, beneficiate ores and dispose of waste. Because suction dredges work the stream bed rather than stream banks, the discharge from suction dredges consists totally of stream water and bed material.

Open-cut methods commonly used in Alaska involve the use of bulldozers to remove overburden, push pay dirt to sluiceboxes, stack tailing and construct ditches ponds and roads. At some sites, loaders are used to move material.

3. Processing Methods

A large percentage of the present gold placer mining operations use some type of sluice box to perform the primary processing function, beneficiation. An increasing number of jig plants are also being used at open-cut mines. Many operations make use of feed size classification which involves the physical separation of large rocks and boulders from smaller materials such as gravel and sand. The object of classification is to prevent the processing of large-sized material which is unlikely to contain gold values. Commonly used classification equipment includes: grizzlies, trommels and static or vibrating screens. The most common gold recovery method is sluicing. A sluice is a long, sloped trough into which water is directed to effectuate separation of gold from ore. A slurry of water and ore flows down the sluice and the gold, due to its relatively high density, is trapped in riffles along the sluice.

II. Effluent Characteristics

Discharges from placer mining operations consist of water and the naturally occurring materials found in the alluvial deposits (e.g. sand, silt, clay, trace minerals and metals, etc.). Some of the elements measured in placer mine effluent are derived principally from sulfide, oxide, carbonate, and silicate mineral species, and may include antimony, arsenic, cadmium, copper, iron, lead, mercury, nickel, silver, and zinc. Most of these parameters have been found in trace amounts in discharges from some mines.

Based on review of available scientific literature, sampling data collected by EPA and the Alaska Water Quality Standards (WQS), EPA has concluded that the pollutants of primary concern are settleable solids, turbidity, and arsenic. Arsenic is the primary metal of concern due to its potential toxicity and its naturally occurring abundance in most Alaskan soils, which may be discharged to Alaskan waters along with other mining wastes.

III. Basis for Effluent Limitations on Mechanical Operations

A. Background

The Clean Water Act requires that NPDES permits establish effluent limitations to assure compliance with technology-based control standards and with State water quality standards. Technology-based limitations represent the degree of pollutant reduction that can be economically achieved by using various levels of pollution control technology. In accordance with Section 301(b)(1)(C) of the CWA, NPDES permits must also assure compliance with any more stringent limitations, particularly those necessary to meet State water quality standards. The NPDES regulations at 40 CFR 122.44(d) requires NPDES permits to include conditions to ''(a)chieve water quality standards established under § 303 of the Clean Water Act.''

B. Technology-Based Limitations

Effluent limits required in this permit for the control of pollutants are published in 40 CFR Part 440 Subpart M (Gold Placer Mine Subcategory), which was published at 53 FR 18764 (May 24, 1988). These limits apply only to a certain category of mechanical placer mining operations. Additional information regarding the basis for establishing the effluent limits is summarized in the EPA publication titled ''Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category—Gold Placer Mine Subcategory'' (May 1988) (''Development Document'').

The Subpart M regulations establish effluent limitations guidelines and standards based on the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), and new source performance standards (NSPS) based on the best available demonstrated technology. The BAT limitations and NSPS represent the level of treatment required for all placer mining operations covered under 40 CFR Part 440 Subpart M. Subpart M also mandates specific best management practices (BMPs).

The limitations and standards established under Subpart M were derived based on the use of settling ponds and total recirculation of process wastewater. Subpart M allows a mine to discharge incidental water that enters the mine site through infiltration, drainage and mine drainage (including waters entering the mine through precipitation, snow melt, drainage water, ground water infiltration and the melting of permafrost) provided that three conditions are met: (1) the incidental waters have commingled with process waters, (2) the volume of the discharge is no greater than the volume of infiltration, drainage and mine drainage waters that is in excess of the make-up water required for operation of the beneficiation process, and (3) the concentration of settleable solids in the discharged water does not exceed the effluent limitations specified below.

For the purpose of this permit, discharged wastewater consists of incidental waters commingled with process waters used to move the ore to and through the beneficiation process, water used to aid in classification, and water used in gravity separation. Subpart M imposes the following effluent limitations:

a. The concentration of settleable solids in wastewater discharged from an open-cut mine plant or a dredge plant site must not exceed an instantaneous maximum of 0.2 ml/l.

b. The volume of wastewater which may be discharged from an open-cut mine plant or dredge plant site must not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

These technology-based requirements are specified in Parts II.A.1.a. and b. of the proposed permit.

Part II.A.2. of the proposed permit prohibits the discharge of any

wastewater during periods when new water is allowed to enter the plant site. It is required to assure compliance with the technology-based requirements established in Part II.A.1.a. of the proposed permit.

C. Water Quality Based Limitations

1. Introduction

In addition to the technology-based effluent limitations, the permit includes effluent limitations which are required to ensure compliance with WQS (Title 18, Chapter 70 of the Alaska Administrative Code).

These standards vary with the beneficial use they are established to protect. In water bodies with more than one designated beneficial use, the more restrictive criteria apply. The WQS protect most fresh water sources for use in drinking, agriculture, aquaculture and industrial water supply, contact and secondary recreation, and the growth and propagation of fish, shellfish, and other aquatic life (18 AAC 70.050). This permit will protect all the above uses.

The WQS also authorize the State to approve mixing zones. 18 AAC 70.032(a) states in part that ''(i)n applying the water quality criteria set out in this chapter, the department will, upon application and in its discretion, prescribe in a permit or certification a mixing zone.'' A mixing zone is the volume of water, adjacent to a discharge, in which wastes discharged mix with the receiving water, and within which the water quality criteria set forth in 18 AAC 70.020 may be exceeded. 18 AAC 70.032 sets forth the method for determining whether a mixing zone is appropriate and, if so, the appropriate size of a mixing zone. Where a mixing zone is authorized, WQS must be achieved at the edge on the mixing zone, known also as the zone of initial dilution (''ZID'').

2. Alaska Water Quality Standards

EPA has evaluated the following WQS in determining appropriate permit limits:

a. Turbidity. According to the WQS, the most protective turbidity criteria applies to fresh water sources classified for use as drinking water and contact recreation uses. These criteria, which are set forth in 18 AAC 70.020(b), state that turbidity ''(m)ay not exceed 5 nephelometric turbidity units (NTU) above natural conditions when the natural turbidity is 50 NTU or less; and more than 10% increase in turbidity when the natural condition is more than 50 NTU, not to exceed a maximum increase of 25 NTU.''

b. Sediment. The most protective sediment criterion applies to fresh water sources classified for use as drinking water. This criterion is a narrative standard requires ''(n)o measurable increase in concentration of settleable solids above natural conditions, as measured by the volumetric Imhoff cone method.'' The lowest measurable value of settleable solids using an Imhoff cone is 0.2 ml/l.

c. Metals. Under Alaska WQS, metals constitute ''Toxic and Other Deleterious Organic and Inorganic Substances.'' The most restrictive metals criterion is that which applies to fresh water used for the growth and propagation of fish, shellfish, and other aquatic life and wildlife. *See* 18 AAC 70.020 (1995). That criterion prohibits individual substances from exceeding the EPA Quality Criteria for Water or, if those criteria do not exist, the Primary Maximum Contaminant Levels of the Alaska Drinking Water Standards. Under this criterion, even more stringent limits may be imposed where ADEC finds that the limits are not appropriate for sensitive resident Alaska species.

(1) Metals Other Than Arsenic. Under the proposed modifications, metals other than arsenic are regulated through permit limitations on settleable solids and turbidity. EPA has determined that any metals present in raw placer mining wastewater are associated with the solids in that wastewater. Development Document at 98. By meeting the settleable solids limitation of 0.2 ml/l, a miner will have removed almost all of the metals that might otherwise be present in placer mining effluent.

However, the concentration of remaining metals still might exceed the metals criteria. Because the remaining metals are associated with solids, the permit's limitations on turbidity—which EPA believes in placer mining effluent is almost wholly composed of solids that have not settled—will control any remaining metals that might be in the effluent.

(2) Arsenic. EPA has concluded, based on available sampling data, that arsenic is commonly associated with placer mining wastes. Development Document at 118, 131. Locally, it is the most abundant toxic metal present. Additionally, although several studies by EPA have indicated a reduction in levels of arsenic in placer mining effluent as a result of reducing settleable solids to 0.2 ml/l, EPA has concluded that these reduced levels of arsenic are not consistently adequate to achieve WQS. Development Document at 118, 131.

3. Limitations

Based on review of the WQS and available data, EPA proposes that the modified general permit would contain limitations on flow, turbidity, settleable solids and arsenic in order to meet the WQS of concern.

a. Flow and Turbidity. Because metals other than arsenic are strongly associated with solids, the technology-based limits on settleable solids and on the volume of wastewater discharged—which effectively require the use of settling ponds—greatly reduce metals. EPA believes additional WQS-based limits on turbidity assure compliance with the metals criteria. Placer mining effluent turbidity is almost entirely caused by those solids that have not settled. Thus, turbidity is an indicator of solids, and therefore it is an indicator of metals too. The turbidity limit thus is not only necessary to achieve the WQS for turbidity but also to achieve the WQS for metals other than arsenic.

For purposes of the general permit, the maximum turbidity limit of the effluent is that which would result in a level of turbidity, after mixing, that does not exceed 5 NTU above background.

The State of Alaska has agreed, as part of its certification of individual NOIs, to consider modifying the turbidity limitation to account for the dilution effects of the receiving stream. The applicant would provide with the NOI sufficient information demonstrating that the dilution effect of the receiving water justifies a less stringent limit and disclosing effluent flow. The necessary dilution information may be provided, as it has in past years, by the permittee or by the Alaska Department of Natural Resources (ADNR). Where the applicant does not provide the site-specific information sufficient to justify a less stringent turbidity limit, coverage under the modified general permit would be granted with a turbidity limit of 5 NTU above natural background.

The proposed modification would make three changes that better ensure that site-specific turbidity limits achieve WQS for metals other than arsenic. First, the modified general permit condition would be based on the assumption that the naturally occurring turbidity level is 0 NTU. This assumption is based on the fact that most Alaska waters upon which placer mining is conducted have either no or very low levels of naturally occurring turbidity.

Second, the flow estimate that the permittee traditionally has provided—and which is used to calculate site-specific turbidity limits—would be included in the permit as a limit. This

would foster accurate assessment of flows and thereby ensure appropriate turbidity limits because applicants who might otherwise tend to underestimate flows, and thereby get a higher turbidity limit, will now have a strong incentive to estimate flows accurately. On the other hand, those who inadvertently underestimate flows can, by undertaking additional turbidity monitoring, negate the presumption that a flow exceedance was resulted in a permit violation. So long as a miner takes a turbidity sample that demonstrates compliance with the turbidity limit, any flow exceedance will not be considered a permit violation.

Third, the turbidity limit would be based on a more conservative low-flow projection based on the thirty day, ten-year low flow (30Q10). This low-flow projection is more conservative than would be required were turbidity not being used as part of the permit's regime to comply with WQS for metals other than arsenic. That is, 30Q10 is proposed in recognition of the potential for placer mining effluent to include toxic metals. Under the Alaska WQS, if the turbidity limitation were not a means for implementing WQS for toxics, the less stringent three-day, ten-year low flow (3Q2) would be the proposed low flow. (On the other hand, a more stringent assumed low flow based on seven-day, ten-year low flow (7Q10) would be utilized in accordance with the Alaska WQS if placer mining effluent were known to contain toxic pollutants.

(A miner who seeks higher turbidity limits than would result under application of the formula would have to apply for an individual permit and would have to include information that demonstrates that the above considerations do not be apply to his or her location. For example, a miner may obtain a higher turbidity limit if he or she could demonstrate in an individual permit application that turbidity natural background is above zero or that metals are not present in the mining effluent.)

The procedures that the State has indicated it would use to calculate a turbidity limit under the general permit are substantially the same as those used in the individual placer mining permits issued since 1986. The proposed turbidity limit is based on utilizing a mass balance equation which relates receiving water flow and turbidity to effluent flow and turbidity. The basic form of this equation is:

$Q_1C_1=Q_2C_2$,

where

C_1=effluent turbidity ;

C_2=receiving water downstream turbidity after mixing where the allowable increase is 5 NTU above background (*i.e.* 5 NTU);

Q_1=effluent flow and,

Q_2=total receiving water flow downstream from discharge after complete mixing (*i.e.* 30Q10).

This formula differs from that used previously in two respects. First, as discussed above, it assumes a background turbidity of zero. The formula used in the May 31, 1994 permit was:

$Q_1C_1+Q_2C_2=Q_3C_3$

where Q_1 represented receiving water flow upstream of the discharge and C_1 represented the receiving water turbidity upstream of the discharge. Because the modified general permit would assume that the upstream turbidity is zero, Q_1C_1 in the previous formula falls out of this equation, and thus, the two equations are the same. Authorization under the proposed modified general permit would only be available based on the zero background turbidity assumption. Second, under this formula no default effluent flow will be utilized. A miner who submits an NOI for zero discharge will not be eligible to receive a site-specific turbidity limit.

The necessary information to determine the appropriate turbidity limit for the facility is the effluent and receiving water flow values. Receiving water flow values can be obtained from the ADNR, Division of Mining, upon request by the permittee. ADNR methodology for determining upstream flow uses equations developed by Ashton and Carlson (1984). The maximum effluent discharge flow must be estimated by the permittee and must account for the effects of all excess incidental waters.

Discharges requesting turbidity limits that account for effluent and receiving water flow rates would need to submit the necessary information to EPA with the NOI. This would apply to all dischargers, including those who have submitted this type of information in the past, in order to assure that all site-specific information is up-to-date. EPA would forward this information to the Alaska Department of Environmental Conservation.

b. Settleable Solids. The settleable solids limitation would serve both as a technology-based limitation and as a WQS-based limitation. The most conservative WQS standard for sediment is defined in terms of settleable solids as measured using an Imhoff Cone. The Imhoff Cone does not reliably quantify settleable solids at levels below 0.2 ml/l which is also the technology-based limit for placer mines. Thus, the permit's technology-based limit also would implement the WQS for sediment.

As mentioned above, compliance with the settleable solids limitation, also would greatly assist, if it would not alone ensure, compliance with WQS for metals. The vast majority of whatever metals are present in placer miner wastewater would be removed where the discharge meets the settleable solids limitation. Development Document at 98.

c. Arsenic. In establishing the arsenic limit, EPA proposes to rely on the ''Amendments to the Water Quality Standards Regulation; Compliance with CWA Section 303(c)(2)(B) (''Amendments'') (57 FR 6084). This rulemaking promulgated the chemical-specific numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of the CWA Section 303(c)(2)(B). The primary focus of the rule is the inclusion of the federal water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs (*e.g.* NPDES permits). Thus, the existing federal standard of 0.18 µg/l total recoverable arsenic is applicable to Alaska and this number has been used to determine the end-of-pipe limitation for the draft permit.

The arsenic criterion in the Amendments is currently under consideration for revision. If the current arsenic criterion has been stayed by EPA prior to final issuance of the modified general permit and no new or interim criterion has been promulgated, EPA intends, consistent with the Alaska Water Quality Standards, to include in the final permit an arsenic limit of 50 µg/l total arsenic which is the Alaska Drinking Water Standard for arsenic. If the current criterion is stayed and EPA issues a new or interim criterion that is less stringent than the State standard, EPA likewise will include the State standard. Alternatively, if the new or interim EPA-issued criterion were more stringent than the State standard, it would be included.

While Mixing zones are allowed under the Alaska standards for some pollutant discharges, under 18 AAC 70.032(a)(1) the State will not authorize a mixing zone if ''pollutants discharged could be expected to cause carcinogenic, mutagenic, or teratogenic effects on biota or human health'' and result in a significant human health risk.

EPA is not proposing a mixing zone for arsenic but would include a method for determining a mixing zone in the

permit if the Department determines that such a mixing zone is appropriate and is in compliance with WQS.

The proposed general permit does not address circumstances where natural background exceeds criteria. Miners seeking to discharge arsenic at levels up to natural background must apply for individual permits. They must also obtain from ADEC a limit based on natural background in accordance with the provisions of 18 AAC 70.025.

IV. Best Management Practices (BMPs)

Section 402(a)(2) authorizes EPA to include miscellaneous requirements in permits on a case-by-case basis which are deemed necessary to carry out the provisions of the Act. BMPs are practices designed to control or abate the discharge of pollutants.

A. BMP conditions in Permit Parts III.A.1. to III.A.5. of the proposed permit were developed pursuant to Section 304(e) of the CWA. These BMPs are established in 40 CFR 440.148 and are necessary for control and treatment of the drainage and infiltration water at gold placer mines and to prevent solids and toxic metals from being released to the receiving streams.

1. The intent of Permit Part III.A.1. is to avoid contamination of nonprocess water, reduce the volume of water requiring treatment and maximize the retention time and the settling capacity of the settling ponds. The diversion would be required to totally circumvent any gold recovery units, treatment facilities, etc. Any mine drainage sources that pass through the actual mining area and are subject to transporting pollutants would be required to be treated prior to discharge.

2. Permit Part III.A.2. is intended to assure that water retention devices are constructed appropriately. This may be achieved by utilizing on-site material in a manner that the fine sealing material (such as clays) are mixed in the berms with coarser materials. Berms should be toed into the underlying earth, constructed in layers or lifts and each layer thoroughly compacted to ensure mechanical and watertight integrity of the berms. Other impermeable material such as plastic sheets or membranes may be used inside the berms when sealing fines are unavailable or in short supply. The side slope of berms should not be greater than the natural angle of repose of the materials used in the berms or a slope of 2:1, whichever is flatter.

3. The intent of Permit Part III.A.3 is to ensure that the investment in pollution control results in the maximum benefit in terms of reduced pollutant volumes reaching water of the United States. These measures may include location of the storage ponds and storage areas to assure that they will not be washed out by reasonably predictable flooding or by the return of a relocated stream to it original stream bed. Materials removed from settling ponds should be placed in bermed areas where liquids from the materials cannot flow overland to waters of the United States. It may be necessary, in some cases, to collect such liquids and pump or divert them back to the settling pond for treatment. This requirement applies both during the active mining season and at all other times until reclamation is completed.

4. Permit Part III.A.4. is intended to assure that the amount of wastewater that is discharged is kept to a minimum.

5. The provisions of Permit Part III.A.5. would ensure that water control devices are adequately maintained. This specifies that structures should be inspected on a regular basis for any signs of structural weakness or incipient failure. Whenever such weakness or incipient failure becomes evident, repair or augmentation of the structure to reasonably ensure against catastrophic failure shall be made immediately.

B. Pursuant to CWA Section 402(a)(2) (40 CFR 122.44(k)(3), additional BMPs are being proposed; these practices are reasonably necessary either to achieve effluent limitations or to carry out the Clean Water Act's goals of eliminating the discharge of pollutants as much as practicable and to maintain water quality which provides for the protection and propagation of fish among other uses.

In addition, the BMPs in Permit Part III.B. would apply to all suction dredges covered by the modified permit. Suction dredges' unique method of intake and displacement present unusual permitting issues. They operate on the surface of flowing streams and rivers, only remove material from stream bottoms, and process and quickly return mined material to the stream bottom. For these reasons EPA has determined that numeric effluent limitations are not necessary. Instead, the BMPs in part III.B. of the permit have been developed. These BMPs, which are supplemented by required turbidity monitoring designed to ensure that the BMPs are being implemented properly, are, in this unique circumstance, sufficient to implement the requirements of the CWA. That is, these practices would ensure that the beneficial uses designated by the state, chiefly the growth and propagation of fish and other aquatic life, are adequately protected and justify the absence of more stringent technology and water-quality based effluent limitations.

1. Permit Part III.A.6. would require reasonable steps be taken to ensure that pollutants are not discharged after close of the mining season. Any discharge of pollutants from the mine area to waters of the United States, even when it is not being operated, in excess of permit limits would constitute a violation of the Clean Water Act.

2. Permit Part III.A.7. would require that a minimum separation distance be maintained between mine discharge points. Separation is intended to prevent the creation of extended overlapping discharge plumes and thereby ensure unimpaired fish habitat zones exist between discharge points. Solids associated with the effluent from mechanical operations effluent downstream and settles downstream among gravel and rocks in the streambed. Too much silt and sand make it difficult for the salmon to dig suitable gravel nests (redds) and can also smother fish eggs already deposited. An applicant who would face difficulty complying with this BMP may submit an application for an individual permit.

3. Permit Part III.B.1. would require that dredging occur only in the active stream channel except where the mining the active channel would contribute to erosion of stream banks. Mining the active stream channel generally should result in dredging spoils that are relatively clean and should cause minimum turbidity when returned to the stream. The material that runs through a suction dredge flows downstream and settles among gravel and rocks in the streambed. As mentioned above, too much silt and sand make it difficult for the salmon to dig suitable gravel nests (redds) and can also smother fish eggs already deposited.

4. Wherever practicable, Permit Part III.B.2. requires that dredge be set to discharge into a quiet pool where settling of dredge spoils can occur more rapidly. This should minimize in-stream turbidity to the general area of the dredging activity.

5. Permit Part III.B.3. would prohibit dredging within 500 feet of any location where the miner knows fish spawn or have left eggs. This BMP also is intended to protect the waters for propagation of fish. The greatest single effect a suction dredge has on the environment is the danger it poses to fish. The dredge pump forces water and gravel through the nozzle and hose. Fish eggs taken up with gravel cannot survive the shock, pressure, and battering and pounding that comes with

moving through the hose and sluice. If a fish egg should somehow survive the hose and sluice, the chances for being buried in the gravel at the right depth and in the correct gravel composition necessary for incubation are nonexistent.

This BMP also would require miners to inform themselves of these locations where fish eggs may exist. In addition to consulting the regional office of the Alaska Department of Fish and Game (ADF&G), miners may consult ''The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish,'' which lists the streams in the State which require a Habitat permit from the ADF&G. This catalog is quite extensive but is available for viewing at many agencies including Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Anchorage Operations Office of EPA.

6. Likewise Permit Part III.B.4 would protect conditions in the receiving water for the benefit of fish. Moving obstructions may cause turbidity in excess of WQS. Instream obstructions also serve important habitat purposes.

7. Permit Part III.B.5. would protect against an unnecessary and unpermitted discharge of turbidity.

8. Permit Part III.B.6., like Permit Part III.A.7., would ensure that turbidity will not impair fish habitat for long stretches of water where mining operations are in close proximity to one another.

9. Permit Part III.B.7. emphasizes the Permit Part III.B.1. The active stream channel is characterized by the absence of clay and silt. Dredging activity in clay and silt can result in turbidity plumes greatly in excess of the 500 foot limitation proposed in the general permit.

10. The purpose of Permit Part III.B.8. would be to control the potential discharge of pollutants, resulting from fuel spills, from entering receiving waters.

Basis for Monitoring and Reporting Requirements

Monitoring

All self-monitoring requirements were developed in consideration of the remoteness of the mining operations, the magnitude of the pollutants discharged, and the practicability of maintaining a valid quality assurance program.

Monitoring provisions for turbidity, arsenic, settleable solids, and flow (in Part II.C.) are included in the proposed modified general permit. These provisions explain how, when, and where to collect such samples.

EPA has prepared a daily checklist as an attachment to the proposed modified general permit. Permittees would be required to maintain a record of the information required by part II.C.1.b of the permit. The attached checklist may be utilized to assist permittees in ensuring compliance with that part. All compliance records would have to be maintained for three years in accordance with part IV. of the permit. In accordance with Section 308 of the Clean Water Act, EPA may require that such records be submitted to the agency. EPA intends to make information requests in accordance with Section 308 when reasonably requested by members of the public.

Daily Monitoring

a. Mechanical Operations. (1) For mechanical operations, the measurement of settleable solids is an indication of overall treatment efficiency. The modified general permit would require monitoring for settleable solids once per day during periods of discharge. If there is a discharge to waters of the United States, permittees would be required to sample for settleable solids on a daily basis, even if sluicing does not occur, because the operator is responsible at all times for the condition of the wastewater entering the receiving stream. Also, the results from settleable solids sampling can give the operator an immediate indication of the overall effectiveness of the treatment system and thus allow advanced planning for treatment system maintenance.

(2) Daily effluent flow monitoring also would be required in the proposed modified general permit. This requirement would provide data for determining compliance with turbidity limits derived using mixing zones and would allow EPA to assess the pollutant loading discharged into the receiving water. On days when flow exceeds permit limits, a permittee may take a turbidity sample. So long as turbidity remains within permit limits, flow exceedances will not be considered to be permit violations.

(3) The daily visual inspection provision in Part II.D.1. of the proposed modified general permit would be required to assure against discharges resulting from structural failure of berms, dikes, dams and other water control structures. A visual inspection is an effective tool for assuring proper operation and maintenance.

b. Suction Dredging. The modified permit would require daily visual inspection of the area downstream of the suction dredge during operation. If turbidity is observed beyond 500 feet downstream, the permittee would be required to modify its operations to meet the permit limitation. If the operations could not be modified to meet the limit, the operation would not be authorized.

This requirement is based on research published in the scientific literature (Griffith and Andrews 1981, Hassler et al. 1986, Harvey 1986, Huber and Blanchet 1992, Thomas 1985) and on monitoring done by Alaska Department of Environmental Conservation (ADEC) (Ron McAllister, ADEC, personal communication). In most cases, water quality recovered rapidly below the dredge. The daily visual inspection during operation, combined with the BMPs in part III.B. of the permit should assure that the water quality standards are met.

2. Seasonal Monitoring—Turbidity and Arsenic

Permittees would be required to monitor for turbidity and arsenic once for each calendar month in which there is a discharge and at least three times per season. The permittee should space sampling as evenly throughout the mining season as possible. If the permittee has fewer than three discharges per season, the permittee would be required to sample each discharge. If the permittee has fewer than three discharges per season, the permittee should take samples of each discharge.

For permittees who have not obtained a site-specific turbidity limit under part II.A.1.c. of the permit, background samples for turbidity, taken immediately upstream of the effluent discharge point, would be required. Effluent turbidity samples would also be required. For permittees who did obtain a site-specific limit, only samples of the effluent would be required.

Samples for monitoring purposes would be required to be taken during sluicing or discharge at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are fairly constant.

B. Reporting

The following reporting requirements apply to all permittees with the exception of suction dredges with intake hoses of four inches or less.

1. Reporting of effluent violations would be required in writing within a reasonable time period. The information required by Attachment A must be included. This is found in Permit Part IV.G.

2. Reporting of visual violations from suction dredges would be required in

writing within a reasonable time period. This is found in Permit Part IV.G.

3. The results of all monitoring or notice that no discharge or no mining would be reported to EPA by November 30 of each year. This is found in Permit Part IV.B.

4. Reporting of the results of arsenic monitoring: As a result of the increasing use of water quality-based effluent limits (WQBEL) in NPDES permits, a number of permits now contain limits that fall below the capability of current analytical technology to detect and/or quantify specific parameters. EPA's draft ''National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantification levels'' (March 1994) outlines objectives for achieving consistency in establishing permit pollutant limitations for pollutants that are set below detection levels, taking into consideration the capabilities and uncertainties of currently available analytical methodologies.

EPA's guidance specifies that, regardless of the ability to measure to the level of the WQBEL, the value provided for the maximum and average effluent limits in the permit should be expressed as the calculated WQBELs. The inability to measure to the necessary level of detection is addressed by establishing the Minimum Level (ML[1]) as the quantification level for use in laboratory analysis and for reporting Discharge Monitoring Report (DMR) data for compliance evaluations. In the absence of promulgated MLs, Interim MLs should be used. EPA believes that Interim ML values can be derived most effectively as a multiple of the existing Method Detection Limit (MDL) value for a given analyte. The Interim ML is approximated by 3.18 times the published MDL. The Interim ML is then rounded to the nearest whole number for the metal analyte and corresponding specific analytical method approved under Section 304(h). In some cases, MDLs for several metals have not been established. When neither the ML nor the MDL is available, 3.18 times the best estimate of the detection level should be used.

The discharge of arsenic in excess of the effluent limit is not authorized by this permit. Because the water quality based effluent limit for arsenic (.18 µg/l) is below the MDL of 1 µg/l using EPA Method 206.2, EPA has derived an interim minimum level of 3 µg/l (3.18×1 µg/l=3.18 rounded to 3) as the quantifiable level. EPA intends to consider using enforcement discretion with regard to arsenic discharges reported below the quantifiable level. For purposes of reporting analytical results for arsenic in the DMR, results below the MDL will be reported as ''less than 1 µg/l''. Actual analytical results shall be reported on the DMR when the results are greater than the MDL. The permittee must also specify in the comment column of the DMR that Method 206.2 was used for analysis.

VI. Other Requirements

A. Spill Prevention Control and Containment (SPCC) Plan

Part III.C. of the proposed modified general permit was established in accordance with Part 40 CFR 122.44(k)(3). The purpose of this requirement would be to control the potential discharge of pollutants, resulting from fuel spills, from entering receiving waters.

B. Endangered Species

The U.S. Fish and Wildlife Service (FWS) previously provided EPA with a species list for the state of Alaska. The recommended protection measures for the species of concern during the nesting period prohibits alterations of limited, high quality habitat which could detrimentally and significantly reduce prey availability. Because the proposed modified general permit is written to protect aquatic life or human health criteria (whichever is more stringent), EPA previously determined that no alterations of habitat due to water discharges authorized by this permit should occur. Because of this, EPA has determined that formal consultation for Section 7 of the Endangered Species Act is not necessary for existing facilities. EPA will provide FWS with copies of the proposed modified general permit for concurrence.

Environmental Assessments would be completed for each new source discharge as is stated in Part I.A.3. of the modified general permit. Any consultation necessary to comply with the Endangered Species Act would be performed at the time the Environmental Assessment is submitted.

C. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of the proposed modified general permit have already been approved by the Office of Management and Budget under the submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VII. Storm Exemption

Part III.D. of the proposed permit would establish a storm exemption provision to authorize exceedances of technology-based effluent limitations and standards in the permit so long as the permittee meets certain design and operational criteria. This provision reflects regulations in 40 CFR 440.141(b).

This provision would allow for the unavoidable exceedance of technology-based effluent limitations during storms of intensity greater than or equal to a 5-year, 6-hour storm event. The storm exemption will be allowed provided that (1) the settling ponds are designed, constructed, and maintained to contain the volume of process water generated during four hours of normal operation plus the drainage water resulting from a 5-year, 6-hour storm event, (2) the operator takes all reasonable steps possible to maintain treatment of the wastewater and minimize overflow from the settling ponds, (3) the permittee complies with the BMPs in Part III.A.1.–.5 of the proposed permit, and (4) the operator complies with all the notification requirements for bypasses and upsets as established in Parts III.G. and H. of the proposed permit. Part III.D. of the proposed permit establishes the specific conditions which must be met in order to be eligible for the storm exemption.

This exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

VIII. New Source Performance Standards (NSPS)

Pursuant to Section 301 of the CWA, NSPS [40 CFR 440.144] were promulgated for gold placer mine facilities. NSPS apply to new mines determined to be new sources by virtue of their activities occurring after

[1] Quantification of measurements below the ML are not acceptable since it requires extrapolation of calibration data to a level below the range of data used to make the original calibration. For a detailed description of these terms, definitions, and interim measures, please refer to EPA's Technical Support Document for Water Quality-Based Toxics Control, March 1991, page 111, and the draft ''National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantification levels'' (March 3, 1994).

promulgation of the rule (May 24, 1988). The NSPS for gold placer mining facilities are based on the same treatment technology as BAT, which consists of simple settling plus recirculation of all process water. BAT is based on the best demonstrated technology that is available for treating gold placer mine wastewater, those mines which are new sources will not be subject to controls more stringent than those applicable to existing mines.

In accordance with Section 511(c)(1) of the CWA, NPDES permits for new sources are subject to the provisions of the National Environmental Policy Act (NEPA). NEPA requires that, prior to the issuance of an NPDES permit to a new source facility, an Environmental Assessment (EA) must be prepared to determine the potential for any significant impacts on the quality of the human environment resulting from operation of the new source. Permit part I.E.1. would require that new facilities submit a notice of intent by January 1 of the year of discharge. This will allow adequate time to complete EAs for each new source prior to the mining season. If the EA indicates that significant adverse environmental impacts may occur, then the applicant would be required to prepare an Environmental Impact Statement (EIS). However, if the EA indicates that significant impacts are not anticipated, a Finding of No Significant Impact (FNSI) would be issued and the facility would be covered by the general permit. The FNSI may be based, in part, on required permit conditions or mitigation measures necessary to make the recommended alternative environmentally acceptable.

IX. State Certification

Section 301(b)(1)(C) of the Act requires that an NPDES permit contain conditions which ensure compliance with applicable State water quality standards or limitations. The limitations for turbidity were established based to implement WQS. Section 401 requires that States certify that Federally issued permits are in compliance with State law. No permits can be issued until the requirements of Section 401 are satisfied.

The modified general permit would apply to operations discharging to waters of the State of Alaska. EPA is requesting State officials review and provide appropriate certification to these draft permits pursuant to 40 CFR 124.53.

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.* and its implementing regulations [15 CFR Part 930] requires that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. EPA is requesting State officials review and make a determination whether the proposed modified general permit are consistent with State policy.

X. References

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* Literature cited in literature research project.

Authorization to Discharge Under the National Pollutant Discharge Elimination System For Alaskan Placer Miners

[General Permit No.: AKG–37–0000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100–4, the ''Act''.

Owners and operators of facilities engaged in the processing of placer gold are authorized to discharge to waters of the United States, in accordance with effluent limitation, monitoring requirements, and other conditions set forth herein.

A Copy of This General Permit Must Be Kept at the Site Where Discharges Occur

[Facility Name]

[Receiving Water]

The orginal version of this permit became effective June 30, 1994. This permit as modified shall become effective on [date of publication in the Federal Register].

This permit and the authorization to discharge shall expire on June 30, 1999.

Informational Copy Only

Phil Millam, Director, Office of Water, Region 10, U.S. Environmental Protection Agency

Table of Contents

I. Coverage Under This Permit

A. Coverage and Eligibility

1. Existing Facilities (those facilities having individual National Pollutant Discharge Elimination System [NPDES] permits or coverage under the existing Alaska placer miner general permit): Upon the submittal of a Notice of Intent (NOI) to gain coverage under this permit, existing facilities which meet the criteria for coverage under Part I of this permit will be granted coverage according to Permit Part F.4.

2. Pending Applications: Upon submittal of an NOI, all facilities which have submitted applications in accordance with 40 CFR 122.21(a) and which meet the criteria for coverage under this permit will be granted coverage according to Permit Part F.4.

3. New Facilities: New facilities that are determined to be new sources under the CWA will be required to have an Environmental Assessment (EA) completed pursuant to the National Environmental Policy Act (NEPA). A finding of no significant impact (FNSI) by EPA is necessary prior to receiving coverage under this permit. A FNSI will become effective only after the public has had notice of, and an opportunity to comment on, the FNSI including either the accompanying Environmental Assessment or a summary of it, and the EPA has fully considered all public comments submitted, pursuant to 40 C.F.R. § 6.400(d). If there may be a significant impact, the facility will require an Environmental Impact Statement (EIS). An EIS will be issued only after public notice and an opportunity for public comments on a draft EIS pursuant to 40 C.F.R. § 6.403(a) and § 1503.1(a).

4. Expanding Facilities: Facilities that contemplate expanding shall submit a new NOI that describes the new discharge. The current permit will be terminated and a new permit, reflecting the changes, issued in its place if the facility meets all the necessary requirements of coverage.

5. Coastal Zone Facilities: Facilities located in the coastal zone as determined by the Alaska Coastal Zone Management Act shall submit, with their Notice of Intent (NOI), an individual consistency determination from Alaska Division of Governmental Coordination (ADGC) unless ADGC makes an overall determination on this General Permit after its issuance.

B. Authorized Placer Mining Operations

1. Facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore.

a. Open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season.

b. Mechanical dredge gold placer mines (not suction dredges) except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters.

2. Suction dredges with intake hoses of less than or equal to 8 inches.

C. Additional Requirements

1. Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government. Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area.

2. Many streams in Alaska where placer mining occurs have been designated by the Alaska Department of Fish and Game (ADF&G) as anadromous fish streams. Placer mining activities in these streams require an ADF&G Fish Habitat Permit which may include additional restrictions. The ''Atlas to the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fish'' lists the streams in the State which require prior ADF&G authorization. In addition, placer mining activities in resident fish streams require an ADF&G Fish Habitat Permit if the proposed activity will block or impede the efficient passage of fish. Permittees operating in anadromous or resident fish streams should contact the ADF&G to determine permitting requirements and additional restrictions that may apply.

D. Prohibitions

1. Discharges from the following beneficiation processes are not authorized under this permit: Mercury amalgamation, cyanidation, froth floatation, heap and vat leaching.

2. This general permit does not apply to facilities located or proposed to be located in State Parks, National Parks and Preserves, National Monuments, National Conservation Areas, National Wildlife Refuges, National Wilderness Areas and waters designated under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271–1287.

3. Discharges from hydraulicking, as defined in Part VIII.F, are not authorized under this permit.

E. Requiring an Individual Permit

1. The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved; or

f. An Individual Control Strategy (ICS) is required under Section 304(L) of the Act, or

g. A Total Maximum Daily Load (TMDL) and corresponding wasteload allocation has been completed for a waterbody or a segment of a waterbody, or

h. A review of the facility shows that it is subject to the State of Alaska's anti-degradation policy.

i. There are other Federal or State legislation, rules or regulations pertaining to a site directly or indirectly related to water quality.

2. The Regional Administrator will deny coverage under this permit in the following circumstances:

(a) a land management agency submits a request that general permit coverage be denied to EPA within thirty (30) days of the agency's receipt of an NOI; and,

(b) the land management agency's request includes proposed additional or revised permit terms which the requesting agency reasonably believes—based upon evidence attached to or cited in the request—are necessary to protect the natural values of the affected location; and,

(c) the land management agency's request concerns a person who either;

i. seeks to discharge into U.S. waters located in National Recreation Areas, Sanctuaries, or Critical Habitat Areas, or in State Refuges, Preserves, Sanctuaries, Recreation Areas, or Critical Habitat Areas; or,

ii. is in significant noncompliance with the terms and conditions of the most recent applicable NPDES permit; or,

iii. intends to discharge into waters designated as impaired or polluted under the Clean Water Act.

Any person denied coverage under this part must apply for and obtain coverage under either (1) an individual permit, or (2) another applicable watershed-specific general permit. Upon receipt of any such application, EPA will determine whether the permit terms requested by the land management agency should be included in the applicable permit.

3. The Regional Administrator will notify the operator in writing by certified mail that a permit application is required. If an operator fails to submit, in a timely manner, an individual NPDES permit application as required, then any applicability of this general permit to the individual NPDES Permittee is automatically terminated at the end of the day specified for application submittal.

4. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2C or 2D) with reasons supporting the request to the Regional Administrator no later than 90 days after the effective date of the permit.

5. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit.

6. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, the Permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Regional Administrator. A new facility can receive coverage under this general permit by submitting an NOI. See Permit Part I.A.3. for details.

7. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

F. Notification Requirements

1. Owners or operators of facilities authorized by this permit, except suction dredges with intake hoses of less than or equal to 4 inches, shall submit an NOI to be covered by this permit. The information required for a complete NOI is in Appendix A of this permit. Notification must be made:

a. within 90 days of issuance of this permit; or

b. by January 1 of the year of discharge from a new facility or a facility established since 1988 subject to New Source Performance Standards (NSPS) that has not previously been covered by a permit; or

c. 90 days prior to discharge from a new facility not subject to NSPS; or

d. 90 days prior to the expiration of an existing individual permit, or

e. 90 days prior to discharge for any other facilities. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

2. The NOI shall be signed by the owner or other signatory authority in accordance with Permit Part VI.H. (Signatory Requirements), and a copy shall be retained on site in accordance with Permit Part IV.F. (Retention of Records). The address for NOI submission to EPA is: United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101

3. A copy of the NOI must also be sent to:

a. the Alaska Department of Environmental Conservation (ADEC). The address is: Alaska Department of Environmental Conservation, 610 University Avenue, Fairbanks, Alaska 99709 and,

b. the Federal, State, or local agency that manages or owns the land in which the mine is located or proposed to be located. The addresses are:

Anchorage Area

U.S. Department of Interior, Bureau of Land Management, 222 West 7th Avenue, #13, Anchorage, AK 99513–7599

U.S. Department of Interior, Fish and Wildlife Service, 1011 E Tudor Rd.,Anchorage, AK 99503

U.S. Department of Interior, National Park Service, 605 West 4th Avenue, Suite 104, Anchorage, AK 99501

Fairbanks Area

State of Alaska, Department of Fish & Game, 1300 College Road, Fairbanks, AK 99701–1599

U.S. Department of Interior, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709

U.S. Department of Interior, Fish and Wildlife Service, 101 12th Avenue, Box 19, Fairbanks, AK 99701

U.S. Department of Interior, National Park Service, 250 Cushman, Suite 1A, Fairbanks, AK 99701

Glennallen Area

U.S. Department of Interior, Bureau of Land Management, P.O. Box 147, Glennallen, AK 99588

U.S. Department of Interior, National Park Service, Wrangell St. Alias, P.O. Box 439, Copper Center, AK 99573

Juneau Area

U.S. Department of Interior, Fish and Wildlife Service, 3000 Vintage Blvd., Suite 201, Juneau, AK 99801

U.S. Department of Interior, National Park Service, P.O. Box 21089, Juneau, AK 99802–1089

Nome Area

U.S. Department of Interior, Bureau of Land Management, P.O. Box 925, Nome, AK 99762

U.S. Department of Interior, National Park Service, P.O. Box 220, Nome, AK 99762

Tok Area

U.S. Department of Interior, Bureau of Land Management, P.O. Box 309, Tok, AK 99780

c. For suction dredges, a copy of the NOI must also be sent to the regional office of the Alaska Department of Fish & Game (ADFG) nearest the location of the dredge. The addresses are:

Anchorage Area, 333 Raspberry Road, Anchorage, AK 99518
Glennallen Area, P.O. Box 47, Glennallen, AK 99588–0047
Juneau Area, P.O. Box 25526, Juneau, AK 99802–5526
Nome Area, Pouch 1148, Nome, AK 99762
Tok Area, P.O. Box 779, Tok, AK 99780

4. A copy of the general permit will be sent to the Permittee, other than Permittees of suction dredges with intake hoses less than or equal to 4 inches, when it is determined that the facility can be granted coverage under this general permit. If it is determined that coverage cannot be granted under this permit, the applicant will be informed of this in writing.

5. The owner or operator of a suction dredge with an intake hose less than or equal to 4 inches and who is authorized by this permit shall submit to EPA at the address in Permit Part I.F.2. a letter of intent to be covered by this permit. The letter shall include the following:

a. the name, address, and telephone number of the owner and operator;

b. the locations (e.g. waterbody name and segment) where, and dates when, the owner or operator intend to operate the suction dredge;

c. a brief description of the suction dredge, including the size of the intake hose; and,

d. a statement that the owner and operator have read the provisions of this permit and intend to comply with the permit provisions that apply. The letter of intent shall be submitted to the EPA no later than three weeks before the owner or operator intends to begin operating the suction dredge.

G. Permit Expiration

This permit will expire on June 30, 1999. For facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

II. Effluent Limitations

A. Mechanical Operation (Traditional Sluicing)

[Not including Suction Dredges]

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations.

a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

b. The wastewater discharged shall not exceed the following:

Effluent characteristic	Instantaneous maximum
Settleable Solids	0.2 ml/l
Turbidity	5 NTUs above natural background*
Arsenic, Total Recoverable.	0.18 ug/l
Effluent Flow	[Flow reported in NOI**]

*Subject to Turbidity Mixing Zone outlined in Permit Part II.A.1.c.
**See Part II.A.1.d. for details.

c. Permittees may request a modified turbidity limit based upon a mixing zone approved by the Alaska Department of Environmental Conservation (ADEC) pursuant to 18 AAC 70.032. EPA will approve a modified turbidity limit proposed by ADEC under this General Permit if the modified limit and resulting mixing zone are consistent with the Clean Water Act, EPA's regulations, and 18 AAC 70.032, and provided that:

i. the modified turbidity limit does not exceed 1500 NTU's;

ii. the modified turbidity limit does not cause turbidity levels to exceed 100 NTU's in at least one-half of the cross-sectional area of resident and anadroumous fish migration corridors;

iii. the ''point of complete mixing'' as referenced in 18 AAC 0.032(d), shall be calculated using (1) the 10 year, 30-day low flow (30Q10) as the chronic criteria design flow for the protection of aquatic life; and (2) zero, as the value for upstream turbidity;

iv. the modified turbidity limit does not result in a mixing zone in an area of anadromous fish spawning or resident fish spawning redds for the fish species listed in 18 AAC 70.032(d)(3)(D)(ii); and,

v. the public was provided reasonable notice of, and an opportunity to comment on, the modified turbidity limit and associated mixing zone, including site-specific assessments used to calculate the limit and zone, prior to their approval by ADEC.

d. The volume of discharge shall not exceed the volume reported by the permittee on the NOI (Appendix A). If the permittee exceeds that volume, EPA will not consider the permittee in violation of the flow limit if:

i. the permittee submits to EPA turbidity samples taken during the period of the flow exceedence; and,

ii. those samples show that the permittee's discharge did not exceed the turbidity limit established in Part II.A.1.b or Part II.A.1.c., whichever is applicable.

The permittee must report all exceedences of the flow limit, together with any turbidity data which the permittee intends to use to avoid being considered in violation of the flow limit, pursuant to the reporting requirements in Part IV.G.

2. Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

B. Suction Dredging

1. At all points in the receiving stream 500 feet downstream of the dredge's discharge point, the maximum allowable increase in turbidity over the natural receiving stream turbidity while operating is 5 NTUs.

2. A visual increase in turbidity (any cloudiness or muddiness) 500 feet downstream of the suction dredge during operations would be considered a violation of the 5 NTU limit.

3. If noticeable turbidity does occur 500 feet downstream of the work site, operation of the suction dredge must decrease or cease so that a violation as defined above does not exist.

C. Monitoring Requirements

1. Mechanical Operations. a. During the period beginning on the effective date of this permit and lasting until the expiration date, the following monitoring shall be conducted:

Effluent characteristic	Monitoring location	Monitoring frequency	Sample type
Settleable Solids (ml/l)	effluent	once per day each day of discharge	Grab.
Turbidity (NTU)	effluent	3 times per season*	Grab.
	background	3 times per season*	Grab.
Arsenic (µg/l)	effluent	3 times per season*	

Effluent characteristic	Monitoring location	Monitoring frequency	Sample type
Grab ** Flow (gpm)	effluent	* * *	Instantaneous.

* See Part II C.1.c. & d. for details.
** Analyzed by EPA Method 206.2 with a detection limit of 1 µg/l.
*** See Part II. C.1.f. for details.

b. Inspection Program. The Permittee shall institute a comprehensive inspection program to facilitate proper operation and maintenance of the recycle system and the wastewater treatment system. As a part of the comprehensivie inspection program, the permittee shall record the information requested on Attachment 4 to this permit on a daily basis. The Permittee shall conduct a visual inspection of the site once per day, while on site, during the mining season. The Permittee shall maintain records of all information resulting from any inspections in accordance with part IV.F. of this permit. These records shall include an evaluation of the condition of all water control devices such as diversion structures and berms and all solids retention structures including, but not limited to, berms, dikes, pond structures, and dams. The records shall also include an assessment of the presence of sediment buildup within the settling ponds. The Permittee shall examine all ponds for the occurrence of short circuiting.

c. Turbidity Monitoring. Permittees that have obtained a site-specific turbidity limit under Permit Part II.A.1.c. shall take at least one turbidity sample for each calendar month in which there is a discharge and at least three turbidity samples for the entire mining season, even if the Permittee has a discharge in fewer then three calendar months. Those Permittees that do not obtain a site-specific turbidity limit shall take at least one turbidity sample set (*i.e.* the discharge and background samples referenced in Part IV.A.) for each calendar month in which there is a discharge and at least three turbidity sample sets for the entire mining season, even if the Permittee has a discharge in fewer than three calendar months. Both samples of a sample set shall be taken within a reasonable time frame.

A Permittee who has had less than three days of discharge over the course of the mining season, must submit one sample or sample set for each day of discharge.

All samples must be taken and stored in the manner set forth in Attachment 1. All sample results shall be reported on the annual Discharge Monitoring report (DMR). Monitoring shall be conducted in accordance with accepted analytical procedures.

d. Arsenic Monitoring. Arsenic samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures. The Permittee shall report the sample results on the DMR. See attachment 2 for sampling protocol. Because the water quality based effluent limit for arsenic (.18 µg/l) is below the MDL (1 µg/l) using EPA Method 206.2, EPA has derived an interim minimum level of 3 µg/l (3.18×1 µg/l = 3.18 rounded to 3) as the quantifiable level. For purposes of reporting analytical results for arsenic in the DMR, results below the MDL will be reported as ''less than 1 µg/l''. Actual analytical results shall be reported on the DMR when the results are greater than the MDL. The permittee must also specify in the comment column of the DMR that Method 206.2 was used for analysis.

The Permittee shall take at least one arsenic sample for each calendar month in which there is a discharge and at least three arsenic samples for the entire mining season, even if the Permittee has a discharge in fewer than three calendar months. A Permittee who has had less then three days of discharge over the course of the mining season, must submit one sample for each day of discharge.

All samples must be taken and stored in the manner set forth in Attachment 2.

e. Settleable Solids Monitoring. Settleable solids samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures (Standard Methods, 17th Edition, 1989). The Permittee shall report the daily sample results on the annual DMR. See attachment 3 for sampling and analysis protocol. Attachment 4 provides an example of how monitoring results may be recorded and reported.

f. Flow Monitoring. Effluent flow shall be measured at the discharge prior to entering the receiving water. Effluent flow shall be measured at least once per day, for continuous discharges, or once during each discharge event if discharges are intermittent. The operator must also estimate seepage discharging to waters of the United States each day that seepage occurs. Effluent flow and seepage flow shall be measured in gallons per minute (gpm). The flow and seepage measurements, the number of discharge events, and the duration of each discharge event shall be reported in the annual DMR for each day of the mining season. For each day in which the permittee fails to monitor effluent flow when required by this permit, the permittee will not be considered in violation of this permit if:

i. the permittee submits to EPA turbidity samples taken during each day in which flow was not monitored; and,

ii. those turbidity samples show that the permittee's discharge did not exceed the turbidity effluent limit in Part II.A.1.b.

The permittee must report all failures to comply with the flow monitoring requirement, together with any turbidity data which the permittee intends to use to avoid being considered in violation of that requirement, pursuant to the reporting requirements in Part IV.G.

2. Suction Dredges. a. Suction Dredge operations shall visually monitor for turbidity as described in Permit Part II.B. once per day of operation, in the following manner: Operators shall mark the point 500 feet downstream of the point of discharge from the suction dredge. With this 500 foot point marked, individuals who conduct visual monitoring shall observe the turbidity plume, where visible, immediately downstream until they reach either the point at which the turbidity plume is no longer visible, or the 500 foot mark, which ever point comes first. Monitors shall record daily all turbidity monitoring results. The Permittee shall maintain records of all information resulting from any visual inspections.

b. The Permittee will report the period of suction dredging on the DMR. Visual violation occurrences will also be reported on the DMR along with the measures taken to comply with the provisions of Permit Part II.B.3. The requirements of this paragraph are not applicable to suction dredges with intake hoses of less than or equal to 4 inches.

III. Management Practices

A. Mechanical Operations

1. The flow of surface waters (i.e., creek, river, or stream) into the plant site shall be interrupted and these waters diverted around and away to prevent incursion into the plant site.

2. Berms, including any pond walls, dikes, low dams, and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

3. Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storage areas and not discharged or released to the waters of the United States.

4. The amount of new water allowed to enter the plant site for use in material processing shall be limited to the minimum amount required as makeup water.

5. All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures, and dams shall be reasonably maintained to continue their effectiveness and to protect from failure.

6. The operator shall take whatever reasonable steps are appropriate to assure that, after the mining season, all unreclaimed mine areas, including ponds, are in a condition which will not cause degradation to the receiving waters over those resulting from natural causes.

7. During each mining season, a permittee may not discharge into the receiving stream within five hundred feet of any upstream or downstream placer mining discharges which are occurring or have already occurred that season. Nor may a permittee discharge at a point within five hundred feet of the downstream edge of a mixing zone granted for any upstream placer mining discharges.

B. Suction Dredges

1. Dredging is permitted only within the active stream channel. Dredging within the active stream channel which results in undercutting or excavating, or which otherwise results in erosion of a stream bank, is prohibited.

2. Except as provided in paragraph 3 below, wherever practicable, the dredge shall be set to discharge into a quiet pool, where settling of dredge spoils can occur more rapidly.

3. Dredging and discharging are prohibited within 500 feet of locations where fish are known to spawn or where fish eggs are known to exist at the time dredging occurs. Each Permittee shall consult the regional office of the Alaska Department of Fish & Game (ADFG) for the region in which the Permittee proposes to operate a dredge in order to obtain the information necessary to comply with this BMP. Each Permittee shall report the information obtained from ADFG, and the name and title of the official contacted, to EPA concurrently with the NOI.

4. Winches or other motorized equipment shall not be used to move boulders, logs, or other natural instream obstructions.

5. No wheeled or tracked equipment may be used instream.

6. Suction dredges shall not operate (including discharge) within 1000 feet of another dredging operation occurring simultaneously or known to have occurred within the previous 12 months.

7. Dredging of silt and clay is prohibited.

8. Care shall be taken by the operator during refueling of the dredge to prevent spillage into public waters or to groundwater.

C. Other Requirements: Mechanical Operations

The operator shall maintain fuel handling and storage facilities in a manner which will prevent the discharge of fuel oil into the receiving waters or on the adjoining shoreline. A Spill Prevention Control and Countermeasure Plan (SPCC Plan) shall be prepared and updated as necessary in accordance with provisions of 40 CFR Part 112 for facilities storing 660 gallons in a single container above ground, 1320 gallons in the aggregate above ground, or 42,000 gallons below ground.

The Permittee shall indicate on the DMR if an SPCC Plan is necessary and in place at the site and if changes were made to the Plan over the previous year.

D. Storm Exemption

The Permittee may qualify for a storm exemption from the technology-based effluent limitation in Permit Part II.A.1.a. of this NPDES general permit if the following conditions are met:

1. The treatment system is designed, constructed and maintained to contain the maximum volume of untreated process wastewater which would be discharged, stored, contained and used or recycled by the beneficiation process into the treatment system during a 4-hour operating period without an increase in volume from precipitation or infiltration, plus the maximum volume of water runoff (drainage waters) resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which should result from the plant site contributing runoff to the individual treatment facility.

2. The operator takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

3. The source is in compliance with the Management Practices in Permit Part III.A.

4. The operator complies with the notification requirements of Permit Parts IV.G. and IV.H.

IV. Monitoring and Reporting Requirements for Mechanical Operations and Suction Dredges With Intake Hoses of Greater Than 4 Inches

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41 (j). To determine compliance with permit effluent limitations, ''grab'' samples shall be taken as established under Permit Part II.D. Specifically, effluent samples for settleable solids, turbidity, and arsenic shall be collected from the settling pond outlet or other treatment systems' outlet prior to discharge to the receiving stream. Additionally, turbidity background samples shall be taken at a point that is representative of the receiving stream just above the permittee's mining operation. Those who receive a site-specific turbidity limit, pursuant to Permit Part II.A.1.c., are not required to take background turbidity samples. Samples for arsenic and turbidity monitoring must be taken during sluicing at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are constant.

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (DMR). The DMR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Enforcement Section WD–135, Seattle, Washington 98101–3188, no later than November 30 each year.

If there is no mining activity during the year or no wastewater discharge to a receiving stream, the Permittee shall notify EPA of these facts no later than November 30 of each year.

The DMR shall also be sent to the ADEC office located in Fairbanks. The address can be found in permit part I.F.3.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of DMRs, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the Permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the Permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the Permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part V.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (See Permit Part V.H., Upset Conditions.).

c. Any violation of any of the requirements of this Permit.

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected;

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;

e. Any turbidity data submitted pursuant to Parts II.A.1.d. (Effluent flow limit) and II.C.f (Flow Monitoring); and

f. Mechanical operations must also provide the information required by Attachment 4 for each date of the period of noncompliance.

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Enforcement Section in Seattle, Washington, by phone, (206) 553–1213.

5. Reports shall be submitted to the addresses in Permit Part IV.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Permit Part IV.G. above shall be reported at the time that monitoring reports for Permit Part IV.B. are submitted. The reports shall contain the information listed in Permit Part IV.G.3.

V. Compliance Responsibilities

A. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both. Except as provided in permit conditions in Permit Part V.G., Bypass of Treatment Facilities and Permit Part V.H., Upset Conditions, nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges or other pollutants removed in the course of treatment or control of wastewater's shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Permit Part IV.G., Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).

2. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under Permit Part IV.G., Notice of Noncompliance Reporting; and

d. The Permittee complied with any remedial measures required under Permit Part V.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director and ADEC as soon as the Permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes.

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.A.1.

3. The alteration or addition will significantly change the location, nature or volume of discharge or the quantity of pollutants, subject to the effluent limitations, discharged.

C. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The NOI should be submitted at least 90 days before the expiration date of this permit.

F. Duty to Provide Information

The Permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

N. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

O. Inspection and Entry

The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or

where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

VII. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent that those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

VIII. Definitions

A. ''Active Stream Channel'' means that part of the channel that is below the level of the water.

B. ''Bypass'' means the intentional diversion of waste streams around any portion of a treatment facility.

C. ''Drainage Water'' means incidental surface waters from diverse sources such as rainfall, snow melt or permafrost melt.

D. ''Expanding Facility'' means any facility increasing in size such as to affect the discharge but operating within the permit area covered by its general permit.

E. A ''Grab'' sample is a single sample or measurement taken at a specific time.

F. ''Hydraulicking'' means both the hydraulic removal of overburden and the use of hydraulic power to move raw rock to the point of processing (i.e. to the gate of the sluice or other processing equipment).

G. ''Infiltration Water'' means that water which permeates through the earth into the plant site.

H. ''Instantaneous Maximum'' means the maximum value measured at any time.

I. ''Mine Drainage'' means any water, not associated with active sluice water, that is drained, pumped or siphoned from a mine.

J. ''Mining Season'' means the time between the start of mining in a calendar year and when mining has ceased for that same calendar year.

K. ''Monitoring Month'' means the period consisting of the calendar weeks which begin and end in a given calendar month.

L. ''New Facility'' means a facility that has not operated in the area specified in the NOI prior to the submission of the NOI.

M. ''NTU'' (Nephelometric Turbidity Unit) is an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in a straight line through the water.

N. ''Make-up Water'' means that volume of water needed to replace process water lost due to evaporation and seepage in order to maintain the quantity necessary for the operation of the beneficiation process.

O. ''New Water'' means water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

P. ''Plant Site'' means the area occupied by the mine, necessary haulage ways from the mine to the beneficiation process, the beneficiation area, the area occupied by the wastewater treatment storage facilities and the storage areas for waste materials and solids removed from the wastewater's during treatment.

Q. ''Receiving Water'' means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.

R. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

S. ''Short circuiting'' means ineffective settling ponds due to inadequate or insufficient retention characteristics, excessive sediment deposition, embankment infiltration/percolation, lack of maintenance, etc.

T. ''Silt and Clay'' are soil particles having a diameter of less than 0.002 mm (2 microns).

U. ''Turbidity Modification'' means the procedures used to calculate a higher turbidity limit based on a mass balance equation which relates upstream receiving water flow and turbidity to effluent flow and turbidity. The basic form of this equation is:

$Q_1C_1 = Q_2C_2$,

where

C_1 = effluent turbidity ;

C_2 = receiving water downstream turbidity after mixing where the allowable increase is 5 NTU above background (*i.e.* 5 NTU);

Q_1 = effluent flow and,

Q_2 = total receiving water flow downstream from discharge after complete mixing (*i.e.* 30Q10).

V. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

W. ''Wastewater'' means all water used in and resulting from the beneficiation process (including but not limited to the water used to move the ore to and through the beneficiation process, the water used to aid in classification, and the water used in gravity separation), mine drainage, and infiltration and drainage waters which commingle with mine drainage or waters resulting from the beneficiation process.

Attachment 1

Turbidity Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced).

4. Samples must be analyzed within 48 hours of sample collection.

Attachment 2

Arsenic Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced).

4. Samples must be acidified promptly with nitric acid (HNO3), to a pH less than 2.[1]

5. Samples must be sent to a laboratory for analysis within 60 days.

6. Samples must be acidified for at least 16 hours prior to analysis.

Attachment 3

Settleable Solids Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced), if analysis is not performed immediately.

[1] Samples that are not acidified promptly must be sent to a laboratory within 48 hours of sample collection.

4. Samples must be analyzed within 48 hours of sample collection.

Settleable Solids Analysis Protocol

1. Fill an Imhoff cone to the liter mark with a thoroughly mixed sample.

2. Settle for 45 minutes, then gently stir the sides of the cone with a rod or by gently spinning the cone.

3. Settle 15 minutes longer, then record the volume of settleable matter in the cone as milliliters per liter. Do not estimate any floating material. The lowest measurable level on the Imhoff cone is 0.1 ml/l. Any settleable material below the 0.1 ml/l mark shall be recorded as trace.

Attachment 4: Placer Mine Daily Checklist

Date ☐☐☐☐☐
Weather ☐☐☐☐☐
Is There a Discharge Today (including seepage)? ☐☐☐☐☐
What is the Volume of Discharge (gallons per minute)? ☐☐☐☐☐
How Much Make-up Water Did You Allow Into Your Mine Site, if Any? ☐☐☐☐☐
What is the Volume of Settleable Solids in the Effluent? (ML/L) ☐☐☐☐☐
Are ANy of Your Ponds, Dikes and Berms Leaking or Eroding? (describe) ☐☐☐☐☐
How Far Below Your Discharge Can You Observe a Discharge Plume, If Any? ☐☐☐☐☐

Don't Forget to Take Your Turbidity and Arsenic Samples.

[FR Doc. 96–1707 Filed 1–30–96; 8:45 am]
BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Environmental Review Procedures

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: The Export-Import Bank (''Ex-Im Bank'') is extending the effective date of its existing Environmental Procedures and Guidelines (which were issued on February 1, 1995 for a one-year trial period expiring on February 1, 1996) to April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Popi Artavanis, Export-Import Bank of the United States, Engineering and Environment Division, 811 Vermont Ave., N.W., Washington, DC 20571, tel: (202) 565–3570.

SUPPLEMENTARY INFORMATION: Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) (''Section 106'') provides that Ex-Im Bank shall establish environmental review procedures consistent with the Bank's overall mandate to maintain U.S. export competitiveness. Pursuant to this section, the Ex-Im Bank Board of Directors approved a set of Environmental Procedures and Guidelines on February 1, 1995. The new procedures and guidelines were made effective on a one-year trial basis until February 1, 1996. The Ex-Im Bank is extending the effective date of these procedures and guidelines to April 1, 1996.

These procedures and guidelines are not subject to notice and comment requirements or to publication in the Federal Register pursuant to 5 U.S.C 553(a)(2), 553(b)(A), and 553(d)(2). Copies may be obtained by written request from Ex-Im Bank's Engineering and Environment Division, 811 Vermont Avenue, N.W., Washington, DC 20571.

Accordingly, under the authority of Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5), the Environmental Procedures and Guidelines will remain in effect until April 1, 1996.

Dated: January 25, 1996.

Kenneth W. Hansen,

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

[FR Doc. 96–1985 Filed 1–30–96; 8:45 am]
BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2119]

Petition for Reconsideration of Actions in Rulemaking Proceedings

January 26, 1996.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed February 15, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Jefferson City, Cumberland Gap, Elizabethton, TN and Jonesville, VA) (MM Docket No. 94–116, RM–8507, RM–8567) Number of Petition Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba, Missouri) (MM Docket No. 92–214, RM–8062, RM–8144, RM–8145, RM–8146, RM–8147) Number of Petitions Filed: 2.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Ava, Branson and Mountain Grove, Missouri) (MM Docket No. 91–352, RM–7866) Number of Petition Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Brookline, Missouri) (MM Docket No. 90–195, RM–7152) Number of Petition Filed: 1.

Subject: Amendment of Section 73–202(b), Table of Allotments, FM Broadcast Stations. (Cloverdale, Montgomery and Warrior, Alabama) (MM Docket No. 94–78, RM–8472, RM–8525) Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–1852 Filed 1–30–96; 8:45 am]
BILLING CODE 6712–01–M

[GC Docket No. 95–172; FCC 95–468]

Rainbow Broadcasting Co.

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Commission is designating a hearing to determine whether Rainbow Broadcasting Company is qualified to be a Commission licensee. The United States Court of Appeals for the District of Columbia directed the Commission to conduct such a hearing. The hearing will resolve all questions regarding Rainbow Broadcasting Company's qualifications.

FOR FURTHER INFORMATION CONTACT: Ava H. Berland, Office of General Counsel, at 202–418–1720.

SUPPLEMENATARY INFORMATION: 1. This is a summary of the *Memorandum Opinion and Hearing Designation Order* in GC Docket No. 95–172, adopted November 20, 1995 and released November 22, 1995. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Dockets Reference Room (room 239), 1919 M St., N.W., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

2. The court in *Press Broadcasting Company, Inc.* v. *FCC*, 59 F.3d 1365

(D.C. Cir. 1965) determined that substantial and material questions of fact exist regarding the basic qualifications of Rainbow Broadcasting Company, the permittee for Station WRBW (TV), Orlando, Florida, to be a Commission licensee and thus ordered the Commission to conduct further proceedings to resolve those questions. Specifically, the court held that the Commission must resolve whether Rainbow made misrepresentations regarding its *ex parte* contacts, its financial qualifications, and its failure to construct. The court also directed the Commission to address whether Rainbow Broadcasting Company had made the requisite showing that would have justified the Commission's grant of its final application for an extension of time to construct its facilities. Accordingly, in order to resolve all of these issues, the Commission is designating the matter for hearing. The Commission further is taking the opportunity to clarify its policies regarding grants of extension applications.

3. *It is further ordered*, That Press is made party to the hearing ordered herein, and that, a separate trial staff shall be designated by the Office of General Counsel to represent the Commission, in light of the Mass Media Bureau's recusal from this proceeding.

4. *It is further ordered*, That, the Administrative Law Judge shall render a determination on each designated issue.

5. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the parties respondent herein, pursuant to Section 1.221 of the Commission's Rules, in person or by attorney, shall file with the Commission, within twenty (20) days of the mailing of this Order, a written appearance in triplicate, stating an intention to appear on the date filed for the hearing and present evidence on the issues specified in this Order.

6. *It is further ordered*, That Rainbow shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in that rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

7. *It is further ordered*, That the Secretary send by Certified Mail-Return Receipt Requested, one copy of this Order to each of the parties to this proceeding.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–1853 Filed 1–30–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to be Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000150–108.

Title: Trans-Pacific Freight Conference of Japan.

Parties: American President Lines, Hapag-Lloyd AG, Kawaski Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A.P. Moller-Maersk Line, Neptune Orient Lines Limited, Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Wilhelmsen Lines, AS.

Synopsis: The proposed Agreement modifies Article 5 of the Agreement to specify that the Conference Chairman has the authority to attend, and participate in (without voting privileges), meetings of the Trans-Pacific Stabilization Agreement (''TSA'') or any committee or sub-committee thereof, and to expand the current authority for the exchange of information between the Conference and TSA. The parties have requested a shortened review period.

Agreement No.: 202–003103–113.

Title: Japan-Atlantic and Gulf Freight Conference.

Parties: American President Lines, Hapag-Lloyd AG, Nedlloyd Lijnen B.V., Mitsui O.S.K. Lines, Ltd., A.P. Moller-Maersk Line, Neptune Orient Lines Limited, Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., Wilhelmsen Lines, AS.

Synopsis: The proposed Agreement modifies Article 5 of the Agreement to specify that the Conference Chairman has the authority to attend, and participate in (without voting privileges), meetings of the Trans-Pacific Stabilization Agreement (''TSA'') or any committee or sub-committee thereof, and to expand the current authority for the exchange of information between the Conference and TSA. The parties have requested a shortened review period.

Dated: January 25, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–1780 Filed 1–30–96; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200969.

Title: Port of Houston/Mediterrean Shipping Co., S.A. Terminal Agreement.

Parties: Port of Houston Authority (Port), Mediterrean Shipping Co., S.A. (''MSC'').

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement permits MSC to perform freight handling services at the Port's Fentress Bracewell Barbours Cut Terminal. The term of the Agreement expires November 30, 1996.

Dated: January 25, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–1781 Filed 1–30–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Community First Financial Group, Inc.; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 commencement of the activity can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community First Financial Group, Inc., English, Indiana; to acquire a 9 percent equity interest in Independent Bankers Life Insurance Company of Indiana, Phoenix, Arizona (Company), a reinsurance company wholly owned by bank holding companies, and thereby to engage *de novo* in underwriting credit life, accident, and health insurance directly related to extensions of credit by the respective subsidiary banks of Company's shareholders, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities would be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, January 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–1813 Filed 1–30–96; 8:45 am]

BILLING CODE 6210–01–F

F & M National Corporation, 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 February 26, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F & M National Corporation, Winchester, Virginia; to merge with FB&T Financial Corporation, Fairfax, Virginia, and thereby indirectly acquire Fairfax Bank & Trust Company, Fairfax, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to acquire 100 percent of the voting shares of Arcadia Financial Corporation, Portage, Michigan, and thereby indirectly acquire Arcadia Bank & Trust Company, Kalamazoo, Michigan.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. East Texas National, Inc., Palestine, Texas, and East Texas-Dover, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of American Bank, Huntsville, Texas.

Board of Governors of the Federal Reserve System, January 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–1814 Filed 1–30–96; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Serviced by the General Services Administration; Names of Members

Correction

Under the Federal Retirement Thrift Board on page 56059 in the issue of Monday, November 6, 1995 make the following correction. Name correction to Veda R. Charrow from Vera D. Charrow, Director of Communications.

Dated: January 23, 1996.

Calvin R. Snowden,

Director, Agency Liaison Division.

[FR Doc. 96–1798 Filed 1–30–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH Meetings

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meetings.

Name: Setting a National Occupational Research Agenda: Regional Meetings.

Date: February 21, 1996.

Time: 1–5 p.m.

Place: The State of Illinois Building Assembly Hall, 100 West Randolph, Chicago, IL 60601.

Date: February 23, 1996.
Time: 1–5 p.m.
Place: Thomas P. O'Neill Federal Building, Auditorium, 10 Causeway, Boston, MA 02222.
Date: February 27, 1996.
Time: 6–9 p.m.
Place: Museum of History and Industry Auditorium, 2700 24th Avenue East, Seattle, WA 98112.
STATUS: Open to the public, limited only by the space available.

Purpose: NIOSH will sponsor three public meetings of worker safety and health stakeholders to develop a national agenda for occupational safety and health research for the next decade. The goals of the public meetings are.

- To receive comments regarding occupational safety and health from stakeholders and the public;
- To increase NIOSH's understanding of occupational safety and health issues and to learn about occupational safety and health concerns in the community; and
- To set research priorities for the national occupational research agenda.

These regional meetings are intended to promote participation by workers, organized labor, businesses, local chamber of commerce, health professionals, researchers, State and local government officials, elected officials, and the public to develop the national agenda. The meetings enable NIOSH officials to learn about worker safety and health concerns from stakeholders and the public.

The tentative agenda of the meetings includes a summary by the Director of NIOSH of the work in developing a national research agenda for occupational safety and health research followed by five minute presentations by participants. Participants may present their perspectives on critical worker safety and health and research priorities. Research priorities for consideration include health effects, hazardous exposures, work environments, industries, occupations, and populations associated with significant occupational disease, injury, disability, fatalities, and topics of growing importance.

Matters To Be Discussed: As the lead federal health agency for research into the causes and prevention of work injuries and diseases, NIOSH is responsible to assess the state of knowledge and define research needs and priorities. The national research agenda will assist NIOSH and the occupational safety and health research community to establish priorities and target scientific needs for the next decade that offer the greatest potential for advancing the safety and health of workers. Establishing these priorities is especially important due to increasing fiscal constraints on occupational safety and health research in the public and private sectors. The agenda will be used by decision-makers and scientists working and employed in government, corporate, labor, university, and private research programs to plan and implement occupational health research and prevention activities.

Prior to holding public meetings, together with external experts, NIOSH developed a discussion list of approximately 50 research priorities for the national occupational research agenda. The discussion list was expanded based on written comments and oral presentations given at a public meeting on November 30, 1995, and at a working group meeting of researchers held on December 12, 1995. The expanded list of research priorities are:

Health Response

- Traumatic Injury
  —Amputation Injuries
  —Eye Injury
  —Electrocutions
  —Falls
  —Inhalation Injury
- Musculoskeletal disorders of the neck, shoulder & other upper extremities
- Musculoskeletal disorders of the lower back
- Fertility and pregnancy outcomes
- Occupational Asthma
- Pneumoconioses
- Hypersensitivity Lung Disease
- Occupational Chronic Diseases (Selected)
  —Chronic Obstructive Lung Disease
  —Chronic Renal Disease
  —Ischemic Heart Disease
  —Neurodegenerative Disease (Congnitive & Movement Disorders)
  —Anxiety and Depression
- Psychological disorders other than Anxiety and Depression
- Occupational Infectious Diseases
- Immune Dysfunction
- Neuroimmune Function
- Hearing Loss due to noise and nonauditory exposures
- Occupational Dermatitis
- Premature Disability
- Latex allergy

Exposure

- Chemical Mixtures (Including Hazardous Waste)
- Pesticides
- Solvents
- Oils their Substitutes and Related derivatives (e.g., Cutting Fluids, Diesel)
- Indoor Environment
- Thermal stresses
- Mineral and Synthetic Fibers
- Silica
- Metals and Related Compounds
- Hormonally Active Substances
- Violence/Assaults
- Motor Vehicles
- Heavy Machinery (including Farm equipment)
- Hand Tools
- Biomechanical Stressors (including manual material handling)
- Noise
- Electric and Magnetic Fields
- Behavioral Risk Factors
- Falling objects
- Lead
- Pharmaceuticals (manufacture and administration)
- Robots
- Interactions

Work Environment, Workforce, Work Sector

- Work Organization
  —Extended work shift
  —Shift work
- Changing Economy and Workforce
- Emerging Technologies and Problems
- Vulnerable Populations
  —Aging workforce
  —Child labor (including adolescents)
  —Home work
  —Migrant workers
  —Temporary/contingent workforce
  —Minorities
- Psychosocial factors
- Costs of occupational disease and injury (economic and social)
- Social inequality & health
- Environmental justice
- Occupational health/occupational disease & injury costs and benefits of prevention
- Construction
- Agriculture
- Small Businesses
- Service workers
- Health Care
- Mining
- Transportation
- Hotel/restaurant workers

Research Process

- Intervention Research
- Effectiveness Research (e.g. training)
- Economic Analysis: Cost benefit and workers' compensation
- International Occupational Health Research
- Clinical Methods Research
  —Develop methods for occupational disease and practice guidelines
- Engineering and Technological Solutions
- Exposure Assessment Methods Development
- Hazard Surveillance
- Disease Surveillance
- Injury Surveillance
- Risk Assessment Methods Development
- Identification of Molecular Correlates of Cancer and other Chronic Diseases
- Health Services Research (in a changing health care & workplace environment)
- Respirator research & other personal protective equipment research
- Information dissemination & Health communication
- Community & region-based studies
- Strategies for worker/employer empowerment
- Barriers to implementation of prevention efforts
- Sector focussed research

From this list and additional items that are recommended, NIOSH will produce a final agenda of 15–25 scientific priorities for advancing safety and health.

NIOSH is seeking public comment until March 6, 1996, to assure that the final agenda includes input from the broadest base of occupational safety and health expertise. In addition to the three Regional meetings described in this announcement, the process for receipt of public comment includes the following elements: (1) Corporate and worker liaison committees and a stakeholder's outreach committee will assist NIOSH to obtain input from employers, employees, health officials, health professionals, scientists, and public health, advocacy, scientific, industry and labor organizations; (2) A public meeting was held on November 30, 1995, to obtain input on the research priorities, criteria for selection of priorities,

and the process for developing the agenda; (3) Three working groups including researchers, health professionals, and representatives of stakeholder organizations will meet before the Regional meetings are convened to provide individual input and recommendations based on the communities they represent; (4) A final public meeting will be held on March 1, 1996, in Washington, DC, to present a preliminary research agenda and receive public comment. The public is encouraged to provide oral comments at the public meetings and written comments as soon as possible. Written comments may be submitted until the close of business, March 6, 1996.

The final agenda will be presented at a scientific symposium commemorating the 25th anniversary of the Occupational Safety and Health Act on April 29, 1996.

NIOSH encourages the public to provide recommendations on research priorities, criteria for determining priorities, and the process of developing the research agenda. To receive more information, contact Ms. Kathy Sykes through the NIOSH toll-free information service. On-site registration will be available; however, to assist in planing for the meeting, advance registration is requested. To register in advance to attend and to speak at the Regional meetings, please contact Ms. Diane Manning. If registering in writing, please provide your name, address, phone and fax number, and indicate if you wish to make a presentation.

Addresses: Written public comments on the National Occupational Research Agenda should be mailed to Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8450, FAX 513/533–8285.

Contact Person for Additional Information: Ms. Kathy Sykes, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone NIOSH toll-free number 800/356–4674, or 202/401–3747, FAX 202/260–1898.

Dated: January 24, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–1828 Filed 1–30–96; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings 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.

MEETINGS: The following advisory committee meetings are announced:

Medical Imaging Drugs Advisory Committee

Date, time, and place. February 15, 1996, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Medical Imaging Drugs Advisory Committee, code 12540.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

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 February 9, 1996, and submit a brief statement of the general nature of the evidence or the 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 committee will discuss and begin drafting ''Points to Consider (PTC) for Developing Medical Imaging Agents.'' The purpose of the meeting is to provide the committee opportunity to work together on this draft and not primarily to hear presentations. The agents encompassed will include radiologic contrast media and nuclear medicine pharmaceuticals. Written comments will be accepted until April 15, 1996, and will be available in the Dockets Management Branch for public inspection under docket number 95N–0414 (Dockets Management Branch, HFA–305, Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857).

Medical Imaging Drugs Advisory Committee

Date, time, and place. February 16, 1996, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or William Freas, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Medical Imaging Drugs Advisory Committee, code 12540.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

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 February 9, 1996, and submit a brief statement of the general nature of the evidence or the 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 committee will discuss product license application (PLA) 91–0209, from Immunomedics, for Immu–4, a murine monoclonal antibody fragment directed against the carcinoembryonic antigen (CEA).

Gastrointestinal Drugs Advisory Committee

Date, time, and place. February 22 and 23, 1996, 9 a.m., Washingtonian Center Marriott, 9752 Washington Blvd., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, February 22, 1996, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; open committee discussion, February 23, 1996, 9 a.m. to 4:30 p.m.; Joan C. Standaert (HFD–180), 419–259–6211, or Valerie M. Mealy (HFD–21), 301–443–4695, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Gastrointestinal Drugs Advisory Committee, code 12538.

General function of the committee. The 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 February 13, 1996, 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. On February 22, 1996, the committee will discuss new drug application (NDA) 20–580, Cotazyme, and NDA 20–581, Cotazyme S and Zymase (pancreatic lipase, Organon), indicated for exocrine pancreatic insufficiency. On February 23, 1996, the committee will discuss NDA 20–617, C–14 Urea Breath Test (Trimed Specialties Inc.), for diagnosis of *Helicobacter pylori* .

Biological Response Modifiers Advisory Committee

Date, time, and place. February 28 and 29, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 28, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open public hearing, February 29, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Biological Response Modifiers Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human 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 February 12, 1996, 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. On February 28, 1996, the committee will: (1) Discuss premarket approval application (PMA) 94–001, for CEPRATE SC Device (CellPro), for selection of CD34+ progenitor/stem cells, and (2) then receive an update on stem cell policy. On February 29, 1996, the committee will discuss: (1) Clinical trials in in utero stem cell transplantation: Issues in early clinical trial development, and (2) the draft document ''Addendum on Gene Therapy to the 1991 Points to Consider (PTC) on Human Somatic Cell and Gene Therapy.'' The draft document will be available at the meeting and is also available through the CBER FAX Information System at 301–594–1939 from a touch tone phone.

Antiviral Drugs Advisory Committee

Date, time, and place. February 28 and 29, and March 1, 1996. February 28 and 29, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD; March 1, 1996, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, February 28, 1996, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, February 29, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open committee discussion, March 1, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Ermona B. McGoodwin or Liz Ortuzar, 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), Antiviral Drugs Advisory Committee, code 12531.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

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 February 23, 1996, 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. On February 28, 1996, the committee will discuss recent studies with nucleoside analogues for the treatment of human immunodeficiency virus (HIV) infection. The discussion will include data from AIDS Clinical Trial Group (ACTG) Study 175, the Delta studies, and other relevant studies. Data pertinent to the following NDA's will be included in the discussion: Bristol Myers Squibb NDA's 20–154, 20–155, and 20–156 for Videx® (didanosine) chewable tablets, buffered powder for oral solution, and pediatric powder for

oral solution; Glaxo Wellcome NDA's 19–665 and 19–910 for Retrovir® (zidovudine) capsules and syrup; Roche Laboratories' NDA 20–199 for HIVID® (zalcitabine) tablets. On February 29, 1996, the committee will discuss data relevant to NDA's 20–659 and 20–680 ritonavir (liquid and capsules, Abbott Laboratories) for treatment of HIV infection. On March 1, 1996, the committee will discuss data relevant to NDA 20–685 Crixivan™ (indinavir capsules, Merck and Co., Inc.) for treatment of HIV infection.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 29, 1996, 8 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX: 301–443–0699, or FDA Advisory Committee Information Hotline, 1– 800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

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 February 21, 1996, 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 committee will hear presentations and discuss data submitted regarding the safety and efficacy of NDA 20–563, Humalog® , (insulin lispro [rDNA origin], Eli Lilly) for treatment of insulin dependent diabetes mellitis.

Joint Meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee

Date, time, and place. March 1, 1996, 8 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Kathleen R. Reedy, Ermona McGoodwin, or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX: 301–443–0699, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

General functions of the committees. The Endocrinologic and Metabolic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders. The Antiviral 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 acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

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 February 21, 1996, 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 committee will hear presentations and discuss data submitted regarding the safety and efficacy of NDA 20–604, Serostim®, (somatropin [rDNA], Serono Laboratories, Inc.) for treatment of AIDS-wasting associated with catabolism, weight loss or cachexia.

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: January 26, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–2045 Filed 1–30–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1996:

Name: National Advisory Council on Migrant Health

Date and Time: February 23–24, 1996—8:00 a.m.

Place: East West Towers, 9th Floor, Conference Room A, 4350 East West Highway, Bethesda, Maryland 20814, 914/631–2200

The meeting is open to the public.

Agenda: This will be a meeting of the Executive Committee. The agenda includes a overview of Council general business activities and priorities. A special emphasis will be given to the issue of workers compensation. In addition, the Executive Committee will review and discuss the 1996 National Advisory Council on Migrant Health Recommendations with federal representatives.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Policy and Issues Forum, February 23–27, 1996.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration, 4350 East West Highway, Room 7–A51, Rockville, Maryland 20857, Telephone (301) 594–4302.

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: February 28–29, 9:00 am–5:00 pm

Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, Maryland 20857

The meeting is open to the public.

The first day of the meeting, February 28, from 9:00 a.m–12:00 noon, will consist of a meeting of the Commission's working Subcommittees: ACCV Subcommittee on Vaccine Safety (meeting jointly with the National Vaccine Advisory Committee Subcommittee on Vaccine Safety)

Agenda: Agenda items will include, but not be limited to: a review of the report of the Task Force on Safer Childhood Vaccines and prioritization of its recommendations.

The full Commission will meet on the afternoon of February 28 from 1:00 p.m. to 5:00 p.m., and February 29 from 9:00 a.m to 12:00 noon. Agenda items will include, but not be limited to: orientation of new members; a review of vaccine information statements; a vaccine safety update from the Centers for Disease Control and Prevention and the Food and Drug Administration; and routine Program reports.

Public comment will be permitted before the Subcommittee adjourns on February 28; and before the end of the full Commission meeting on February 28 and 29. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Jerry Anderson, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room D on February 28 and 29. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Anderson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443–1533.

Agenda Items are subject to change as priorities dictate.

Dated: January 24, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–1665 Filed 1–30–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3873–N–02]

Continuum of Care Homeless Competition, Supportive Housing Program, Shelter + Care Program, Single Room Occupancy Program

Announcement of Funding Awards—Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1995 Continuum of Care Competition (Supportive Housing Program, Shelter + Care Program and Single Room Occupancy Program). The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Maggie Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION. The purpose of the competition was to award grants for the development of continuum of care systems through supportive housing and supportive services, rental assistance, and services including innovative approaches to assist homeless persons in the transition from homelessness and to enable them to live as independently as possible.

The assistance made available in this announcement is authorized by the Stewart B. McKinney Homeless Assistance Act of 1987, as amended. The competition was announced in a Notice of Funding Availability (NOFA) published in the Federal Register on February 17, 1995 (60 FR 9534). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $902,585,052 was awarded for 485 applications in 228 communities. In accordance with

section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: January 25, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix A

CONTINUUM OF CARE HOMELESS 1995 COMPETITION

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
Alabama:			
Jefferson County Housing Authority	Jefferson County	S+C	$3,156,000
Alethia House	Birmingham	SHP	1,858,752
AIDS Task Force of Alabama, Inc	Birmingham	SHP	1,082,053
Safeplace, Inc	Florence	SHP	1,762,817
Harris Family Foundation, Inc	Huntsville	SHP	810,616
American Red Cross	Huntsville	SHP	662,845
Mental Health Mental Retardation	Tuscaloosa	SHP	200,069
Alaska:			
Abbott Loop Community Chapel	Anchorage	SHP	59,588
Alaska Dept. of Health and Social Services	Anchorage	SHP	629,265
Anchorage Community Mental Health Srvs	Anchorage	SHP	2,064,339
Arizona:			
Arizona Department of Health Services	Statewide	S+C	2,448,600
Arizona Department of Health Services	Statewide	S+C	5,324,220
Arizona Department of Health Services	Statewide	S+C	831,300
MESA Community Action Network	Mesa	SHP	121,275
Save the Family Foundation of Arizona	Mesa	SHP	441,239
ComCare, Inc	Phoenix	SHP	10,270,160
Pima County Community Services	Tucson	SHP	1,529,686
Arkansas:			
Newton County Resource Council	Jasper	SHP	556,500
Our House, Inc.	Little Rock	SHP	360,000
California			
San Diego Housing Commission	San Diego area	S+C	995,400
Housing Aut. of the County of Los Angeles	Los Angeles Co	S+C	5,025,240
Housing Aut. of the City of Los Angeles	Los Angeles	S+C	12,645,000
City of Long Beach	Long Beach	S+C	870,000
Housing Aut. of the Co. of San Bernardino	San Bernardino	S+C	2,515,000
Housing Aut. of the County of San Mateo	San Mateo Co	S+C	562,500
County of Santa Clara	Santa Clara Co	S+C	1,390,740
County of San Joaquin	San Joaquin Co	S+C	1,236,420
Housing Authority of the County of Marin	Marin County	S+C	1,046,400
City of San Francisco	San Francisco	S+C	5,904,900
Resources for Community Development	Alameda	SHP	515,002
County of Alameda	Alameda	SHP	2,487,975
Center for Independent Living	Berkeley	SHP	2,662,546
Resources for Community Development	Berkeley	SHP	423,377
Berkeley Oakland Support Services	Berkeley	SHP	2,267,344
Phoenix Programs, Inc	Contra Costa Co	SHP	3,000,000
City of Fresno	Fresno	SHP	1,417,000
Center for Employment Training	Gilroy City	SHP	732,638
Berkeley Oakland Support Services	Hayward	SHP	977,183
Desert Counseling Clinic, Inc	Los Angeles	SHP	495,000
Los Angeles Homeless Services Authority	Los Angeles	SHP	33,610,854
Center Point Inc	Marin County	SHP	1,643,807
Innovative Housing for Community	Marin County	SHP	680,633
Interim, Inc	Monterey	SHP	802,842
John XXIII AIDS Ministry	Monterey	SHP	523,223
The City of Oakland	Oakland	SHP	4,291,648
Pacific Clinics	Pasadena	SHP	3,000,000
City of Pomona	Pomona	SHP	1,145,502
Rubicon Programs, Inc	Richmond	SHP	893,421
Whiteside Manor, Inc	Riverside	SHP	2,420,381
Vietnam Veterans of California, Inc	Sacramento	SHP	1,203,614
County of Sacramento	Sacramento	SHP	652,499
Housing Authority of Monterey County	Salinas	SHP	1,185,910
San Diego Housing Commission	San Diego	SHP	6,843,589
County of San Diego	San Diego	SHP	7,916,752
City and County of San Francisco	San Francisco/Co	SHP	12,508,319
Emergency Housing Consortium	San Jose	SHP	927,536
Alum Rock Counseling Center, Inc	San Jose	SHP	949,174

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
Inn Vision of Santa Clara Valley	San Jose	SHP	371,103
Robinson's Group Home	San Jose	SHP	982,109
San Luis Obispo Non-Profit Housing	San Luis Obispo	SHP	1,465,490
Bill Wilson Marriage & Family Cou. Cntr	Santa Clara	SHP	1,493,516
Santa Clara Unified School District	Santa Clara	SHP	752,007
Emergency Housing Consortium	Santa Clara County	SHP	679,892
County of Santa Clara	Santa Clara County	SHP	2,391,915
Turning Point Foundation	Ventura	SHP	1,103,228
Aragon Affordable Housing, Inc	Santa Ana	SRO	2,124,000
Community Housing Assistance Program	La Habra	SRO	4,248,000
Housing Aut. of the City of Los Angeles	Los Angeles	SRO	1,941,840
Housing Aut. of the City of Los Angeles	Los Angeles	SRO	3,382,560
Housing Aut. of the City of Los Angeles	San Pedro	SRO	2,505,600
Single Room Occupancy Housing Corp.	Los Angeles	SRO	375,840
Single Room Occupancy Housing Corp.	Los Angeles	SRO	4,008,960
Single Room Occupancy Housing Corp.	Los Angeles	SRO	2,756,160
Mission Housing Development Corp.	San Francisco	SRO	5,395,200
Rubicon Programs, Inc	Richmond	SRO	1,715,640
Colorado:			
Denver Department of Social Services	Denver area	S+C	3,449,700
Colorado Department of Human Services	Statewide	S+C	512,940
Partners in Housing, Inc	Colorado Springs	SHP	207,900
Community Health Center, Inc	Colorado Springs	SHP	1,123,007
Colorado Coalition for the Homeless	Denver	SHP	4,563,142
Volunteers of America CO Branch, Inc	Denver	SHP	585,916
Colorado Coalition for the Homeless	Denver	SHP	2,231,270
Posada	Pueblo	SHP	1,032,855
Denver Indian Center Development Corp.	Denver	SRO	1,875,720
Connecticut:			
State of Connecticut	Statewide	S+C	2,163,600
St. Vincent de Paul Society of Bristol	Bristol	SHP	902,550
State of Connecticut	Hartford	SHP	5,442,053
Thames Valley Council for Community	Jewett	SHP	2,031,043
Housing Operations Mngt. Enterprises	New Haven	SRO	689,760
Housing Authority of the City of Stamford	Stamford	SRO	1,653,000
Housing Authority of the City of Stamford	Stamford	SRO	870,000
Central Connecticut Coast YMCA, Inc	Bridgeport	SRO	5,904,000
Delaware:			
Delaware Economic Development	Dover	SHP	158,000
Ministry of Caring, Inc	Wilmington	SHP	1,774,569
Delaware Health and Social Services	New Castle Co.	SHP	1,797,500
District of Columbia:			
The Community Partnership	Washington, DC	SHP	9,563,246
Access Housing, Inc	Washington	SRO	1,790,880
Florida:			
Broward Coalition for the Homeless, Inc	Ft. Lauderdale	SHP	359,999
City of Gainesville	Gainesville	SHP	496,542
The Jacksonville Housing Partnership, Inc	Jacksonville	SHP	2,570,672
Lee County Board of Co. Com.	Lee County	SHP	4,047,458
Metropolitan Dade County	Dade County	SHP	6,753,665
Network of Orange County, Inc	Orange County	SHP	1,495,862
Pinellas County Board of Co. Com.	Pinellas County	SHP	2,153,089
Tallahassee Coalition for the Homeless	Tallahassee	SHP	173,420
The Salvation Army, A Georgia Corporation	Tampa	SHP	748,439
Mental Health Care, Inc	Tampa	SHP	2,993,923
Carrfour Housing Corporation	Miami	SRO	2,112,000
Miami Beach Development Corporation, Inc	Miami Beach	SRO	2,904,000
Georgia:			
Georgia Housing and Finance Authority	Statewide	S+C	4,483,200
Housing Authority of Savannah	Savannah	S+C	1,369,860
Marietta Housing Authority	Marietta	S+C	711,360
Unified Govt. of Athens-Clarke County	Athens-Clarke Co.	SHP	1,321,418
Metro Atlanta Task Force for the Homeless	Metro Atlanta	SHP	12,451,233
Urban Action, Inc	Augusta	SHP	252,833
Hawaii: Hawaii Housing Authority	Statewide	S+C	565,800
Idaho:			
Idaho Housing Agency	Statewide	S+C	191,520
Boise City	Boise City	SHP	405,889
Communication Action Agency	Lewiston	SHP	257,853

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
Illinois:			
City of Chicago	Chicago area	S+C	4,720,500
CASA Central	Chicago	SHP	196,875
Lakefront Single Room Occ. Corporation	Chicago	SHP	893,275
Travelers & Immigrants Aid	Chicago	SHP	654,821
Southwest Women Working Together	Chicago	SHP	481,383
City of Chicago	Chicago	SHP	6,300,000
City of Chicago	Chicago	SHP	7,356,274
Community Supportive Living Systems	Chicago	SHP	840,635
Community Supportive Living Systems	Chicago	SHP	627,024
AIDS Foundation of Chicago	Chicago	SHP	720,744
University of Chicago	De Kalb	SHP	1,723,253
Safe Passage, Inc	De Kalb-County	SHP	250,950
Dove, Inc	Decatur	SHP	1,849,690
Du Page Housing Authority	Du Page County	SHP	1,809,131
CEFS Economic Development	Effingham	SHP	1,324,502
Housing Options for the Mentally Ill	Evanston	SHP	688,762
Catholic Charities, Diocese of Joliet	Joliet	SHP	821,143
County of Lake	Waukegan	SHP	643,944
Crittenton Care and Counseling Center	Peoria	SHP	57,750
City of Rockford	Rockford	SHP	2,238,991
Housing Authority of Champaign Ccounty	Champaign	SRO	1,226,400
Century Place Development Corporation	Chicago	SRO	2,760,120
Lakefront SRO Corporation	Chicago	SRO	3,788,400
Thresholds	Chicago	SRO	2,110,680
Peoria Housing Authority	Peoria	SRO	2,030,400
Indiana:			
City of South Bend	South Bend area	S+C	562,080
Indianapolis Public Housing Authority	Indianapolis area	S+C	954,960
City of Fort Wayne	Fort Wayne	SHP	1,451,541
Indianapolis Public Housing Agency	Indianapolis	SHP	5,549,495
Community Mental Health Center	Lawrenceburg	SHP	490,422
Muncie Community Schools	Muncie	SHP	292,437
Open Door Community Services, Inc	Muncie	SHP	597,677
Bridges Community Services, Inc	Muncie	SHP	386,463
Housing Aut. of the County of Delaware	Muncie	SRO	753,000
Iowa:			
Neighborhood Place, Inc	Davenport	SHP	485,985
Family Service League, Inc	Waterloo	SHP	1,404,014
Kansas: City of Topeka	Topeka area	S+C	562,800
Kentucky:			
Kentucky Housing Corporation	Statewide	S+C	346,860
Lexington-Fayette Urban Co. Housing Corp.	Lexington-Fayette	S+C	698,160
Welcome House of Northern Kentucky, Inc	Covington	SHP	1,645,401
Presbyterian Child Welfare Agency	Lexington-Fayette	SHP	755,751
Chrysalis House, Inc	Lexington-Fayette	SHP	715,664
Society of St. Vincent de Paul	Louisville	SHP	680,794
Owensboro Area Shelter & Info. Services	Owensboro	SHP	2,257,500
Hazard/Perry Co. Hsg. Dev. Alliance	Hazard	SRO	295,200
Louisiana:			
Housing Aut. of the City of Lake Charles	Lake Charles area	S+C	715,800
City of New Orleans	New Orleans area	S+C	1,401,480
UNITY for the Homeless	New Orleans	SHP	7,123,586
Shreveport SRO, Inc	Shreveport	SHP	1,665,919
Volunteers of America of GNO, Inc	New Orleans	SRO	1,105,200
Maine:			
Maine Dept. of Mental H. & Mental Retard.	Statewide	S+C	3,981,480
Maine State Housing Authority	Augusta	SHP	428,000
Maryland:			
MD Dept. of Health and Mental Hygiene	Statewide	S+C	5,550,000
City of Baltimore	Baltimore area	S+C	8,540,460
Department of Human Resources	Baltimore	SHP	5,325,003
Baltimore City	Baltimore	SHP	5,933,831
Massachusetts:			
City of Boston	Boston	S+C	4,796,040
City of Fall River	Fall River	S+C	1,419,840
Quincy Housing Authorty	Quincy	S+C	848,760
City of Springfield	Springfield	S+C	300,540
City of Cambridge	Cambridge	S+C	385,800
City of Lowell	Lowell	S+C	428,040

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
City of Haverhill	Haverhill	S+C	1,194,720
MA Executive Ofc. of Health & Human Svcs	Boston	SHP	17,701,059
City of Boston and Public Fac. Com	Boston	SHP	12,122,849
City of Cambridge	Cambridge	SHP	1,189,354
Steppingstone, Inc	Fall River	SHP	934,185
Lynn Housing Authority	Essex	SHP	518,000
The Second Step, Inc	Newtonville	SHP	350,543
City of Springfield	Springfield	SHP	4,495,348
City of Worcester	Worcester	SHP	1,931,310
Boston Housing Authority	Boston	SRO	1,480,320
Boston Housing Authority	Boston	SRO	1,110,240
Commonwealth of Massachusetts	Haverhill	SRO	981,480
Michigan:			
SOS Crisis Center	Ann Arbor	SHP	2,451,750
Plymouth Housing Commission	Plymouth	SHP	1,200,027
City of Detroit	Detroit	SHP	22,012,723
Genesee County	Genesee County	SHP	2,408,665
City of Grand Rapids	Grand Rapids	SHP	4,273,309
Housing Resources, Inc. of Kalamazoo Co	Kalamazoo	SHP	141,750
Saginaw Housing Commission	Saginaw	SHP	444,325
Operation Helping Hand, Inc	Detroit	SRO	3,768,000
United Way of Pontiac-North Oakland	Ferndale	SRO	2,582,643
Minnesota:			
Dakota County	Dakota County	SHP	1,433,511
Hennepin County	Hennepin County	SHP	1,244,686
Hennepin County, Minnesota	Minneapolis	SHP	1,907,340
RESOURCE, Inc	Minneapolis	SHP	861,212
American Indian Housing Corporation	Minneapolis	SHP	656,250
Simpson Housing Services, Inc	Minneapolis	SHP	242,872
Catholic Charities of the Arch. of St. Paul	St. Paul	SHP	1,805,714
Alliance Housing Incorporated	Minneapolis	SRO	4,068,000
Mississippi:			
Gulf Coast Women's Center	Gulfport	SHP	295,832
Catholic Charities, Inc	Jackson	SHP	533,027
Stewpot Community Service, Inc	Jackson	SHP	157,831
Missouri:			
D.A.R.E. House, Inc	Joplin	SHP	1,410,254
Network Rehabilitative Services	Kansas City	SHP	1,642,001
City of St. Louis	St. Louis	SHP	4,859,922
St. Louis County	St. Louis County	SHP	630,000
Montana:			
God's Love, Inc	Helena	SHP	556,605
County of Missoula	Missoula	SHP	675,837
Nebraska:			
Mid-Nebraska Community Services	Kearney	SHP	359,013
Youth Service System, Inc	Lincoln	SHP	450,987
The Paxton	Omaha	SHP	602,705
Nevada: The Salvation Army, A California Cor	Las Vegas	SHP	1,876,071
New Hampshire:			
Strafford Guidance Center, Inc	Dover	SHP	840,207
Families in Transition	Manchester	SHP	1,256,912
New Jersey:			
New Jersey Dept. of Community Affairs	Statewide	S+C	189,360
City of Paterson	Paterson area	S+C	7,494,480
Alliance Against Homelessness	Bergen County	SHP	556,151
Bergen County Community Action Program	Bergen County	SHP	657,849
Volunteers of America Delaware Valley, Inc	Camden	SHP	2,323,707
Communities of Faith for Housing, Inc	Hudson County	SHP	602,546
The Women's Center of Monmouth Co., Inc	Monmouth County	SHP	755,776
County of Union, Dept. of Human Services	Union County	SHP	547,882
Collaborative Support Programs of NJ	Wayne Township	SHP	818,239
State of New Jersey, Dept. of Com. Affairs	Jersey City	SRO	2,587,200
State of New Jersey, Dept. of Com. Affairs	Jersey City	SRO	3,428,040
Douglas-Harrison Housing Corporation	Newark	SRO	3,030,000
YMCA of Passaic-Clifton	Passaic	SRO	3,707,880
New Mexico:			
City of Albuqerque, Fam & Comm Servs	Albuqerque area	S+C	619,500
City of Santa Fe	Santa Fe area	S+C	540,060
City of Albuqerque	Albuqerque	SHP	3,347,790
Mescalero Apache Tribe	Mescalero	SHP	500,850

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
St. Elizabeth Shelter	Santa Fe	SHP	616,035
New York:			
City of Syracuse	Syracuse area	S+C	1,034,160
City of Schenectady	Schenectady area	S+C	346,560
State of New York, Homeless Housing	Statewide	S+C	248,100
State of New York, Homeless Housing	Statewide	S+C	861,000
State of New York, Homeless Housing	Statewide	S+C	901,320
State of New York, Homeless Housing	Statewide	S+C	518,220
Rochester Housing Authority	Rochester area	S+C	1,192,200
City of New York	New York City	S+C	3,984,000
State of New York, Homeless Housing	Statewide	S+C	11,012,640
Westchester County	Westchester	S+C	3,903,060
Municipal Housing Authority	City of Yonkers Albany	S+C	1,042,680
Albany Community Development Agency	Bath	SHP	649,132
Pro Action of Stueben and Yates	Buffalo-Erie Co.	SHP	356,161
Erie County Department of Mental Health	Islip Town	SHP	338,000
A Program for Life Enrichment, Inc	Ithaca	SHP	315,000
Tompkins County	Nassau County	SHP	341,250
Family Service Association of Nassau Co	Briarwood NY	SHP	1,214,001
Samaritan Village, Inc	Brooklyn NY	SHP	551,250
Turning Point Housing Development Fund	New York	SHP	320,410
BRC Human Services Corporation	New York	SHP	1,347,413
BRC Human Services Corporation	New York	SHP	1,128,048
Housing Works, Inc	New York	SHP	1,900,000
Project Return Foundation, Inc	New York	SHP	1,805,963
Project Return Foundation, Inc	New York	SHP	2,488,284
Lower Eastside Service Center, Inc	New York	SHP	1,900,001
Binding Together, Inc	New York	SHP	1,197,000
Goddard Riverside Community Center	New York	SHP	450,000
Urban Resource Institute	New York	SHP	1,170,884
H.E.L.P. Homeless Service Corporation	New York	SHP	3,000,000
Pastoral and Educational Services, Inc	New York	SHP	222,725
Goddard Riverside Community Center	New York	SHP	500,000
Catholic Charities Counseling Service	New York	SHP	878,719
H.O.M.E. Clinic, Inc	New York	SHP	447,962
Institute for Community Living, Inc	New York	SHP	1,112,836
Minority Task Force on AIDS, Inc	New York	SHP	442,500
Coalition for the Homeless	New York	SHP	625,144
St. Barbara's Roman Catholic Church	New York	SHP	47,460
John Heuss Corporation	New York	SHP	448,714
New York City-Dept. of Cultural Affairs	New York	SHP	405,777
Minority Task Force on AIDS, Inc	New York	SHP	685,029
Care for the Homeless	New York	SHP	157,293
Services for the Underserved	New York	SHP	2,000,250
Episcopal Social Services of New York, Inc	New York	SHP	2,436,000
Legal Action Center for the Homeless	New York	SHP	209,475
Nazareth Housing, Inc	New York	SHP	199,500
The Mental Health Assoc. of NY and Bronx	New York	SHP	2,152,500
Project Renewal, Inc	New York	SHP	1,464,175
YMCA of Greater New York	New York	SHP	2,082,301
The Project for Pysch. Outreach	New York	SHP	850,500
Federation Employment and Guidance	New York	SHP	1,785,001
Pathways to Housing, Inc	New York	SHP	1,101,291
Lenox Hill Neighborhood Association, Inc	New York	SHP	1,442,935
YMCA of Greater New York	New York	SHP	1,897,375
West Side Federation for Senior Housing	New York	SHP	315,124
Association to Benefit Children	New York	SHP	578,550
Food First HDFC, Inc	New York	SHP	450,450
The Bridge, Inc	New York	SHP	1,697,155
Services to the Underserved	New York	SHP	546,462
Fountain House, Inc	New York	SHP	1,816,605
Fountain House, Inc	New York	SHP	2,323,183
Henry Street Settlement	New York	SHP	827,033
Community Action for Human Services, Inc	New York	SHP	1,706,249
Metro New York Coordinating Council	New York	SHP	299,829
163rd Street Improvement Council, Inc	New York	SHP	934,605
The Doe Fund, Inc	New York	SHP	2,499,888
The Doe Fund, Inc	New York	SHP	1,699,595
Community Access, Inc	New York	SHP	2,096,073
Women In Need, Inc	New York	SHP	1,557,413

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
The Jericho Project, Inc	New York	SHP	450,983
Covenant House New York/Under 21, Inc	New York	SHP	1,068,921
Homes for the Homeless	New York	SHP	764,562
CAMBA	New York	SHP	100,128
Institute for Community Living	New York	SHP	898,538
Woodlawn East Community & Center	New York	SHP	1,649,998
Women's Prison Association and Home,	New York	SHP	690,505
AIDS Resource Center, Inc	New York	SHP	1,887,900
Support for Trng & Educational Program	New York	SHP	300,000
Jewish Board of Family and Children, Inc	New York	SHP	1,246,185
City of Schenectady	Schenectady	SHP	283,617
H.E.L.P.-Suffolk	Bellport-Suffolk Co	SHP	947,179
Westchester County	White Plains	SHP	5,005,287
The Municipal Hsg Aut./City of Yonkers	Yonkers	SHP	1,883,737
Albany Housing Authority	Albany	SRO	1,044,000
H.E.L.P. Homeless Service Corporation	Buffalo	SRO	912,000
City of New York	New York	SRO	1,435,200
City of New York	New York	SRO	6,386,640
City of New York	New York	SRO	7,176,000
Apropos Housing Opportunities	Mt. Pleasant	SRO	681,600
Community Counseling & Mediation	New York	SHP	918,750
North Carolina:			
State of NC, Dept. of Human Resources	Statewide	S+C	1,034,160
State of NC, Dept. of Human Resources	Statewide	S+C	275,400
Affordable Hsg. Coal	Asheville	SHP	544,985
County of Cumberland	Fayetteville	SHP	2,001,650
Wake County Opportunities, Inc	Raleigh	SHP	559,935
City of Winston-Salem	Winston-Salem	SHP	1,316,965
North Dakota: Ruth Meiers Hospitality House, Inc	Bismarck	SRO–25	777,000
Ohio:			
Columbus Metropolitan Housing Authority	Columbus area	S+C	4,041,480
City of Youngstown	Youngstown area	S+C	1,828,800
Akron Metropolitan Housing Authority	Metro Akron area	S+C	287,880
City Cincinnati	Cincinnati area	S+C	1,507,200
Tender Mercies, Inc	Cincinnati	SHP	989,940
Cleveland/Cuyahoga Co. Office	Cleveland	SHP	4,783,776
Community Shelter Board	Columbus	SHP	1,034,632
Young Women's Christian Assoc. of Dayton	Dayton	SHP	2,054,988
Elyria YWCA	Elyria	SHP	570,605
Licking County Coalition for Housing	Newark	SHP	1,855,503
Volunteers of America	Sandusky	SHP	861,662
Board of Stark County Commissioners	Stark County	SHP	131,230
City of Toledo	Toledo	SHP	750,881
City of Youngstown	Youngstown	SHP	1,377,782
Board of Stark County Commissioners	Canton	SHP	131,230
Famicos Foundation	Cleveland	SRO	965,520
Famicos Foundation	Cleveland	SRO	715,200
Famicos Foundation	Cleveland	SRO	1,072,800
Famicos Foundation	Cleveland	SRO	1,430,400
Oklahoma:			
City of Oklahoma	Oklahoma City	S+C	496,500
Action, Inc	Norman	SHP	255,898
The City of Oklahoma	Oklahoma City	SHP	3,233,065
Metropolitan Tulsa Urban League	Tulsa	SHP	199,749
Oregon:			
Housing Authority of Portland	Portland area	S+C	1,462,620
Clackamas Women's Services, Inc	Clackamas County	SHP	180,000
Lane County, Oregon	Eugene	SHP	1,425,811
The Youthworks, Inc	Medford	SHP	619,395
Multnomah County, Oregon	Portland	SHP	4,216,598
Northwest Human Services	Salem	SHP	766,794
Housing Authority of Portland	Portland	SRO	821,520
Pennsylvania:			
Home Nursing Agency-Community Services	Altoona	SHP	248,000
Young Women's Christian Association	Bradford	SHP	745,500
County of Bucks	Bucks County	SHP	190,927
The Salvation Army of Cumberland County Family and	Carlisle	SHP	922,102
Community Service of Delaware	Chester	SHP	647,725
Delaware County Housing Authority	Delaware County	SHP	2,459,247
City of Erie	Erie	SHP	707,317

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
Community Action Program of Lancaster	Lancaster County	SHP	407,437
Central Pennsylvania Legal Services, Inc	Lancaster County	SHP	495,000
Indian Valley Opportunity Center	Philadelphia	SHP	168,519
1260 Housing Development Corporation	Philadelphia	SHP	2,992,500
Philadelphians Concerned about Housing	Philadelphia	SHP	1,288,031
People's Emergency Center	Collingswood	SHP	2,388,685
Volunteers of America—Delaware Valley	Philadelphia	SHP	1,136,431
H.E.L.P. Homeless Service Corporation	Philadelphia	SHP	2,370,486
Horizon House, Inc	Philadelphia	SHP	2,432,785
Allegheny County	Northumberland Co	SHP	3,530,525
Northwestern Corporation	Fayette County	SHP	241,840
Fayette County Community Action	Washington Co	SHP	215,709
Washington County	Westmoreland Co	SHP	585,000
Life Service Systems, Inc	York	SHP	1,326,965
ACCESS-York, Inc	Ambridge	SHP	248,000
Housing Enterprises & Local Programs, Inc	Philadelphia	SRO	239,400
The Salvation Army	Harrisburg	SRO	3,270,960
YWCA of Greater Harrisburg	Bucks County	SRO	705,600
Bucks County Housing Authority	Bucks County	S+C	1,845,000
Puerto Rico:			
Municipality of San Juan	San Juan Municip	SHP	782,684
Corporacion La Fandita De Jesus	San Juan Municip	SHP	1,459,500
Puerto Rico Housing Finance Corporation	Caguas	SRO	2,232,000
Municipality of San Juan	Old San Juan	SRO	2,592,000
Puerto Rico Housing Finance Corporation	San Juan	SRO	2,592,000
Puerto Rico Housing Finance Corporation	San Juan	SRO	3,457,000
Rhode Island:			
City of Pawtucket—Planning & Redev	Pawtucket area	S+C	696,000
Child and Family Services	Newport	SHP	382,284
State of Rhode Island	Statewide	SHP	2,203,881
South Carolina:			
The Housing Aut. of the City of Charleston	Charleston	SHP	1,523,646
Sunbelt Human Advancement Resources	Greenville	SHP	2,605,971
South Dakota:			
Inner-Lakes Community Action, Inc	Sioux Falls	SHP	742,001
Tennessee:			
Chattanooga Church Ministries, Inc	Chattanooga	SHP	707,524
City of Knoxville	Knoxville	SHP	1,642,545
City of Memphis, Tennessee	Memphis	SHP	6,663,669
Buffalo Valley, Inc	Mid-TN area	SHP	3,000,000
Metropolitan Dev. and Housing Agency	Nashville-Davidson	SHP	2,911,904
CCS Housing Systems, Inc	Nashville	SRO	765,600
Texas:			
Housing Authority of the City of Abilene	Abilene area	S+C	1,588,080
Housting Authority of the City of Fort Worth	Forth Worth area	S+C	5,748,120
Harris County	Harris County	S+C	2,005,200
City of Beaumont	Beaumont area	S+C	272,120
Housing Authority of the City of Lubbock	Lubbock area	S+C	270,060
Housing Authority of Travis County	Travis County	S+C	1,182,960
The Salvation Army	Austin	SHP	2,290,700
MHMR Authority of Brazos Valley	Byran	SHP	1,288,317
Johnson County MHMR Center	Cleburne	SHP	387,446
Corpus Christi Metro Ministries, Inc	Corpus Christi	SHP	518,000
Housing Crisis Center	Dallas	SHP	367,500
Phoenix House, Inc	Dallas	SHP	2,087,485
City of Dallas	Dallas	SHP	402,015
El Paso Coalition for the Homeless	El Paso	SHP	1,371,998
Burke Center	Lufkin	SHP	1,701,000
Tarrant County	Tarrant County	SHP	1,557,215
Houston Regional HIV/AIDS Resource	Houston	SHP	2,005,234
Jasa House of Texas, Inc	Houston	SHP	264,600
Harris County	Harris County	SHP	9,083,724
Mental Health/Mental Retard. Auth.	Houston	SHP	2,513,680
Laredo State Center—TXMHMR	Laredo	SHP	198,450
Midland County Housing	Midland	SHP	354,362
City of San Antonio	San Antonio	SHP	2,406,999
Housing Authority of the City of Houston	Houston	SRO	4,248,000
Utah:			
Housing Authority of the Co. of Salt Lake	Salt Lake County	S+C	1,105,800
Cedar City Housing Authority	Cedar City	SHP	232,050

CONTINUUM OF CARE HOMELESS 1995 COMPETITION—Continued

[List of awards by State]

State listing (Grantee and subrecipient listing)	Location	Prog comp	Dollars awarded
Iron County Care and Share	Cedar City	SHP	276,498
Community Action Services	Provo	SHP	1,490,843
Volunteers of America	Salt Lake City	SHP	1,000,000
Housing Authority of Salt Lake City	Salt Lake City	SHP	227,871
Valley Mental Health, Inc	Salt Lake City	SHP	563,681
Vermont:			
Vermont State Housing Authority	Statewide	S+C	600,360
Howard Center for Human Services	Burlington	SHP	1,750,130
Virgin Islands: Shaky Acres, Incorporated	St. Thomas	SRO–7	372,120
Virginia:			
City of Roanoke	Roanoke	S+C	540,000
Fairfax County, Dept. of Housing	Fairfax County	S+C	442,560
Commonwealth of VA Division of Housing	Alexandria	SHP	621,373
Alexandria Community Services Board	Alexandria	SHP	1,854,851
Arlington County	Arlington County	SHP	586,473
Christian Relief Services, Inc	Fairfax County	SHP	517,482
Christian Relief Services, Inc	Fairfax County	SHP	1,222,653
Rappahanock Refuge	Fredericksburg	SHP	347,078
VHM, Inc	Newport News	SHP	292,000
Commonwealth of Virginia	Norfolk	SHP	384,527
Prince William County	Prince William Co.	SHP	2,241,786
The Daily Planet	Richmond	SHP	1,011,726
Commonwealth of VA—Division of Housing	Richmond	SHP	1,136,310
Community Alternatives Management	Virginia Beach	SHP	70,896
Community Alternatives Management	Virginia Beach	SHP	348,926
Community Alternatives Management	Virginia Beach	SHP	706,355
Washington:			
Bellingham Housing Authority	Bellingham area	S+C	1,305,600
Spokane County	Spokane County	S+C	860,880
Serenity House of Clallam County	Port Angeles	SHP	456,240
City of Seattle	Seattle	SHP	13,826,027
Snohomish County	Snohomish County	SHP	2,506,165
Pierce County	Tacoma	SHP	1,274,907
AIDS Housing of Washington	Seattle	SRO	1,126,080
Low Income Housing Institute	Seattle	SRO	2,346,000
Low Income Housing Institute	Olympia	SRO	519,480
West Virginia:			
Housing Aut. for the City of Parkersburg	Parkersburg area	S+C	195,600
Huntington West Virginia Housing Authority	Huntingdon area	S+C	292,500
City of Parkersburg	Parkersburg	SHP	88,200
Stop Abusive Family Environments	Welch	SHP	750,750
Wisconsin:			
Milwaukee County Mental Health Division	Milwaukee area	S+C	5,248,140
ADVOCAP, Inc	Fond du Lac	SHP	485,100
City of Madison	Madison	SHP	783,494
The Salvation Army, Inc	Milwaukee	SHP	161,448
Social Development Commission	Milwaukee	SHP	1,180,726
Milwaukee County Mental Health Division	Milwaukee	SHP	1,180,726
Southside Milwaukee Emergency Shelter	Milwaukee	SHP	2,931,606
Milwaukee Women's Center, Inc	Milwaukee	SHP	692,757
Wyoming: Community Action of Laramine County, Inc	Cheyenne	SHP	63,315

ALegend: HUD Programs (Prog): SHP=Supporting Housing S+C=Shelter Plus Care SRO=Section 8 Single Room Occupancy.

[FR Doc. 96–1787 Filed 1–30–96; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. FR–3700–N–05]

Section 8 Moderate Rehabilitation SRO Program Announcement of Funding Awards—Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1994 Section 8 Moderate Rehabilitation SRO Program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Maggie Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION. The purpose of the competition was to award grants for rental assistance on

behalf of homeless individuals in connection with the moderate rehabilitation of SRO dwellings. Resources to fund the cost of rehabilitating the dwellings must be from other sources. However, the rental assistance covers operating expenses of the SRO housing, including debt service for rehabilitation financing, provided the monthly rental assistance per unit does not exceed the moderate rehabilitation fair market rent for an SRO unit, as established by HUD.

The assistance made available in this announcement is authorized by Section 441 of the Stewart B. McKinney Homeless Assistance Act, as amended by the 1992 Act. The competition was announced in a Notice of Funding Availability (NOFA) published in the Federal Register on May 10, 1994 (59 FR 24255). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $134.4 million was awarded to 59 applicants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: January 25, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix A

FISCAL YEAR 1994—SECTION 8 MODERATE REHABILITATION SRO COMPETITION

[List of awards by State]

	Location	Number of units	Dollars awarded
Alaska: Anchorage Neighborhood Housing	Anchorage	75	3,636,000
Arkansas:			
Community Counseling Services	Hot Springs	10	230,400
Volunteers of America of Arkansas	Little Rock	50	1,854,000
Arizona:			
The Guidance Center, Inc	Flagstaff	6	257,040
The Community Housing Partners	Phoenix	50	1,824,000
California:			
Housing Authority of the City of Los Angeles	Los Angeles	8	492,480
Berkeley Housing Authority	Berkeley	34	1,974,720
Catholic Charities of San Jose	San Jose	16	1,171,200
Burbank Housing Development Corp	Santa Rosa	68	3,949,440
Mission Housing Development Corp	San Francisco	88	5,829,120
Mercy/Charities Housing—CA	San Francisco	85	5,630,400
Oakland Housing Authority	Oakland	92	5,343,360
Colorado:			
Mercy Housing of Colorado	Colorado Springs	31	1,037,880
Florida:			
Grand Avenue Economic Community Development Corp	Orlando	100	4,824,000
Liberty Center for the Homeless	Jacksonville	100	4,164,000
Illinois:			
Century Place Development Corp	Chicago	60	3,168,000
Lakefront Single Room Occupancy	Chicago	100	5,280,000
Kentucky:			
Salvation Army	Louisville	8	232,320
Massachusetts:			
Lynn Housing Authority	Lynn	32	1,954,560
Valley Programs, Inc	Florence	14	588,000
Hispanic Resources, Inc	Springfield	8	336,000
Greater Lawrence YWCA	Lawrence	10	463,200
The Salvation Army	Boston	8	488,640
Vietnam Veterans Workshop, Inc	Boston	80	4,886,400
Boston Aging Concerns	Boston	41	2,504,280
Maryland: Project PLASE, Inc	Baltimore	5	218,400
Michigan:			
Michigan Housing Coalition	Detroit	100	3,696,000
Muskegon Housing Commission	Muskegon	36	1,391,040
Detroit Central City Community	Detroit	70	2,587,200
Minnesota:			
Central Community Housing Trust	Minneapolis	17	679,320
Virginia Housing and Development Authority	Eveleth	12	318,240
Missouri: The Salvation Army	St. Louis	50	1,596,000
North Carolina: Guilford County Community Action Program	Greensboro	28	1,149,120
New Jersey:			
Hispanic Information Center of Passaic	Passaic	28	1,908,480
Lutheran Social Ministries of New Jersey	Trenton	80	3,936,000
YMCA of Jersey City	Jersey City	100	6,300,000
Genesis Housing Corporation	Woodbury	20	979,200
East Orange/Orange Community Development	East Orange	100	5,892,000
New York:			
Utica Community Action, Inc	Utica	80	2,793,600
City of New York	New York	100	6,984,000

FISCAL YEAR 1994—SECTION 8 MODERATE REHABILITATION SRO COMPETITION—Continued

[List of awards by State]

	Location	Number of units	Dollars awarded
City of New York	New York	100	6,984,000
Ohio:			
Community Action Commission of Fayette County	Fayette County	17	528,360
Race Street Tenant Organization	Cincinnati	20	609,600
Jefferson County Commuity Action Council	Steubenville	15	316,800
Middletown House of Hope, Inc	Middletown	11	337,920
Volunteers of America/Ohio River Valley, Inc	Cincinnati	50	1,524,000
Pennsylvania:			
Community Services for Human Growth, Inc	Phoenixville	25	1,224,000
Redevelopment Authority of Philadelphia	Philadelphia	24	1,175,040
YMCA of McKeesport	McKeesport	3	100,440
Puerto Rico: Municipality of San Juan	San Juan	100	3,456,000
Rhode Island: Community Counseling Center, Inc	Pawtucket	45	1,922,400
Texas:			
City of Fort Worth Housing Authority	Fort Worth	18	719,280
Housing Authority of the City of Houston	Houston	80	3,292,800
Housing Authority of the City of Houston	Houston	90	3,704,400
Utah: Housing Authority of the County of Salt Lake	Salt Lake City	18	576,720
Virginia: SRO Housing of Richmond	Richmond	10	435,600
Washington:			
Low Income Housing Institute	Olympia	30	1,170,000
Seattle Housing Authority	Seattle	76	3,483,840
Seattle Housing Authority	Seattle	7	320,880

[FR Doc. 96–1788 Filed 1–30–96; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. FR–3700–N–04]

Supportive Housing Program; Announcement of Funding Awards—Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1994 Supportive Housing Program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Maggie Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants for the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness and to enable them to live as independently as possible.

The assistance made available in this announcement is authorized by Title IV, Subtitle C, of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended. The competition was announced in a Notice of Funding Availability (NOFA) published in the Federal Register on May 10, 1994 (59 FR 24255). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $290.1 million was awarded for 272 grants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: January 25, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix A

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION

[List of awards by State]

State listing	Location	Dollars awarded
Alabama:		
Jefferson-Blount-Saint Clair Mental Health	Birmingham	$955,047
Birmingham Health Care for the Homeless	Birmingham	626,616
Birmingham Health Care for the Homeless	Birmingham	1,366,037
Alaska:		
Alaska Department of Health & Social Services	Various	1,045,000
Anchorage Community Mental Health Services, Inc	Anchorage	1,148,714
Municipality of Anchorage	Anchorage	2,500,000
The Arc of Anchorage (ARCA)	Anchorage	607,658

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION—Continued

[List of awards by State]

State listing	Location	Dollars awarded
Alaskan AIDS Assistance Association	Anchorage	724,302
Arizona:		
United Methodist Outreach Ministries, Inc	Phoenix	481,089
Sojourner Center	Phoenix	723,594
Pima County Jackson Employment Center	Tucson	1,992,783
Arizona Department of Economic Security	Phoenix	1,116,780
Arkansas: N. Arkansas Human Services System	Batesville	1,099,399
California:		
Mendocino County	Mendocino County	1,317,459
The Salvation Army, A California Corporation	Los Angeles & LA Co.	661,599
Los Angeles Youth Network	Los Angeles	201,630
City & County of San Francisco	San Francisco	1,281,510
St. Vincent de Paul Village, Inc.	San Diego	2,250,120
Innovative Housing for Community	Santa Rosa	361,605
A Community of Friends	Los Angeles	420,000
P.A.T.H.	Los Angeles	556,374
Skid Row Housing Trust	Los Angeles	813,647
Transitional Living and Community Support Inc.	Sacramento	890,973
New Directions, Inc.	Los Angeles	2,500,000
Chemical Awareness and Treatment Services, Inc.	San Francisco	999,518
Shelter Network of San Mateo County	San Mateo	807,318
Center for Independent Living, Inc.	Berkeley	1,986,246
Community Housing Partnership, Inc.	San Francisco	947,104
Upward Bound House	Santa Monica	1,436,789
New Economics for Women	Los Angeles	643,104
Esperanza Housing and Community Development Corp	Oceanside	420,000
North County Housing Foundation	Vista	960,890
City of Woodland	Woodland	481,871
Gramercy Group Homes	Los Angeles	1,033,463
Berkeley Oakland Support Services	Various	1,325,783
County of Los Angeles Department of Children	Los Angeles	1,914,521
Mary Lind Foundation	Los Angeles	1,324,367
The Salvation Army, A California Corporation	Los Angeles	731,796
Filipino-American Services Group, Inc.	Los Angeles County	598,953
South Bay Community Services	Chula Vista	752,877
Affordable Housing Associates	Berkeley	349,485
Peninsula Outreach Welcome House	Monterey County	465,410
Center for Human Rights and Constitutional Rights	Los Angeles County	1,098,039
Swords to Plowshares A Veterans Rights Organization	San Francisco	1,208,113
United Way of the Salinas Valley	Salinas	535,747
Walden House, Inc.	San Francisco	998,236
West Hollywood Homeless Organization	West Hollywood	330,254
Testimonal Community Love Center	Los Angeles County	539,394
Single Room Occupancy Housing Corporation	Los Angeles	473,012
Berkeley Oakland Support Services	Oakland	910,900
California Council for Veterans Affairs	Los Angeles	662,621
Colorado:		
Colorado Coalition for the Homeless	Denver	2,500,000
Cenikor Foundation, Inc.	Lakewood	364,668
Volunteers of America Colorado Branch, Inc.	Denver	494,641
Colorado Coalition for the Homeless	Denver	1,526,829
Colorado Homeless Families	Denver	393,602
Colorado Housing & Services	Denver	353,500
Boulder Shelter for the Homeless	Boulder	147,452
Connecticut:		
Christain Community Action, Inc.	New Haven	1,139,016
Hall-Brooke Foundation, Inc.	Westport	996,555
Delaware:		
Ministry of Caring, Inc.	Wilmington	856,844
Ministry of Carling, Inc.	Wilmington	1,262,869
District of Columbia:		
Consortium for Services to Homeless Families	Washington	769,459
Hannah House, Inc	Washington	874,963
So Others Might Eat—SOME, Inc	Washington	1,917,414
So Others Might Eat—SOME, Inc	Washington	2,500,000
Sasha Bruce Youthwork, Inc	Washington	753,480
Marshall Heights Community Development Organization	Washington	645,600
Florida:		
Mary and Martha House, Inc	Hillsborough County	293,115
The Salvation Army, A Georgia Corporation	Hollywood	641,523
Carrefour Housing Corporation	Miami	1,446,834

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION—Continued

[List of awards by State]

State listing	Location	Dollars awarded
The Spring of Tampa Bay, Inc	Tampa	854,139
The Tallahassee-Leon Shelter, Inc	Tallahassee	187,408
Volunteers of America of Miami, Inc	Dade County	2,101,017
Northwest Dade Center, Inc	Hialeah	2,000,000
State of Florida Department of Health	Tallahassee	293,528
YMCA of Tampa Bay	St. Petersburg	974,385
Volunteers of America, North & Central Florida	Various	1,262,267
YWCA of Jacksonville, Inc	Jacksonville	1,448,953
Catholic Charities Bureau, Inc	Jacksonville	184,097
Project Return, Inc	Tampa	580,700
Mental Health Care, Inc	Tampa	909,123
Metropolitan Dade County	S. Miami Heights	2,500,000
Georgia: Jewish Family Services, Inc	Atlanta	343,514
Hawaii: The House, Inc	Honolulu	2,099,999
Idaho:		
Sotheast Idaho Community Action Agency	Various	842,788
Bonner County Homeless Task Force	Sandpoint	445,925
Illinois:		
City of Urbana	Urbana	987,210
Chicago Coalition for the Homeless	Chicago	692,801
Matthew House	Chicago	301,210
Thresholds	Chicago	768,655
YMCA of Peoria	Peoria	1,058,400
Catholic Charities, Diocese of Joliet	Joliet	761,111
Deborah's Place	Chicago	393,977
Deborah's Place	Chicago	310,686
Cornerstone Services, Inc	Chicago	979,391
City of Chicago	Chicago	1,966,466
NW Memorial Hospital	Chicago	1,015,632
SW Women Working Together	Chicago	317,000
Indiana:		
Middle Way House, Inc	Bloomington	1,047,171
Center for the Homeless	South Bend	1,327,278
Eastside Community Investments	Indianapolis	847,638
Iowa: Youth and Shelter Services, Inc	Various	1,205,109
Kansas: The Salvation Army	Wichita	1,877,733
Kentucky: Daniel Pitino Shelter, Inc	Owensboro	984,761
Louisiana:		
Unity for the Homeless, Inc.	New Orleans	1,994,590
Opelousas housing Corporation	Opelousas	929,475
Maine: Department of Mental Health & Mental Retardation	Portland	1,497,373
Maryland:		
Advocates for the Homeless, Inc.	Frederick	149,799
City of Frederick	Frederick	256,528
The City of Baltimore	Baltimore	2,095,238
Howard County Government	Columbia	261,450
Silver Spring Community Vision	Silver Spring	1,157,805
Housing Opportunities Community of Montgomery County	Kensington	2,500,000
Associated Catholic Charities	Silver Spring	686,682
Housing Assistance Corporation	Baltimore	1,988,807
Massachusetts:		
Trustees of Health and Hospitals of the City of Boston	Boston	1,288,060
Lynne Shelter Association	Lynn	1,087,142
Middlesex North Resource Center, Inc.	Lowell	1,431,350
Mental Health Association of Greater Springfield	Springfield	346,355
Latino Health Institute	Boston	1,953,724
Victory Programs, Inc.	Boston	824,100
Advocates, Inc.	Framingham	376,296
Saint Francis House, Inc.	Various	1,898,834
Michigan:		
Dwelling Place of Grand Rapids, Inc.	Grand Rapids	422,247
Coalition On Temporary Shelter	Detroit	2,500,000
State of Michigan	State-wide	1,984,105
SOS Crisis Center	Detroit	1,366,663
Operation Get Down	Detroit	1,796,477
Minnesota:		
Freeport West, Inc.	Minneapolis	964,253
Minnesota Dept. of Economic Security	Various	2,499,919
Amherst Wilder Foundation	Various	1,932,602
Freeport West, Inc.	Various	1,806,807
Anoka County Community Action Programs	Centerville	179,288

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION—Continued

[List of awards by State]

State listing	Location	Dollars awarded
Mississippi: City of Natchez	Natchez	913,033
Missouri:		
City of Kansas City	Kansas City	1,909,815
The Salvation Army	St. Louis	496,233
The Kitchen, Inc.	Springfield	1,049,972
Montana: Northwest Montana Human Resources	Kalispell	388,500
Nebraska:		
Lincoln Action Program, Inc.	Lincoln	1,340,480
Catholic Social Services	Hastings	310,520
Nevada: City of Law Vegas	Las Vegas	2,298,515
New Hampshire:		
Harbor Homes, Inc.	Nashua	2,500,000
Marguerite's Place, Inc.	Nashua	653,071
New Jersey:		
Paterson Coalition for Housing, Inc	Clifton	1,211,963
Middlesex Interfaith Partners with the Homeless	Edison	2,000,000
Catholic Charities, Diocese of Metuchen	East Brunswick	1,396,372
Morris Shelter, Inc	Morris County	786,245
Morris Shelter, Inc	Morris County	798,550
New Mexico:		
Town of Taos	Taos	1,157,467
Catholic Social Services of Albuquerque	Albuquerque	1,085,366
New York:		
Cattaraugus Community Action, Inc	Salamanca	296,683
Project Return Foundation, Inc	Bronx	1,902,990
Health Industry Resources Enterprise, Inc	New York	2,211,421
Services for the Underserved	Brooklyn	2,358,770
Metropolitan New York Coordination Council	New York	2,129,855
Institute for Community Living, Inc	Various	1,112,836
2136 Crotona Parkway Housing Development Fund	Bronx	869,969
The Doe Fund, Inc	New York	1,566,122
BRC Human Services Corporation	New York	484,822
Project Hospitality, Inc	Staten Island	1,606,560
Standup Harlem, Incorporated	New York	1,546,759
Coalition for the Homeless	New York	1,113,915
The Bridge, Inc	New York	550,561
Rescue Mission Alliance of Syracuse	Syracuse	337,894
Urban Pathways, Inc	New York	1,492,358
Concern for Mental Health, Inc	Suffolk	875,737
YWCA of Western New York	Buffalo	175,000
NYS Department of Social Services	Various	2,000,000
H.E.L.P. Suffolk	Suffolk County	864,629
Manhattan Bowery Corporation	New York	1,683,378
Indra's Networks, Inc	Yonkers	1,121,162
F.E.G.S	New York City	1,532,456
Rochester Housing Authority	Rochester	487,733,
Geneva B. Scruggs Community Health Care Center	Buffalo	2,055,452
North Carolina:		
Wake County Mental Health	Raleigh	1,252,570
Interfaith Council for Social Services	Chapel Hill	1,783,161
Hope Haven, Inc	Charlotte	1,760,248
Housing for New Hope, Inc	Durham	1,228,821
North Dakota: Mercer County Women's Action & Resources Center	Various	14,500
Ohio:		
Cleveland/Cuyahoga County Office of Homeless	Cleveland	1,297,843
Warren Metropolitan Housing Authority	Lebanon	1,472,211
Continue Life, Inc	Cleveland	1,077,000
Community Housing Network, Inc	Columbus	2,100,000
Family Outreach Church United Services, Inc	Toledo	643,925
Cuyahoga Metropolitan Housing Authority	Cleveland	1,640,625
The Salvation Army	Cincinnati	84,595
Mental Health Services for Homeless Persons	Cleveland	622,830
Metropolitan Residential Services	Columbus	869,520
Family & Community Services of Catholic Charities	Kent	336,289
Oklahoma: The Salvation Army, A Georgia Corporation	Tulsa	1,174,342
Oregon:		
Central Oregon Community Action Agency Network	Redmond	1,124,898
Saint Vincent de Paul Society of Lane County	Eugene	871,911
Bradley-Angle House	Portland	209,192
Lane County	Eugene	398,627
Catholic Community Services of Portland	Portland	118,796

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION—Continued

[List of awards by State]

State listing	Location	Dollars awarded
Housing Authority of Portland	Portland	735,772
Housing Authority of Portland	Portland	860,696
Housing Authority of Portland	Portland	1,236,136
Pennsylvania:		
1260 Housing Development Corporation	Philadelphia	1,292,209
Philadelphians Concerned About Housing	Philadelphia	948,501
Project H.O.M.E.	Philadelphia	2,500,000
Trevor's Campaign for the Homeless	Philadelphia	999,681
Libertae, Inc.	Bensalem	400,000
Episcopal Community Services of the Diocese	Philadelphia	773,100
Impact Services Corporation	Philadelphia	1,963,368
Elwyn, Inc.	Various	2,339,348
The Salvation Army	Chester	493,549
Asociacion Puertorriquenos en Marcha, Inc.	Philadelphia	800,000
Valley Housing Developments Corporation	Various	522,585
Resources for Human Development	Philadelphia	1,671,674
The Salvation Army	Wilkes-Barre	758,747
City of Erie	Erie	1,501,312
Penn Foundation for Mental Health	Sellerville	150,000
Puerto Rico:		
Casa Protegida Julia de Burgos, Inc.	San Juan	1,506,768
Fundacion Modesto Gotay Pro-ninos	Trujillo Alto	706,041
Rhode Island: Providence Center for Counseling	Providence	771,531
South Carolina:		
Richland County	Richland County	1.050,000
Housing Authority of City of Charleston	Charleston	398,467
South Dakota: Yankton Homeless Shelter	Yankton	21,000
Tennessee:		
City of Memphis	Memphis	363,140
Council of Alcohol and Drug Abuse	Chattanooga	867,553
Texas:		
Housing Authority of the County of Hidalgo	Weslaco	2,500,000
The Presbyterian Night Shelter	Fort Worth	241,337
Institute of Cognitive Development, Inc.	San Angelo	577,417
Harris County	Houston	2,500,000
Phoenix House, Inc.	Dallas	1,962,293
Center for Battered Women	Austin	2,164,472
Helping Our Brothers Out	Austin	191,258
Phoenix House, Inc.	Dallas	1,962,293
City of San Antonio	San Antonio	2,500,000
Harris County	Harris County	2,500,000
Utah: Travelers Aid Society	Salt Lake	91,995
Vermont:		
Franklin/Grand Isle Mental Health Services, Inc.	St. Albans	538,281
Howard Center for Human Services	Burlington	680,877
Addison County Community Action Group	Middlebury	502,609
Champlain Valley Office of Economic Opportunity	Burlington	671,362
Virginia:		
The Daily Planet	Richmond	939,693
Fairfax County	Various	1,698,026
Commonwealth of Virginia	Richmond	156,397
Christian Relief Services of Virginia, Inc.	Alexandria	995,144
Commonwealth of Virginia	Richmond	1,498,125
Commonwealth of Virginia	Richmond	801,359
Commonwealth of Virginia	Richmond	184,510
Commonwealth of Virginia	Richmond	131,510
Washington:		
Low Income Housing Institute	Seattle	986,520
Snohomish County	Everett	661,644
Counterpoint Community Mental Health Services	Edmonds	651,212
Serenity House of Clallam County	Port Angeles	926,835
Seattle/King County Department of Public Health	Seattle	1,850,000
AIDS Housing of Washington	Seattle	1,423,534
St. Joseph Committee on Housing and Homelessness	Seattle	73,739
Community Psychiatric Clinic	Seattle	1,851,907
Family Counseling Service of Snohomish County	Arlington	143,374
West Virginia:		
Cabell-Huntington Coalition for the Homeless	Huntington	1,646,596
Wyoming:		
City of Rock Springs	Rock Springs	429,200

SUPPORTIVE HOUSING PROGRAM 1994 COMPETITION—Continued

[List of awards by State]

State listing	Location	Dollars awarded
Wisconsin:		
Dane County Department of Human Services	Madison	1,885,519
Transitional Housing, Inc.	Madison	991,228
Tellurian UCAN, Inc.	Madison	705,067

[FR Doc. 96–1789 Filed 1–30–96; 8:45 am]
BILLING CODE 4210–29–P–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3705–N–04]

Announcement of Funding Awards for Fiscal Year 94 for Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 94 to housing agencies under the Section 8 rental voucher and rental certificate programs. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the Rental Certificate and the Rental Voucher Programs are published at 24 CFR parts 882 and 887, respectively. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

The purpose of the rental voucher and rental certificate programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 94 awards announced in this notice were selected for funding in a competition announced in a Federal Register notice published on July 11, 1994 (59 FR 35426). Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $593,120,690 of budget authority for rental vouchers (16,197 units) was awarded to 396 recipients, and a total of $332,898,650 of budget authority for rental certificates (9,159 units) was awarded to 399 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown on Appendix A for rental vouchers and Appendix B for rental certificates.

Dated: January 25, 1996.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

Appendix A

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS

Recipients	Units	Amount
New England Area:		
Lowell Housing Authority P.O. Box 60, 350 Moody St., Lowell, MA 01853	25	$1,015,510
Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111	75	3,003,145
Lynn Housing Authority, 174 S. Common St., Lynn, MA 01905	25	884,330
Brockton Housing Authority, P.O. Box 340, 45 Goddard Rd., Brockton, MA 02403	50	1,850,080
Framingham Housing Authority, 1 John J. Brady Dr., Framingham, MA 01701	13	615,290
Somerville Housing Authority, 30 Memorial Rd., Somerville, MA 02145	25	1,290,390
Brookline Housing Authority, 90 Longwood Ave., Brookline, MA 02146	13	712,955
Springfield Housing Authority, P.O. Box 1609, 25 Saab Ct., Springfield, MA 01101	25	919,585
Winchendon Housing Authority, 108 Ipswich Dr., Winchendon, MA 01475	20	832,170
Plymouth Housing Authority, 69 Allerton St., Plymouth, MA 02360	25	1,016,500
Avon Housing Authority, One Fellowship Circle, Avon, MA 02322	25	1,239,280
Methuen Housing Authority, 24 Mystic St., Methuen, MA 01844	25	942,370
North Andover HA, P.O. Box 373, One Morkeski Meadows, North Andover, MA 01845	25	1,029,625
Chelmsford Housing Authority, 10 Wilson St., Chelmsford, MA 01824	13	483,970
Gardner Housing Authority, 116 Church St., Gardner, MA 01440	9	358,635
Tewksbury Housing Authority, Saunders Cir., Tewksbury, MA 01876	25	906,300
Millis HA, 310 Exchange St., Millis, MA 02054	25	941,630
Auburn Housing Authority, 200 Oxford Street, Auburn, MA 01501	25	816,485
Raynham Housing Authority, 75 Mill Street, Raynham, MA 02767	25	997,185
EOCD, 100 Cambridge St., Boston, MA 02202	109	4,853,520
HA of the city of Norwalk, P.O. Box 508, 24½ Monroe St., Norwalk, CT 06854	5	295,680
HA of the city of Waterbury, 70 Lakewood Road, Waterbury, CT 06704	25	1,080,720
HA of the city of Danbury, P.O. BOx 86, 2 Mill Ridge Rd., Danbury, CT 06813	15	760,890

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
HA of the city of Torrington, Torrington Towers, Torrington, CT 06790	15	557,225
City of Hartford Dept. of HSG, 942 Main Street, the Richardson Building, Hartford, CT 06103	39	1,637,265
HA of the town of Fairfield, Old Town Hall, 611 Old Post Rd., Fairfield, CT 06430	6	214,680
HA town of Canton, 21 Dowd Avenue, Canton, CT 06019	14	630,090
State of Connecticut Department of Social Services, 1049 Asylum Avenue, Hartford, CT 06105	117	5,669,195
HA of the city of Westbrook, P.O. Box 349, Westbrook, ME 04092	24	972,164
HA of the city of Old Town, P.O. Box 404, 100 South Main Street, Old Town, ME 04468	38	1,036,900
Maine State Housing Authority, P.O. Box 2669, 353 Water Street, Augusta, ME 04338	4	97,235
Nashua HA, 101 Major Dr., Nashua, NH 03060	42	1,597,755
Laconia HSG & Redev Auth, 25 Union Ave, Laconia, NH 03246	27	1,114,716
Burlington HA, 230 St. Paul Street, Burlington, VT 05401	9	290,115
Bennington HA, Willow Brook, 10 Willow Road, Bennington, VT 05201	8	244,710
Vermont State HA, P.O. Box 397, One Prospect St., Montpelier, VT 05601	24	709,355
HA of Town of South Kingstown, P.O. Box 6, Peace Dale, RI 02883	30	1,145,250
Town of Portsmouth HA, P.O. Box 118, 2368 East Main Road, Portsmouth, RI 02871	3	177,235
Town of Narragansett HA, P.O. Box 388, Town Hall, 25 Fifth Ave., Narragansett, RI 022882	40	1,527,000
Rhode Island Housing and Mortgage Finance Corp., 60 Eddy Street, Providence, RI 02903	14	534,465
New York/New Jersey Area:		
Syracuse Municipal HA, 516 Burt St., Syracuse, NY 13202	78	2,133,125
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202	30	794,850
Jamestown Housing Authority, Hotel Jamestown, 110 W. Third St., Jamestown, NY 14701	50	1,170,125
Plattsburgh Housing Authority, 19 Oak St., Plattsburgh, NY 12901	30	791,400
Rochester Housing Authority, 140 West Ave., Rochester, NY 14611	65	2,786,475
Ithaca Housing Authority, 800 S. Plain St., Ithaca, NY 14850	30	789,195
City of Hornell HA 87 E. Washington, St., Hornell, NY 14843	26	499,070
North Syracuse HA, Post Office Building, 201 S. Main St., Suite 205A, North Syracuse, NY 13212	50	1,222,475
City of Buffalo, City Hall, Buffalo, NY 14202	50	1,388,000
Town of Guilderland, Route 20, Guilderland, NY 12084	20	581,425
Town of Niskayuna, 1335, Balltown Rd., Niskayuna, NY 12309	10	281,960
City of Binghamton, City Hall, Governmental Plaza, Binghamton, NY 13901	22	508,100
Dept of Urban & Economic Dev, City Hall, 1 Kennedy Plaza, Utica, NY 13502	25	574,500
New York City HA, 250 Broadway, New York, NY 10007	1,036	49,539,770
Monticello Housing Authority, 76 Evergreen Dr., Monticello, NY 127012163	11	391,470
New York City DHPD, 100 Gold St., New York, NY 10038	459	22,025,940
Cith of White Plains Department of Planning, 255 Main St., White Plains, NY 10601	25	1,707,025
Town of Babylon Housing Assistance Agency, P.O. Box 2791, 281 Phelps Lane North Babylon, NY 11703	11	708,960
Kiryas Joel, Village Hsg. Auth., Municipal Building, 500 Forest Road Suite 202, Monroe, NY 10950	17	1,016,980
New York State HFA and DHCR, One Fordham Plaza, Bronx, NY 10458	277	14,141,905
HA of City of Jersey City, 400 U.S. Highway #1, Jersey City, NJ 007306	19	980,185
HA of the City of East Orange, 160 Halsted Street, East Orange, NJ 07018	14	716,800
HA of the Town of Boonton, 125 Chestnut St., Boonton, NJ 07005	35	1,753,955
HA of the City of Vineland, 191 Chestnut Avenue, Vineland, NJ 08360	39	1,553,910
HA of the Town of Dover, 215 East Blackwell Street, Dover, NJ 07801	20	1,064,775
HA of the TWP of Weehawken, 525 Greagory Ave., Weehawken, NJ 07087	50	1,890,015
Passaic County PHA Administration Bldg., 317 Pennsylvania Avenue, Paterson, NJ 07503	72	4,567,640
HA of township of Bloomfield, Town Hall, Municipal Plaza—Room 105, Bloomfield, NJ 07003	19	1,215,015
Burlington County PHA, 49 Rancocas Road, Mount Holly, NJ 08060	23	1,104,010
New Jersey DCA, CN 051, Trenton, NJ 08625	338	15,280,590
Mid-Atlantic Area:		
HA of Baltimore City, 417 East Fayette St., Baltimore, MD 21202	107	4,707,235
Anne Arundel County HA, 7885 Gordon Ct., Glen Burnie, MD 21061	50	2,315,950
State of Maryland Community Dev. Admin., People Resource CNT, 100 Community Place, Crownsville, MD 21032	35	1,711,655
HA of city of Charleston, P.O. Box 86, 911 Michael Ave., Charleston, WV 25321	26	606,810
HA of the city of Fairmont, 517 Fairmont Avenue, Fairmont, WV 26554	25	644,460
Kanawha County Housing and Redevelopment Auth., P.O. Box 3826, 231 Hale St., Charleston, WV 25338	25	703,200
Mingo County HA, P.O. Box 2239, 75 E Second St., Williamson, WV 25661	36	699,545
Newark Housing Authority, 313 E Main St., Newark, DE 19711	20	688,000
New Castle County HA, 800 French St., Willington, DE 19801	25	926,375
Philadelphia HA, 2012 Chestnut St., Philadelphia, PA 19103	29	1,590,720
Chester Housing Authority, 6 W Sixth St., Chester, PA, 19016	45	2,558,825
York Housing Authority, P.O. Box 1963, 31 S Broad St., York, PA, 17405	26	713,165
Dauphin County HA, 501 Mohn St., Steelton, PA 17113	46	1,445,550
Bucks County HA, 350 S Main St., Doylestown, PA 18901	150	6,520,825
Luzerne County HA, 250 First Ave., Kingston, PA 18704	25	653,100
Wayne County HA, 100 Court St., Honesdale, PA 18431	33	743,655
Lehigh County HA, 333 Ridge St., Emmaus, PA 18049	47	1,429,710
Lancaster County HA, P.O. Box 3480, 50 N Duke St., Lancaster, PA 17603	62	1,943,695
Snyder County HA, Courthouse, P.O. Box 333, Middleburg, PA 17842	21	384,110
Pittsburgh HA, 200 Ross Street, 9 Fl., Pittsburgh, PA 15219	64	1,542,095
Allegheny County HA, 341 Fourth Avenue, Pittsburgh, PA 15222	85	2,700,170
Butler County HA, 111 South Cliff St., P.O. Box 1917, Butler, PA 16003	16	470,370

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Westmoreland County HA, R.D.#6 Box 223, R.D.# 6 South Greengate Rd., Greensburg, PA 15601	41	1,240,660
Altoona Housing Authority, P.O. Box 671, 1100 Eleventh St., Altoona, PA 16603	25	630,785
Indiana County HA, 104 Philadelphia Street, Indiana, PA 15701	11	256,890
Clarion County HA, 8 West Main St., Clarion, PA 16214	19	369,530
Portsmouth Redev & HSG Auth., P.O. Box 1098, 339 High St., Portsmouth, VA 23705	13	459,440
Norfolk Redev. & HSG Auth., P.O. Box 968, Norfolk, VA 23501	20	783,790
Franklin Redev. & HSG Auth., P.O. Box 2669, Franklin, VA 23851	23	451,050
Waynesboro Redev & HSG Auth, 1700 New Hope Rd., Waynesboro, VA 22980	24	613,250
Dept of Housing, Municipal Center, Bldg 5, Princess Anne Executive Park, Virginia Beach, VA 23456	13	525,180
Virginia HSG Dev Auth, 601 S. Belvidere St., Richmond, VA 23220	151	4,861,660
HOC of Montgomery County, 10400 Detrick Ave., Kennsington, MD 20895	49	2,772,405
Rockville Housing Authority, 14 Moore Dr., Rockville, MD 20850	25	1,438,490
Prince George's County DHCD, 9400 Peppercorn Pl., Landover, MD 20785	48	3,130,515
Alexandria Redev & HSG Auth, 600 N Fairfax St., Alexandria, VA 22314	21	919,295
Fairfax Co. Redev & HSG Auth, 3700 Pender Drive Suite 300, Fairfax, VA 22030	32	1,637,935
Arlington County Department of Community Planning Hsng & Dev. 2100 N Clarendon Blvd. 709, Arlington, VA 22201	26	1,741,135
Virginia Housing Dev Auth, 601 S. Belvidere Street, Richmond, VA 23220	20	1,424,375
Southeast Area:		
HA of city of Albany, Georgia, P.O. Box 485, Albany, GA 31702	50	1,146,650
HA of the County of Dekalb, P.O. Box 1627, Decatur, GA 30031	58	2,712,080
Georgia HSG and Fin Auth, 60 Executive Parkway, So., Suite 250, Atlanta, GA 30329	267	6,870,515
Mobile Housing Board, P.O. Box 1345, 151 S Claiborne St., Mobile, AL 36633	11	321,145
HA of city of Montgomery, 1020 Bell St., Montgomery, AL 36197	21	773,420
Tarrant Alabama HA, 624 Bell Ave., Tarrant, AL 35217	25	655,875
HA of city of Decatur, Alabama, P.O. Box 878, Decatur, AL 35602	46	951,665
Columbiana Housing Authority, P.O. Box 49A, Columbiana, AL 35051	2	58,330
Tuscaloosa Housing Authority, P.O. Box 2281, 2808 10th Ave., Tuscaloosa, AL 35403	25	631,750
Northport Housing Authority, P.O. Drawer 349, Northport, AL 35476	22	642,510
HA of the city of Tallahassee, 904 Hickory Street, Tallahassee, AL 36078	18	265,915
South Central Alabama Reg HA, 100 Spring Rd., Troy, AL 36081	58	970,530
HA of Mobile County, P.O. Box 10307, Mobile, AL 36610	13	339,530
HA of the city of Charleston, 20 Franklin Street, Charleston, SC 29401	30	872,565
HA of city of Spartanburg, P.O. Box 4534, Sta. B, 764 North Church St., Spartanburg, SC 29305	31	745,940
South Carolina Reg HA No. L, P.O. Box 326, 404 Church Street, Laurens, SC 29360	30	753,780
HA of Myrtle Beach, P.O. Box 2468, 10th Avenue North, Myrtle Beach, SC 29578	41	1,235,360
Charleston County HRA, 2106 Mt. Pleasant St., Charleston, SC 29403	19	635,695
HA of the city of Charlotte, P.O. Box 36795, 1301 South Boulevard, Charlotte, NC 28236	33	852,815
HA of the city of Kinston, P.O. Box 697, 608 North Queen Street, Kinston, NC 28501	11	254,610
HA of the city of Asheville, P.O. Box 1898, 165 South French Broad Ave., Asheville, NC 28802	25	653,170
HA of city of Winston-Salem, 901 Cleveland Ave., Winston-Salem, NC 27101	50	1,352,320
HA of the city of Durham, P.O. Box 1726, 330 East Main Street, Durham, NC 27702	25	695,095
HA of the town of Laurinburg, P.O. Box 1437, 300 Woodlawn Street, Laurinburg, NC 28353	14	295,250
HA of the County of Wake, P.O. Box 368, 100 Shannon St., Zebulon, NC 27597	25	697,645
Greenville HA, P.O. Box 1426, 1103 Broad Street, Greenville, NC 27835	25	587,375
Statesville HA, P.O. Box 187, 433 South Meeting Street, Statesville, NC 28677	10	224,450
Rowan County HA, 121 West Council St., Ste 101, Salisbury, NC 28144	25	695,875
Chatham County HA, P.O. Box 691, 126 Hillsboro Street, Pittsboro, NC 27312	16	450,295
Economic Improvement Council, P.O. Box 549, Highway 32 North, Edenton, NC 27932	19	473,195
Western Piedmont Council of Governments, 317 First Avenue, N.W., Hickory, NC 28601	26	704,610
Isothermal Planning & Development Commission, P.O. Box 841, 101 West Court Street, Rutherfordton, NC 28139	30	636,940
Biloxi Housing Authority, P.O. Box 447, Biloxi, MS 39533	13	328,415
Tennessee Valley Reg HA, P.O. Box 1329, Corinth, MS 38834	50	708,970
Mississippi Regional HA No. IV, P.O. Box 1051, Columbus, MS 39703	41	862,655
Mississippi Regional HA No. VII, P.O. Box 430, McComb, MS 39648	24	598,410
Mississippi Regional HA No. VI, P.O. Drawer 8746, Jackson, MS 39284	12	487,435
Long Beach Housing Authority, P.O. Drawer 418, Long Beach, MS 39560	13	383,065
HA of the City of Tampa, P.O. Box 4766, 1514 Union Street, Tampa, FL 33607	54	1,718,280
Dade Co., Special Hsg. Programs, 2153 Coral Way, Miami, FL 33145	47	2,319,790
HA of City of Ft. Lauderdale, 437 SW 4th Ave., Ft. Lauderdale, FL 33315	25	978,875
HA of the City of Lakeland, P.O. Box 1009, 430 S. Hartsell Avenue, Lakeland, FL 33802	38	1,201,180
HA of City of Miami Beach, 200 Alton Road, Miami Beach, FL 33139	88	4,822,970
HA of Brevard County, P.O. Box 540338, 615 Kurek Court, Merritt Island, FL 32953	5	163,700
HA of City of Pompano Beach, P.O. Box 2006, 321 West Atlantic Blvd., Pompano Beach, FL 33061	18	797,940
HA of the County of Flagler, P.O. Box 188, 414 S. Bacher Street, Bunnell, FL 32110	25	1,062,925
Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010	117	5,047,150
Tallahassee HA, 2940 Grady Road, Tallahassee, FL 32312	25	637,125
City of Pensacola, P.O. Box 12910, 180 Governmental Center, Pensacola, FL 32521	38	1,132,420
Orange County Hsg Assistance, P.O. Box 1393, 525 E. South St., Orlando, FL 32801	25	763,175
Volusia Co. Comm. Dev Section 8, 123 W. Indiana Ave., Deland, FL 32720	25	848,715
Lee County Housing Authority, 14170 Warner Circle, NW., North Fort Myers, FL 33903	29	839,695

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Winter Haven HA, 2670 Avenue C, S.W., Winter Haven, FL 33880	25	585,000
Citrus County Housing Services, 1300 S. Lecanto Hwy., Lecanto, FL 32661	25	456,315
HA of Frankfort, 590 Walter Todd Dr., Frankfort, KY 40601	25	665,320
HA of Jefferson County, 801 Vine Street, Louisville, KY 40204	17	457,790
Lexington-Fayette Urban Co. HA, 635 Ballard St., Lexington, KY 40508	32	994,790
Cumberland Valley Reg HA, P.O. Box 806, Barbourville, KY 40906	25	542,720
HA of Grayson/Carter Co. (AFHA), 1448 Diedrich Blvd., Russell, KY 41169	25	513,735
Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	81	2,012,175
Knoxville's Comm Dev Corp, P.O. Box 3550, 901 Broadway NE, Knoxville, TN 37927	48	1,124,160
Chattanooga HA, P.O. Box 1486, 505 W. M.L. King Blvd., Chattanooga, TN 37401	50	1,457,000
Town of Crossville HA, P.O. Box 425, 202 Irwin Ave., Crossville, TN 38557	50	736,900
Memphis Housing Authority, P.O. Box 3664, 700 Adams Avenue, Memphis, TN 38103	50	1,748,400
Metropolitan Dev & HA, P.O. Box 846, 701 South Sixth Street, Nashville, TN 37202	42	1,633,800
Jackson Housing Authority, P.O. Box 3188, 175 Preston Street, Jackson, TN 38301	25	639,910
Municipality of San Juan, P.O. Box 4355, San Juan, PR 00910	22	501,930
Municipality of Moca, P.O. Box 163, Moca, PR 00673	3	65,250
Municipality of Trujillo Alto, P.O. Box 1869, Trujillo Alto, PR 00977	25	636,000
Municipality of Carolina, P.O. Box 8, Carolina, PR 00984	23	558,095
Municipality of Guaynabo, P.O. Box 126, Guaynabo, PR 00657	11	259,325
Municipality of Cayey, P.O. Box 1365, Cayey, PR 00736	9	181,530
Municipality of Juana Diaz, P.O. Box J, Juana Diaz, PR 00795	8	188,600
Municipality of Vega Alta, P.O. Box 292, Vega Alta, PR 00692	8	188,600
Municipality of Aguada, P.O. Box 517, Aguada, PR 00602	3	59,250
Puerto Rico Dept of Housing, P.O. Box 21365, 606 Barbosa Avenue, Rio Piedras, PR 00928	50	1,140,750
Virgin Island HA, P.O. Box 7668, Charlotte Amalie, VI 00801	16	654,480
Midwest Area:		
Peoria Housing Authority, 814 W. Brotherson St., Peoria, IL 61605	23	669,540
Springfield HA, 200 N. Eleventh St., Springfield, IL 62703	69	2,560,875
GMAHA of Rock Island County, 325 Second Street, Silvis, IL 61282	85	2,524,335
Rockford Housing Authority, 330 Fifteenth Avenue, Rockford, IL 61104	40	984,955
Cook County HA, 59 E. Van Buren St., Chicago, IL 60605	366	16,529,730
Williamson County HA, P.O. Box 045, 300 Hickory St., Carterville, IL 62918	4	109,840
Marion County HA, 719 E. Howard Street, Centralia, IL 62801	50	1,045,090
Franklin County HA, 302 E Elm St., West Frankfort, IL 62896	65	1,124,925
Aurora Housing Authority, 1630 Plum Street, Aurora, IL 60506	34	1,596,270
Elgin Housing Authority, 1845 Grandstand Pl., Elgin, IL 60123	60	1,944,680
Dupage County HA, 421 N. County Farm Road, Wheaton, IL 60187	88	3,476,495
McHenry County HA, P.O. Box 683, 1108 N. Seminary, Woodstock, IL 60098	42	1,854,800
Kendall County HA, 123 West, Hydraulic Ave., Yorkville, IL 60560	22	806,570
Cincinnati Metropolitan HA, 16 W. Central Parkway, Cincinnati, OH 45210	73	2,296,505
Dayton Metropolitan HA, 400 Wayne Avenue, Dayton, OH 45410	25	889,850
Adams Metropolitan HA, 900 Cemetery Street, Manchester, OH 45144	12	258,255
Hamilton County PHA, 138 E Court St., Cincinnati, OH 45202	50	1,401,690
Youngstown Metropolitan HA, 131 West Boardman Street, Youngstown, OH 44503	100	2,164,100
Lucas Metropolitan HA, P.O. Box 477, 435 Nebraska Avenue, Toledo, OH 43697	10	275,000
Akron Metropolitan HA, 180 West Cedar Street, Akron, OH 44307	50	1,732,300
Jefferson Metropolitan HA, 815 North Sixth Street, Steubenville, OH 43952	50	1,021,325
Medina Metropolitan HA, 860 Walter Road, Medina, OH 44256	5	195,975
Erie Metropolitan HA, 322 Warren Street, Sandusky, OH 44870	59	1,672,835
Portage Metropolitan HA, 223 West Main, Ravenna, OH 44266	25	821,650
Tuscarawas Metropolitan HA, 125 East High Avenue, New Philadelphia, OH 44663	2	29,970
Hancock Metropolitan HA, 306 Municipal Bldg., c/o Hancock Reg Plan'g Comm, Findlay, OH 45840	30	754,020
Bowling Green Housing Agency, Bowling Green, OH 43256	30	938,775
Columbus Metropolitan HA, 960 East 5th Avenue, Columbus, OH 43201	93	2,889,985
Zanesville Metropolitan HA, 2746 Maple Avenue, Zanesville, OH 43701	20	474,960
Springfield Metropolitan HA, 437 East John Street, Springfield, OH 45505	14	586,740
Meigs Housing Authority, 237 Race Street, Middleport, OH 45760	20	382,660
Hardin Metropolitan HA, 298 E. Center Street, Suite B, Marion, OH 43302	3	51,690
Monroe Metropolitan HA, P.O. Box 744, 1100 Maple Court, Cambridge, OH 43725	8	106,170
Noble Metropolitan HA, P.O. Box 744, 1100 Maple Court, Cambridge, OH 43725	4	43,275
Potiac Housing Commission, 132 Franklin Blvd, Pontiac, MI 48053	25	773,365
Saginaw Housing Commission, 2811 Davenport Ave., Saginaw, MI 48602	38	974,175
Redford Township HSG Comm, 12121 Hemingway, Redford Township, MI 48239	25	923,855
Dearborn Heights HSG Comm, 26155 Richardson St., Dearborn Heights, MI 48127	50	1,694,050
Michigan State HSG Dev Auth, P.O. Box 30044, 401 S. Washington Sq, 4th Fl., Lansing, MI 48909	209	6,894,345
Jackson Housing Commission, 301 Steward Ave., Jackson, MI 49201	25	720,730
Boyne City HSG Commission, 829 S Park, Boyne City, MI 49712	25	704,730
Iron County HSG Commission, 210 N Third St., Crystal Falls, MI 49920	10	182,950
Kent County HSG Commission, 4300 Cascade Road SE, Grand Rapids, MI 49546	25	593,140
Michigan State HSG Dev Auth, P.O. Box 30044, Plaza One, 4th Fl., 401 S. Washington Sq, Lansing, MI 48909	120	3,549,595
HA of the City of Hammond, 7329 Columbia Circle West, Hammond, IN 46324	18	612,285

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Indianapolis HA, 410 North Meridian St., Indianapolis, IN 46204	16	642,355
Indiana Dept. of Family & Social Services Admin Div of Family & Children, P.O. Box #7083, 402 West Washington Street, Indianapolis, IN 46207	221	6,257,870
Racine County HA, 837 Main St., Racine, WI 53403	40	1,127,850
Eau Claire County HA, 731 Oxford Ave., Eau Claire, WI 54703	25	460,400
Eau Claire HA, 203 S Farwell St., Eau Claire, WI 54701	25	394,475
Appleton Housing Authority, 525 N Oneida St., Appleton, WI 54911	40	839,900
Janesville Community Dev Auth, P.O. Box 5005, 18 N Jackson St. Janesville, WI 54547	20	407,300
Wisconsin HSG & Econ Dev Auth, P.O. Box 1728, Madison, WI 53701	85	2,524,850
PHA of the city of Saint Paul, 480 Cedar Street, Suite 600, St. Paul, MN 55101	17	766,495
Minneapolis PHA, 1001 Washington Ave., Minneapolis, MN 55401	53	2,296,775
HSG & Redev Auth of Duluth, P.O. Box 16900, 222 E Second Street, Duluth, MN 55816	13	325,445
HSG & Redev City of Brainerd, 304 East River Road, Brainerd, MN 56401	13	276,235
HSG & Redev Auth of Red Wing, 433 West Fourth St., Red Wing, MN 55066	13	234,045
HRA of Columbia Heights, 590 Fortieth Ave. NE, Columbia Heights, MN 55421	25	807,400
HRA of Dakota County, 2496 145th Street W., Rosemount, MN 55068	17	611,120
HRA for the City of Bloomington, 2215 W Old Shakopee Road, Bloomington, MN 55431	10	292,825
Koochiching County HRA, P.O. Box 466, Northome, MN 56661	13	278,020
Metropolitan Council HRA, 230 East 5th Street Mears Park Centre, St. Paul, MN 55101	53	2,108,660
HRA of Cass County, P.O. Box 33, Backus, MN 56435	13	216,155
South Central MN Multi Co HRA, 410 Jackson St, P.O.	15	392,325
HRA of Owatonna, 540 W. Hills Circle, Administration Bldg., Owattonna, MN 55060	10	181,575
Southwest Area:		
Taos County HA, P.O. Box 4239, Taos, NM 87571	25	633,795
Region II HA (Los Alamos), P.O. Box 1106, Las Vegas, NM 87701	36	1,503,895
HA of El Paso City, P.O. Box 9895, 1600 Montana Ave., El Paso, TX 79902	23	879,300
HA of City of Dallas, P.O. Box 191485, 3939 N. Hampton Road, Dallas TX 75212	82	3,261,575
Housing Authority of WACO, P.O. Box 978, 800 Clay, Waco, TX 775456	42	1,121,520
Ms. Leigh, P.O. Box 1051, Mount Pleasant, TX 7456	33	698,985
Housing Authority of Monahans, 209 S. Dwight St., Monahans, TX 79756	44	952,570
HA of the city of Arlington, P.O. Box 231, 401 W. Sanford, #2600, Arlington, TX 76011	42	1,527,795
Housing Authority of Marshall, P.O. Box 609, 406 Poplar, Marshall, TX 75671	30	818,330
Wichita Falls HSG Assist Prog, Box 1431, Wichita Falls, TX 76307	45	1,158,025
Midland County HA, 218 W. Illinois, Rm. 108, Midland TX 79701	50	1,408,775
Texas Dept of Comm Affairs, P.O. Box 13166, 8317 Cross Park Dr., Austin, TX 78711	10	421,785
HA of the City of Houston, P.O. Box 2971, 2640 Fountainview, Houston, TX 77252	105	5,016,105
HA of the City of Galveston, 920 53rd Street, Galveston, TX 77551	25	1,275,825
HA of the city of Beaumont, P.O. Box 1,312, 4925 Concord, Beaumont, TX 77704	24	746,780
HA of the city of Palacios, P.O. Box 899, 45 Seashell, Palacios, TX 77465	20	578,880
HA of city of North Little Rock, Box 516, 2201 Division, North Little Rock, AR 72115	35	1,015,725
HA of city of Fort Smith, 2100 North 31st St., Ft. Smith, AR 72904	27	604,665
HA of the city of Paragould, P.O. Box 137, 612 East Canal, Paragould, AR 72450	25	321,850
Jonesboro Urban Renewal & HA, 600 Alpine Street, Jonesboro, AR 72401	24	593,720
Walnut Ridge PHA, Box 225, 109 W. Walnut St., Walnut Ridge, AR 72476	10	135,720
Greene County HA, P.O. Box 137, 612 East Canal, Paragould, AR 72451	26	349,680
HA of Jefferson Parish, 1718 Betty St., Marrero, LA 70072	92	3,614,160
HA of Natchitoches Parish, P.O. Box 255, 624 Second St., Natchitoches, LA 71458	11	263,700
East Carroll Parish Police Jury, 400 First Street, Lake Providence, LA 71254	16	225,970
W. Baton Rouge Parish Police Jury, P.O. Box 757, Port Allen, LA 70767	25	766,585
Webster Police Jury, P.O. Box 876, 208 Gleason St., Minden, LA 71058	40	1,088,875
HA of Morgan City, P.O. Box 2393, Morgan City, LA 70381	23	419,795
HA of LaFourche Pr. P.O. Drawer 499, 750 Triple Oaks St., Raceland, LA 70394	50	1,099,055
Town of White Castle, P.O. Box 100, 32535 Bowie Street, White Castle, LA 70788	14	278,930
HA, of the City of Stillwater, 807 S. Lowry St., Stillwater, OK 74074	7	178,720
Oklahoma Hsg. Fin. Agency, P.O. Box 26720, 1140 NW 63rd St., Oklahoma City, OK 73126	71	2,255,065
Laredo Housing Authority, 2000 San Francisco Ave., Laredo, TX 78040	35	988,100
Robstown Housing Authority, 625 W. Avenue F, Robstown, TX 78380	20	650,650
HA of the City of Sinton, P.O. Box 1302, 900 Harvill, Sinton, TX 78387	15	499,270
Marble Falls HA, P.O. Box 668, 1110 Broadway, Marble Falls, TX 78654	19	432,180
Georgetown Housing Authority, P.O. Box 60, 1702 Hart St., Georgetown, TX 78627	19	710,175
Schertz Housing Authority, 204 Schertz Parkway, Schertz, TX 78154	12	430,380
Bexar Co. HA, 1405 N. Main, Suite 240, San Antonio, TX 78212	30	1,080,650
Travis Co. Housing Authority, P.O. Box 1748, Austin, TX 78767	19	747,145
Hidalgo Co. HA, 1800 N. Texas Blvd., Weslaco, TX 78596	31	739,660
Alamo Area Council of Govts., 118 Broadway, Suite 400, San Antonio, TX 78205	9	224,375
TX Dept. of Comm. & Hsg. Affairs, P.O. Box 13941, 811 Barton Springs Rd., Ste. 500, Austin, TX 78711	14	387,480
Cherokee Nation, P.O. Box 1007, Tahlequah, OK 74464	45	1,336,400
Great Plains Area:		
Ottumwa Housing Authority, 102 West Finley Ave., Ottumwa, IA 52501	18	329,220
City of Sioux HA, P.O. Box 447, City Hall, Sioux City, IA 51102	25	471,050
Iowa City HA, 410 E. Washington St., Iowa City, IA 52240	9	360,475
Waterloo Housing Auth., P.O. Box 1587, 215 E. 4th St., Waterloo, IA 50704	41	961,655

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Fort Dodge Municipal HA, 700 S. 17th Street, Fort Dodge, IA 50501	4	60,160
Southern Iowa Reg. HA, 219 N. Pine St., Creston, IA 50801	14	528,050
Region XII Reg. HA, P.O. Box 663, 108 W. 6th, Carroll, IA 51401	14	238,040
Northwest Iowa Reg. HA, P.O. Box 6207, 2311 W. 18th St., Spencer, IA 51301	31	487,955
Upper Exploreland Reg HA, 134 West Greene St., Postville, IA 52162	6	120,310
Iowa Northland Reg HA, 213 E. 4th Street, Waterloo, IA 50703	20	473,250
Wichita PHA, 307 Riverview, Wichita, KS 67203	24	786,500
Lawrence Housing Authority, 1600 Haskell Ave., Lawrence, KS 66044	34	1,214,840
Ford County, SW Area Agency, P.O. Box 1636, Dodge City, KS 67801	6	99,540
Ellis County PHA, c/o Jim Koenigsman, P.O. Box 1016, 2703 Hall, Bldg B, Ste 10, Hays, KS 67601	36	554,625
HA of Kansas City, 299 Paseo, Kansas City, MO 64106	27	927,295
Chillicothe HA, 320 Park Ln., Chillicothe, MO 64601	47	875,605
Missouri HSG DEV Commission, 301 West Armour, Suite 600, Kansas City, MO 64111	50	1,751,520
Omaha Housing Authority, 540 S 27th St., Omaha, NE 68105	17	496,430
Lincoln Housing Authority, P.O. Box 5327, 5700 R St., Lincoln, NE 68505	33	744,975
Bellevue Housing Authority, 8214 Armstrong Cir, Omaha, NE 68147	3	111,835
NE Nebraska Joint HA, Simpco, P.O. Box 447, Sioux City, IA 51102	25	550,595
Goldenrod Joint HA, P.O. Box 280, Wisner, NE 68791	13	251,135
Saint Louis HA, 4100 Lindell Blvd., St. Louis, MO 63108	19	446,720
HA of the City of Jefferson, P.O. Box 1029, Jefferson City, MO 65102	15	392,350
Lincoln County PHA, P.O. Box 470, Bowling Green, MO 63334	68	2,366,890
Franklin County PHA, P.O. Box 920, Hillsboro, MO 63050	34	1,065,145
Phelps County PHA, 101 W. 10th Street, Rolla, MO 65401	22	483,005
Rocky Mountains Area:		
HA of City and County of Denver, P.O. Box 4305, 1100 W. Colfax Ave., Denver, CO 80204	10	355,455
HA of the City of Pueblo, 1414 N. Santa Fe Ave., Pueblo, CO 81003	33	826,470
HA of the City of Boulder, 3120 Broadway Ave., Boulder, CO 80304	10	277,050
Fort Collins HA, 1715 W. Mountain Ave., Ft. Collins, CO 80521	12	488,640
Longmont Housing Authority, 900 Coffman, Suite C, Longmont, CO 80501	11	482,900
HA of County of Montezuma, 37 No. Madison, Cortez, CO 81321	19	510,055
CO Dept. of Human Services, 4131 S. Julian Way, Denver, CO 80236	20	343,820
CO Division of Housing, 1313 Sherman St., #323, Denver, CO 80203	65	1,937,390
HA of Billings, 2415 First Ave. N., Billings, MT 59101	25	516,370
Great Falls HA, 1500 Sixth Ave. S., Great Falls, MT 59405	14	275,940
Barnes County HA, Skyline Villa, 120 NW. 12th St., Barnes County, ND 58072	25	339,245
Sioux Falls HSG & Redev Comm, 804 S. Minnesota, Sioux Falls, SD 57104	26	581,670
Pennington County HSG & Redevelopment Commission, 1805 W. Fulton St., Rapid City, SD 57702	25	583,250
Brookings HSG & Redev Comm, Box 270—City Hall, 1310 Main Ave. South, Brookings, SD 57006	46	936,220
HA of the County of Salt Lake, 1962 S. 200 E., Salt Lake City, UT 84115	25	500,250
HA of Salt Lake City, 1776 SW Temple #204, Salt Lake City, UT 84115	23	883,140
Davis County HA, P.O. Box 328, 352 S. 200 W. #1, Farmington, UT 84025	25	615,040
HA of Utah County, 240 E. Center, Promo, UT 84606	25	668,370
Rock Springs HA, 212 D Street, Rock Springs, WY 82901	25	624,955
Pacific Hawaii Area:		
Dept of Human Concerns—Maui County, 200 S. High St. Wailuku, HI 96793	15	1,122,140
Hawaii Housing Authority, P.O. Box 17907, 1002 N. School Street, Honolulu, HI 96817	61	3,868,860
CDC County of Los Angeles, 2525 Corporate Place, Monterey Park CA 91754	513	24,600,570
Kern County HA, 525 Roberts LN, Bakersfield, CA 93308	65	1,712,895
HA of County of San Bernardino, 1053 N ''D'' St., San Bernardino, CA 92410	50	2,009,685
Santa Barbara County PHA, P.O. Box 397, 815 W Ocean Ave., Lompoc, CA 93438	26	1,172,600
Riverside County PHA, 5555 Arlington Ave., Riverside, CA 95204	68	3,037,545
San Luis Obispo City PHA, 487 Leff St., San Luis Obispo, CA 93401	21	879,360
Long Beach HA, 333 W Ocean Blvd., Long Beach, CA 90802	170	7,635,300
Santa Barbara City PHA, 808 Laguna St., Santa Barbara, CA 93101	46	2,071,930
Santa Ana Housing Authority, 500 W Santa Ana Blvd., Santa Anna, CA 92707	34	2,216,375
Orange County HA, 2043 N Broadway, Santa Ana, CA 92706	95	4,683,550
San Diego County HA, 3989 Riffin Road, San Diego CA 92123	93	4,235,945
Santa Monica HA, 612 Colorado Ave., Santa Monica, CA 90401	28	1,062,240
Glendale Housing Authority, 520 E Broadway Ave., Ste, 302, Glendale, CA 91205	4	279,570
Norwalk Housing Authority, 11689 the Plaza, Norwalk, CA 90650	11	505,870
Pomona Housing Authority, P.O. Box 660, Pomona CA 91769	21	1,013,225
HA city of Encinitas, 505 South Vulcan Avenue, Encinitas, CA 92024	50	1,904,000
Phoenix Neighborhood Improvement & HSG Dept, 830 E. Jefferson St., Phoenix, AZ 95034	50	2,051,000
Pinal County Housing Dept, RR 1, P.O. Box 191, 970 N. Eleven Mile Corner Rd., Casa Grande, AZ 85222	7	229,725
Navajo Nation HA, P.O. Box 4980, Window Rock, AZ 86515	17	499,690
Tempe Housing Authority, P.O. Box 5002, 132 E. 6th St. 200, Tempe AZ 95280	50	1,421,750
Pimal County HA, P.O. Box 27210, 1501 N. Oracle Rd. 103, Tucson, AZ 85726	14	396,540
HA of the county of Butte, 580 Vallombrosa Ave., Chico, CA 95926	50	1,592,475
HA of the county of Yolo, P.O. Box 1867, 1224 Lemen Avenue, Woodland, CA 95695	50	1,990,950
HA of the county of Shasta, 1670 Market St., Suite 300, Redding, CA 96001	11	298,590
HA of the city of Redding, 760 Parkview Ave., Redding, CA 96001	14	324,320
El Dorado County PHA, 937 Spring Street, Placerville, CA 95667	16	613,740

SECTION 8 RENTAL VOUCHER PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
State Department of Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252	19	505,615
HA of the city and county of San Francisco, 440 Turk St., San Francisco, CA 94102	139	8,929,135
HA of the city of Oakland, 1619 Harrison St., Oakland, CA 94612	40	2,132,770
HA city and county of Fresno, P.O. Box 11985, 1833 "E" Street, Fresno, CA 93776	29	1,396,490
San Mateo County HA, 456 Peninsula Ave., San Mateo, CA 94401	82	4,774,040
Merced County HA, 405 U St., Merced, CA 95340	25	913,645
HA city and county of Fresno, P.O. Box 11985, 1833 "E" Street, Fresno, CA 93776	28	991,970
HA of the county of Tulare, P.O. Box 791, 5140 West Cypress Avenue, Visalia, CA 93279	28	996,940
HA of the county of Monterey, 123 Rico Street, Salinas, CA 93907	31	1,636,935
HA of the county of Marin, P.O. Box 4282, 30 N. San Pedro Road, San Rafael, CA 94913	30	1,797,840
Vallejo City HA, P.O. Box 1432, Vallejo, CA 94590	25	1,114,055
San Jose Housing Authority, 505 W. Julian Street, San Jose, CA 95110	25	1,726,145
HA of the Co. of Santa Clara, 505 West Julian Street, San Jose, CA 95110	25	1,726,145
Alameda City HA, 701 Atlantic Ave., Alameda, CA 94501	26	1,331,170
Alameda County HA, 22941 Atherton Street, Hayward, CA 94544	25	1,229,800
Madera Housing Authority, 800 E Yosemite Ave., Madera, CA 93638	11	400,020
Santa Cruz County HA, 2160 41st Ave., Capitola, CA 95062	49	3,136,605
Napa City Housing Authority, P.O. Box 660, 1115 Seminary St., Napa, CA 94559	25	1,194,650
City of Santa Rosa HA, P.O. Box 1806, Santa Rosa, CA 95402	25	1,233,515
HA of County of Santa Cruz, 2160 41st Avenue, Santa Cruz, CA 95010	50	983,715
HA of the City of Reno, 1525 East Ninth Street, Reno, NV 89512	49	1,730,100
Northwest/Alaska Area:		
Alaska Housing Finance Corp, P.O. Box 230329, 624 W. International Rd., Anchorage, AK 99523	6	274,115
SW Idaho Cooperative HA, 1108 West Finch Drive, Nampa, ID 83651	14	394,440
Linn-Benton HA, 1250 SE Queen Ave., Albany, or 97321	25	620,640
HA of Malheur County, 959 Fortner St., Ontario, OR 97914	34	603,600
NW Oregon HSG Association, 1508 Exchange St., Astoria, OR 97103	34	931,380
HA City of Longview, 1207 Commerce Ave., Longview, WA 98632	21	615,480
HA of the city of Wenatchee, 236 N. Mission St., Wenatchee, WA 98801	20	385,380
Ferry County Joint HA, Post Office Box 533, Republic, WA 99166	28	367,200
Total Units	16,197	$593,120,690

Appendix B

SECTION 8 RENTAL CERTIFICATE PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS

Recipients	Units	Amount
New England Area:		
Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111	42	$1,784,050
Medford Housing Authority, 121 Riverside Ave., Medford, MA 02155	25	1,191,445
Framingham Housing Authority, 1 John J. Brady Dr., Framingham, MA 01701	12	471,260
Brookline Housing Authority, 90 Longwood Ave., Brookline, MA 02146	12	515,880
Springfield Housing Authority, P.O. Box 1609, 25 Saab Ct., Springfield, MA 01101	25	875,665
Braintree Housing Authority, 25 Roosevelt St., Braintree, MA 02184	25	1,220,340
Gardner Housing Authority, 116 Church St., Gardner, MA 01440	25	672,360
Cohasset Housing Authority, 60 Elm St., Cohasset, MA 02025	25	1,026,780
EOCD 100 Cambridge St., Boston, MA 02202	152	6,193,470
HA of the city of Willimantic, P.O. Box 606, 49 West Ave., Willimantic, CT 06226	10	428,475
HA of the city of Meriden, P.O. Box 911, 22 Church St., Meriden, CT 06451	35	1,830,395
HA of the city of Ansonia, 75 Central Street, Ansonia, CT 06401	44	2,540,345
State of Connecticut Department of Social Services, 1049 Asylum Avenue, Hartford, CT 06105	22	1,324,545
HA of the city of Old Town, P.O. Box 404, 100 South Main Street, Old Town, ME 04468	12	395,100
Bath HA, 125 Congress Avenue, Bath, ME 04530	25	902,552
Maine State HA, P.O. Box 2669, 353 Water Street, Augusta, ME 04338	19	579,248
Dover HA, 62 Whittier St., Dover, NH 03820	25	942,300
Brattleboro HA, P.O. Box 2275, 100 Melrose Terrace, Brattleboro, VT 05301	10	232,680
Hartford HA, Lebanon HA, 31 Riverside Circle, West Lebanon, VT 03784	9	221,355
Vermont State HA, P.O. Box 397, One Prospect St., Montpelier, VT 05601	5	150,045
HA of town of South Kingston, P.O. Box 6, Peace Dale, RI 02883	20	770,500
Town of Portsmouth HA, P.O. Box 118, 2368 East Main Road, Portsmouth, RI 02871	2	100,075
Rhode Island Housing and Mortgage Finance Corp., 60 Eddy Street, Providence, RI 02903	27	1,040,085
New York/New Jersey Area:		
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202	5	139,110
Plattsburg Housing Authority, 19 Oak St., Plattsburgh, NY 12901	6	159,120
Rochester Housing Authority, 140 West Ave., Rochester, NY 14611	35	1,349,425
Gloversville Housing Authority, Dubois Garden Apts, 181 West Street, Gloversville, NY 12078	17	334,920
Amsterdam Housing Authority, 52 Division St., Amsterdam, NY 12010	25	622,500
Town of Amherst, 5583 Main St., Williamsville, NY 14221	22	553,795
City of Buffalo, City Hall, Buffalo, NY 14202	80	2,306,300

SECTION 8 RENTAL CERTIFICATE PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Dept of Urban & Econc Dev., City Hall 1 Kennedy Plaza, Utica, NY 13502	25	574,500
Town of Knox, Town Hall, P.O. Box 56, Knox, NY 12107	20	590,840
Town of Kortright, Town Hall, Rt. 10, P.O. Box D–6, Bloomville, NY 13739	20	384,640
Town of Stillwater, P.O. Box 700, Stillwater, NY 12170	10	324,675
New York Stata HFA, One Fordham Plaza, Room E204, Bronx, NY 10458	13	295,375
New York City HA, 250 Broadway, New York, NY 10007	580	26,788,560
Greenburgh Housing Authority, 9 Maple St., White Plains, NY 10603	30	1,676,460
Monticello Housing Authority, 76 Evergreen Dr., Monticello, NY 12701	6	218,340
Town of Islip HA, 963 Montauk Hwy., Oakdale, NY 11769	16	833,960
Town of Amherst c/o Belmont, 560 Delaware Avenue, Buffalo, NY 14202	30	1,993,500
New York City DHPD, 100 Gold St., New York, NY 10038	215	10,513,020
Highland Falls, Village, 180 Main St., Highland Falls, NY, 10928	10	436,750
Kiryas Joel, Village HSG. Auth., Municipal Building, 500 Forest Road Suite 202, Monroe, NY 10950	8	441,360
New York State HFA and DHCR, One Fordham Plaza, Bronx, NY 10458	156	7,639,705
HA of the City of Newark, 57 Sussex Ave., Newark, NJ 07103	69	3,397,905
HA of the city of Union City, 3911 Kennedy Boulevard, Union City, NJ 07087	25	954,000
HA of the Borough of Red Bank, P.O. Box 2158, Red Bank, NJ 07701	25	1,214,400
Township of Neptune HA, 1810 Alberta Avenue, Neptune, NJ 07753	25	1,299,275
HA of the city of East Orange, 160 Halsted Street, East Orange, NJ 07018	21	1,086,210
Glassboro Housing Authority, 737 Lincoln Blvd., Glassboro, NJ 08028	27	1,155,690
HA of the city of Berkeley, 44 Frederick Drive, Bayville, NJ 08721	25	1,524.420
Brick Township HA, 165 Chambers Street, Bridge Road, Brick Town, NJ 08723	29	1,016,160
HA of the Town of Dover, 215 East Blackwell Street, Dover, NJ 07801	15	830,280
City of Paterson, Dept. of Community Development, 125 Ellison Street, Paterson, NJ 07505	24	1,409,045
HA of township of Bloomfield, Town Hall, Municipal Plaza—Room 105, Bloomfield, NJ 07003	16	898,380
New Jersey DCA, CN 051, Trenton, NJ 08625	20	729,300
Mid-Atlantic Area:		
HA of Baltimore City, 417 East Fayette St., Baltimore, MD 21202	49	2,356,205
Havre De Grace HA, 101 Stansbury Court, Havre De Grace, MD 21078	25	1,003,775
HA of St. Mary's County, P.O. Box 653, Leonardtown, MD 20650	6	253,690
Carroll County HSG Admin., Bureau of HSG & Com, 125 N. Court Street, Suite 203, Westminster, MD 21157	36	1,318,470
HA of the City of Morgantown, 517 Fairmont Avenue, Fairmont, WV 26554	25	758,855
Benwood Housing Authority, 2200 Marshall Street, Benwood, WV 26031	32	739,660
Chester Housing Authority, 6 W. Sixth St., Chester, PA 19016	55	2,517,600
Harrisburg Housing Authority, 351 Chestnut St., Harrisburg, PA 17105	10	340,860
Montgomery Housing Authority, 1875 New Hope Street, Norristown, PA 19401	75	3,494,750
Monroe County HA, 1055 W. Main St., Stroudsburg, PA 18360	34	1,176,020
Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17062	41	1,504,260
Shamokin Housing Authority, 1 East Independence Street, Shamokin, PA 17872	15	322,400
Cumberland County HA, 114 N. Hanover St., Carlisle, PA 17013	20	597,155
Lehigh County HA, 333 Ridge St., Emmaus, PA 18049	26	796,050
Union County HA, Colonial Pk Box-274, 2015 Market St., Lewisburg, PA 17837	16	309,480
Pittsburgh Housing Authority, 200 Ross Street, 9FL, Pittsburgh, PA 15219	69	1,782,540
Allegheny County HA, 341 Fourth Avenue, Pittsburgh, PA 15222	39	1,054,605
Butler County HA, 111 South Cliff St., P.O. Box 1917, Butler, PA 16003	13	321,420
Westmoreland County HA, R.D. #6 South Greengate Rd., Greensburg, PA 15601	21	613,725
Indiana County HA, 104 Philadelphia St., Indiana, PA 15701	14	297,610
Portsmouth Redev & HA, P.O. Box 1098, 339 High St., Portsmouth, VA 23705	7	248,380
Norfolk Redev & HA, P.O. Box 968, Norfolk, VA 23501	11	490,925
Dept. of Housing, Municipal Center, Bldg., 5, Princess Anne Executive Park, Virginia Beach, VA 23456	7	282,720
Virginia Housing Dev Auth, 601 S. Belvidere St., Richmond, VA 23220	102	3,312,965
HOC of Montgomery Cnty, 10400 Detrick Ave., Kensington, MD 20895	29	1,568,265
Prince George's County DHCD, 9400 Peppercorn Pl., Landover, MD 20785	45	2,859,360
Alexandria Redev. & HA, 600 N. Fairfax St., Alexandria, VA 22314	15	710,875
Fairfax County Redev & HA, 3700 Pender Drive, Suite 300, Fairfax, VA 22030	31	1,675,805
Virginia Housing Dev. Auth., 601 S. Belvidere Street, Richmond, VA 23220	10	561,960
Southeast Area:		
HA of the county of DeKalb, P.O. Box 1627, Decatur, GA 30031	89	4,622,160
Georgia HFA, 60 Executive Parkway, S. Suite 250, Atlanta, GA 30329	64	1,402,465
HA of the Birmingham District, P.O. Box 55906, 1826 Third Ave. S, Birmingham, AL 35255	15	535,500
HA of city of Huntsville, AL, P.O. Box 486, 200 Washington St., Huntsville, AL 35804	21	522,570
Columbiana Housing Authority, P.O. Box 49A, Columbiana, AL 3501	4	93,340
HA of the city of Ozark, P.O. Box 566, #7 Matthews Ave., Ozark, AL 36361	18	382,440
Rural HA of Jefferson County, AL, 2100 Walker Chapel Rd., Fultondale, AL 35068	16	372,370
HA of the town of Arab, P.O. Box 452, 711 Stone Creek Dr., Arab, AL 35016	10	201,320
HA of city of Bessemer, AL, 1100 Fifth Ave. N., Bessemer, AL 35020	5	178,500
HA of the city of Greenville, P.O. Box 521, 601 Beeland St., Greensville, AL 36037	30	491,850
HA of the city of Foley, 302 Fourth Ave., Foley, AL 36535	4	111,200
HA of city of Prichard, AL, P.O. Box 10307, 800 Hinson Ave., Prichard, AL 36610	11	265,615
HA of the city of Columbia, 1917 Harden Street, Columbia, SC 29204	50	1,697,130
South Carolina Reg HA No. L, Post Office Box 326, 404 Church Street, Laurens, SC 29360	22	417,605

SECTION 8 RENTAL CERTIFICATE PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
HA of the city of Greenwood, Post Office Box 973, 315 Foundry Road, Greenwood, SC 29648	13	280,005
HA of the city of Charlotte, P.O. Box 36795, 1301 South Boulevard, Charlotte, NC 28236	32	824,220
HA of the city of Kinston, P.O. Box 697, 608 North Queen Street, Kinston, NC 28501	39	894,660
HA of the city of High Point, P.O. Box 1779, 500 East Russell Avenue, High Point, NC 27261	28	764,540
HA of the city of Asheville, P.O. Box 1898, 165 South French Broad Avenue, Asheville, NC 28802	29	737,880
HA of the city of Durham, P.O. Box 1726, 330 East Main Street, Durham, NC 27702	28	863,940
Statesville HA, P.O. Box 187, 433 South Meeting Street, Statesville, NC 28677	18	399,690
Chatham County HA, P.O. Box 691, 126 Hillsboro, NC 27312	12	355,500
Biloxi Housing Authority, P.O. Box 447, Biloxi, MS 39533	12	331,045
Mississippi Reg HA No. VII, P.O. Box 430, McComb, MS 39648	56	1,225,605
Long Beach HA, P.O. Drawer 418, Long Beach, MS 39560	12	345,240
Panama City HA, 804 East 15th Street, Panama City, FL 32405	19	491,170
HA of Brevard County, P.O. Box 540338, 615 Kurek Court, Merritt Island, FL 32953	25	900,120
Pahokee HA, 465 Friend Terrace, Pahokee, FL 33476	29	1,166,195
Ormond Beach HA, P.O. Box 998, 100 New Britain Ave., Ormond Beach, FL 32174	17	505,890
Ocala Housing Authority, 1415 NE 32nd Terrace, Ocala, FL 34470	25	667,500
Alachua County HA, 636 NE First Street, Gainesville, FL 32601	33	1,126,455
Deland Housing Authority, 300 Sunflower Circle, Deland FL 32724	33	1,316,280
Broward County HA, 1773 N. State Road 7, Lauderhill, FL 33313	25	958,800
Hillsborough County Housing Assistance Dept., 9260 Bay Plaza Blvd., Tampa, FL 33619	34	1,298,635
Orange County HSG Assistance, P.O. Box 1393, 525 E. South St., Orlando, FL 32801	25	827,760
Pasco County HA, 37460 Acorn Loop, Dade City, FL 33525	30	1,171,225
Walton County HA, P.O. Box 1258, 161 East Sloss Avenue, Defuniak Springs, FL 32433	25	690,000
HA of Boca Raton, 201 W. Palmetto Park Rd., Boca Raton, FL 33432	25	961,430
Hernando County HA, 820 Kennedy Blvd., Brooksville, FL 34601	25	801,300
Nassau County HA, 9143 Phillips Highway, Ste 350, Jacksonville, FL 32256	25	471,650
HA of Jefferson County, 801 Vine Street, Louisville, KY 40204	15	415,615
City of Louisville DHUD, 745 West Main St., Louisville, KY 40202	32	873,405
Appalachian Foothills HA, 1448 Diedrich Blvd., Russell, KY 41169	25	490,480
Kentucky Housing Corp., 1231 Louisville Road, Frankfort, KY 40601	50	1,148,935
Knoxville's CDC, P.O. Box 3550, 901 Broadway NE, Knoxville, TN 37927	12	267,540
Southeast Tennessee HRA, P.O. Box 805, Dunlap, TN 37327	50	1,451,400
Memphis Housing Authority, P.O. Box 3664, 700 Adams Avenue, Memphis, TN 38103	19	644,280
Metropolitan Development & HA, P.O. Box 846, 701 South Sixth Street, Nashville, TN 37202	25	972,500
Jackson Housing Authority, P.O. Box 3188, 175 Preston Street, Jackson, TN 38301	25	642,740
Municipality of San Juan, P.O. Box 4355, San Juan, PR 00901	28	772,800
Municipality of San Juan, P.O. Box 163, Moca, PR 00673	25	501,900
Municipality of Guaynabo, P.O. Box 126, Guaynabo, PR 00657	15	414,000
Municipality of Aguada, P.O. Box 517, Aguada, PR 00602	25	487,500
Virgin Island HA, P.O. Box 7668, Charlotte Amalie, St THO, VI 00801	9	380,160
Midwest Area:		
Cook County HA, 59 E. Van Buren St., Chicago, IL 60605	407	18,371,825
Williamson County HA, P.O. Box 045, 300 Hickory Street, Carterville, IL 62918	48	1,288,260
Cincinnati Metropolitan HA, 16 W. Central Parkway, Cincinnati, OH 45210	91	2,589,340
Adams Metropolitan HA, 900 Cemetery Street, Manchester, OH 45144	6	146,170
Lucas Metropolitan HA, P.O. Box 477, 435 Nebraska Avenue, Toledo, OH 43697	40	1,490,200
Lake Metropolitan HA, 200 West Jackson Street, Painesville, OH 44077	80	2,284,200
Medina Metropolitan HA, 860 Walter Road, Medina, OH 44256	35	1,134,775
Tuscarawas Metropolitan HA, 125 East High Avenue, New Philadelphia, OH 44663	24	513,870
Springfield Metropolitan HA, 437 East John Street, Springfield, OH 45505	28	812,475
Cambridge Metropolitan HA, P.O. Box 744, 1100 Maple Ct., Cambridge, OH 43725	15	300,725
Morgan Metropolitan HA, 4512 N State Route 376 NW, McConnelsville, OH 43756	14	223,855
Noble Metropolitan HA, P.O. Box 744, 1100 Maple Court, Cambridge, OH 43725	2	43,855
Delaware Metropolitan HA, P.O. Box 1292, 27.5 N. Union Street, Delaware, OH 43015	43	1,150,910
Morrow Housing Authority, Morrow County, 298 East Center Street, Marion, OH 43302	5	85,140
Saginaw Housing Commission, 2811 Davenport Ave., Saginaw, MI 48602	12	288,440
Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197	25	1,021,740
Kent County HA, 741 East Beltline Ave., NE., Grand Rapids, MI 49506	50	1,819,215
Michigan State HSG Dev Auth, P.O. Box 30044, 401 S. Washington Sq, 4th Fl., Lansing, MI 48909	100	3,180,975
Cadillac Housing Commission, Kirtland Terrace, 111 S. Simons Street, Cadillac, MI 49601	25	677,215
Muskegon Housing Commission, 1080 Terrace St., Muskegon, MI 49442	25	847,645
Grand Rapids HSG Comm, 1420 Fuller Ave SE., Grand Rapids, MI 49507	49	1,230,620
Kent Co. Housing Commission, 4300 Cascade Road SE., Grand Rapids, MI 49546	25	623,810
Michigan State HSG Dev Auth, P.O. Box 30044, 401 S. Washington Sq, 4th Fl., Lansing, MI 48909	5	102,575
HA of the city of Fort Wayne, One Main Street, P.O. Box 13489, Fort Wayne, IN 46802	13	363,740
HA of the city of Hammond, 7329 Columbia Circle West, Hammond, IN 46324	35	1,260,840
Indianapolis Housing Authority, 410 North Meridian St., Indianapolis, IN 46204	54	1,900,980
HA of the city of Marion, 121 North Washington St., Marion, IN 46952	25	497,450
Crawfordsville HA, P.O. Box 421, 227 E. Main St., Crawfordsville, IN 47933	11	213,080
Beloit Comm Dev Auth, 220 Portland Ave., 100 State Street, Beloit, WI 53511	10	289,755
Racine County HA, 837 Main St., Racine, WI 53403	40	1,117,500
Kenosha Housing Authority, 625 52nd St., Kenosha, WI 53140	25	708,780

SECTION 8 RENTAL CERTIFICATE PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Eau Claire HA, 203 S. Farwell St., Eau Claire WI 54701	25	394,475
PHA of the city of Saint Paul, 480 Cedar Street, Suite 600, St. Paul, MN 55101	18	797,050
HRA of Duluth, P.O. Box 16900, 222 E. Second Street, Duluth, MN 55816	12	255,705
HRA of Bemidji, 619 America Avenue, Bemidji, MN 56601	13	290,595
Moorehead Housing Authority, 920 Fifth Ave., South, Moorehead, MN 56560	25	592,805
HRA of St. Cloud, 619 Mall Germain, Suite 212, St. Cloud, MN 56301	10	206,600
HRA of Cambridge, 121 S. Fern Street, Cambridge, MN 55008	10	288,000
HRA of Columbia Heights, 590 Fortieth Ave., NE., Columbia Heights, MN 55421	25	807,400
HRA of Dakota County, 2496 145th Street W., Rosemount, MN 55068	10	368,440
HRA of Rochester, 2116 Campus Drive SE., Suite 10, Rochester, MN 55904	10	301,850
Koochiching County HRA, P.O. Box 466, Northome, MN 56661	25	572,110
HRA of Clay County, P.O. Box 099, 6 North Main Street, Dilworth, MN 56529	25	598,175
HRA of Cass County, P.O. Box 33, Backus, MN 56435	9	161,275
Southwest Area:		
Bernalillo County HA, 620 Lomos NW., Albuquerque, NM 87102	27	847,080
Region IV, Box 5699 RIAC, Roswell, NM 88201	18	359,060
HA of Lubbock, P.O. Box 2568, 515 N. Zenith, Lubbock, TX 79408	21	653,095
Ms. Caviness, P.O. Box 621, 700 S. Delaware, Clarksville, TX 75426	16	393,275
HA of the city of Thorndale, 306 Umlang St., Thorndale, TX 76577	18	537,300
Tarrant County HA, 1501 Merrimac Circle # 200, Ft. Worth, TX 76107	31	861,390
HA of El Paso County, P.O. Box 9895, 1600 Montana Ave., El Paso, TX 79902	39	1,298,700
HA of the city of Garland, 701 Clark St., Garland, TX 75040	50	2,079,720
HA of San Angelo, P.O. Box 1751, 115 W. 1st. St., San Angelo, TX 76902	32	632,315
Texoma HSG Assistance Prog, 10000 Grayson, Denison, TX 75020	17	459,595
HA of the city of Baytown, 805 Nazro St., Baytown, TX 77520	50	2,104,200
HA of city of Texas City, 817 Second Ave. North, Texas City, TX 77590	19	559,320
HA of the city of Palacios, P.O. Box 899, 45 Seashell, Palacios, TX 77465	12	325,200
HA of the city of Rosenberg, 1901 Avenue G, Rosenberg, TX 77471	38	1,311,000
HA of city of North Little Rock, Box 516, 2201 Division, North Little Rock, AR 72115	27	709,320
HA of city of Siloam Springs, Box 280, Siloam Springs, AR 72761	25	454,025
HA of the city of Texarkana, 110 Bramble Courts, Texarkana, AR 75502	10	205,425
Greene County HA, P.O. Box 137, 612 East Canal, Paragould, AR 72451	25	336,325
HA of New Orleans, 918 Carondelet St., New Orleans, LA 70130	49	2,041,140
HA of Shreveport, 623 Jordan St., Shreveport, LA 71101	19	613,020
E. Baton Rouge Parish HA, 4546 North Street, Baton Rouge, LA 70806	12	429,720
HA of Bogalusa, P.O. Box 1113, 1015 Union Ave., Bogalusa, LA 70427	9	122,260
HA of New Iberia, 325 North Street, New Iberia, LA 70560	11	236,820
Calcasue Parish HA, P.O. Drawer 3287, 1107 Enterprise Blvd., Lake Charles, LA 70602	22	624,600
HA of New Roads, 151 Cherry Street, New Roads, LA 70760	8	168,730
Lincoln Parish, P.O. Box 979, Ruston, LA 71273	7	153,000
HA of the City of Tulsa, P.O. Box 6369, 415 E. Independence, Tulsa, OK 74148	21	534,060
HA of town of Fort Gibson, P.O. Box 426, 501 E. Walnut, Fort Gibson, OK 74434	20	360,670
HA of the city of Norman, 700 N. Berry Rd., Norman, OK 73069	34	942,870
HA of city of Stillwater, 807 S. Lowry St., Stillwater, OK 74074	13	294,525
San Antonio HA, P.O. Drawer 1300, 818 S. Flores St., San Antonio, TX 78295	50	2,103,000
Robstown Housing Authority, 625 W. Avenue F, Robstown, TX 78380	10	279,715
Edcouch Housing Authority, P.O. Box 92, 209 Pacific Avenue, Edcouch, TX 78538	12	318,340
Round Rock HA, P.O. Box 781, 1100 Westwood Drive, Round Rock, TX 78664	20	759,315
Roma Housing Authority, P.O. Box 1002, 301 Canales Circle, Roma, TX 78584	14	268,560
Alamo Area Council of Govts, 118 Broadway Suite 400, San Antonio, TX 78205	9	159,820
Great Plains Area:		
Ottumwa Housing Authority, 102 West Finley Ave., Ottumwa, IA 52501	17	320,130
Low Rent HA of Cedar Rapids, Iowa, 1215 1st Street SE., Cedar Rapids, IA 52401	20	523,300
Waterloo Housing Authority, P.O. Box 1587, 214 E. 4th St., Waterloo, IA 50704	9	223,205
Northwest Iowa Regional HA, P.O. Box 6207, 2311 W 18th St., Spencer, IA 51301	19	316,835
Upper Exploreland Reg HA, 134 West Greene St., Postville, IA 52162	18	337,315
Central Iowa Regional HA, 1111 9th St. Suite 390, Des Moines, IA 50314	18	564,115
Wichita PHA, 307 Riverview, Wichita, KS 67203	10	264,550
City of Olathe HA, P.O. Box 768, 100 W. Santa Fe, Olathe, KS 66061	31	865,455
Ford Co., SW Kansas Area AG., P.O. Box 1636, Dodge City, KS 67801	19	369,355
LaFayette Co. PHA, c/o Saline Co. PHA ADM by HRCA, P.O. Box 550, 1415 S. O'Dell, Marshall, MO 65304	25	494,380
HA of Liberty, P.O. Box 159, 101 E. Kansas, Liberty, MO 64608	50	1,512,525
Omaha Housing Authority, 540 S. 27th St., Omaha, NE 68105	16	378,920
Bellevue Housing Authority, 8214 Armstrong Cir, Omaha, NE 68147	12	385,155
Goldenrod Joint HA, P.O. Box 280, Wisner, NE 68791	24	452,670
HA of Saint Louis County, P.O. Box 23886, 8865 Natural Bridge, St. Louis, MO 63121	50	1,718,000
HA of the city of Jefferson, P.O. Box 1029, Jefferson City, MO 65102	25	494,245
Franklin County PHA, P.O. Box 920, Hillsboro, MO 63050	16	472,040
Rocky Mountains Area:		
HA of city and county of Denver, P.O. Box 4305, 1100 W. Colfax Ave., Denver, CO 80204	15	622,695
Fort Collins HA, 1715 W. Mountain Ave., Ft. Collins, CO 80521	13	529,360
HA of the city of Lakewood, 445 So. Allison Pkwy, Lakewood, CO 80226	25	789,075

SECTION 8 RENTAL CERTIFICATE PROGRAM, FY 1994 FAIR SHARE/INCREMENTAL FUNDING DECISIONS—Continued

Recipients	Units	Amount
Adams County HA, 7190 Colorado Blvd. 6th Floor, Commerce City, CO 80022	25	967,920
CO Department of Human Services, 4131 S. Julian Way, Denver CO, 80236	60	1,168,060
Housing Authority of Billings, 2415 First Ave. N., Billings, MT 59101	4	98,560
Blackfeet HA, P.O. Box 790, Browning, MT 59417	25	528,500
City of Ronan PHA, P.O. Box 128, Ronan, MT 59864	10	250,680
Madison HSG & Redev Comm, 111 S. Washington Ave., Madison, SD 57042	25	520,995
HA of the city of Provo, 650 W. 100 N., Provo, UT 84601	25	583,640
Evanston Housing Authority, 350 City View Drive 203, Evanston, WY 82930	21	571,325
Pacific/Hawaii Area:		
Dept. of HSG & Comm Dev, 650 S. King St., Honolulu, HI 96813	40	2,184,000
Mariana Islands HA, P.O. Box 514, Saipan, MP 96950	10	633,600
CDC County of Los Angeles, 2525 Corporate Place, Monterey Park, CA 91754	9	419,820
Kern County HA, 525 Roberts Ln, Bakersfield, CA 93308	67	2,030,480
HA of Co. of San Bernardino, 1053 N. ''D'' St., San Bernardino, CA 92410	50	1,973,450
Riverside County PHA, 5555 Arlington Ave., Riverside, CA 92504	24	875,880
San Diego HSG Comm, 1625 Newton St., San Diego, CA 92113	64	2,207,440
San Luis Obispo City PHA, 487 Leff St., San Luis Obispo, CA 93401	10	299,500
Long Beach HA, 333 W. Ocean Blvd., Long Beach, CA 90802	50	2,592,000
Santa Barbara City PHA, 808 Laguna St., Santa Barbara, CA 93101	18	769,590
Santa Ana HA, 500 W. Santa Ana Blvd, Santa Ana, CA 92707	20	1,018,900
Orange County HA, 2043 N. Broadway, Santa Ana, CA 92706	56	2,877,940
San Diego County HA, 3989 Riffin Road, San Diego, CA 92123	92	2,747,860
Santa Monica HA, 612 Colorado Ave., Santa Monica, CA 90401	10	356,000
Glendale HA, 520 E Broadway Ave. Ste 302, Glendale, CA 91205	10	507,800
Pico Rivera HA, P.O. Box 1016, 6615 Passons Blvd., Pico Rivera, CA 90660	33	1,682,505
Baldwin Park HA, 14403 E. Pacific Ave., Baldwin Park, CA 91706	25	1,320,125
Pomona Housing Authority, P.O. Box 660, Pomona, CA 91769	12	578,640
Imperial Valley HA, 1401 ''D'' St., Brawley, CA 92227	7	197,430
West Hollywood HA, 8611 W. Santa Monica Blvd., West Hollywood, CA 90069	50	1,861,500
City of Glendale Community Housing Services Department, 6842 N. 61st Ave., Glendale, AZ 85301	34	993,810
Pinal County Housing Dept., RR 1, P.O. Box 191, 970 N. Eleven Mile Corner Rd., Casa Grande, AZ 85222	10	410,640
Pima County HA, P.O. Box 27210, 1501 N. Oracle Rd. 103, Tucson, AZ 85726	38	1,183,140
Sacramento HSG & Redev Agency, P.O. Box 1834, 630 I St., Sacramento, CA 95809	17	616,440
Sacramento HSG & Redev Agency, P.O. Box 1834, 630 I St., Sacramento, CA 95812	50	2,103,720
State Dept of HSG & Comm Dev, P.O. Box 952054, Sacramento, CA 94252	9	282,180
HA of the city of Oakland, 1619 Harrison St., Oakland, CA 94612	90	5,155,680
HA city and county of Fresno, P.O. Box 11985, 1833 ''E'' Street, Fresno, CA 93776	27	1,134,790
San Mateo County HA, 456 Peninsula Ave., San Mateo, CA 94401	26	1,686,060
Merced County HA, 405 U St., Merced, CA 95340	25	1,058,015
HA City and County of Fresno, P.O. Box 11985, 1833 ''E'' Street, Fresno, CA 93776	27	1,134,790
HA of the County of Monterey, 123 Rico Street, Salinas, CA 93907	31	1,744,395
Kings County HA, P.O. Box 355, Hanford, CA 93232	26	781,300
Berkeley HA, 3200 Adeline Street, Berkeley, CA 94703	40	1,768,265
Alameda County HA, 22941 Atherton Street, Hayward, CA 94544	53	2,599,700
Santa Cruz County HA, 2160 41st Ave., Capitola, CA 95062	25	1,705,430
Napa City HA, P.O. Box 660, 1115 Seminary St., Napa, CA 94559	25	1,242,070
HA of Clark County, 5064 E. Flamingo Rd., Las Vegas, NV 89122	49	2,222,500
Alaska Hsg Fin Corp, P.O. Box 230329, 624 W. International Rd., Anchorage, AK 99523	8	371,775
Northwest/Alaska Area:		
Southwestern Idaho Coop HA, 1108 West Finch Drive, Nampa, ID 83651	39	738,240
HA of Douglas County, P.O. Box 966, Roseburg, OR 97470	25	696,360
HA of City of Salem, Oregon, P.O. Box 808, 360 Church Street, SE., Salem, OR 97308	25	686,220
HA of Washington County, P.O. Box 988, 560 S.E. Third Avenue, Hillsboro, OR 97123	55	1,705,380
HA of the City of Seattle, 120 Sixth Ave. N., Seattle, WA 98109	13	575,220
King County HA, 15455 65th Ave S., Seattle, WA 98188	35	974,760
HA of City of Kalama, 226 Cloverdale Road, Kalama, WA 98625	27	771,720
Kitsap County Consol. HA, 9265 Bayshore Dr. NW., Silverdale, WA 98383	25	653,880
Pierce County HA, P.O. Box 45410, 603 S. Polk Street, Tacoma, WA 98445	45	1,853,820
Richland HA, P.O. Box 190, Richland, WA 99352	25	694,620
Kodiak Island HA, 3137 Mill Bay Road, Kodiak, AK 99615	3	154,770
Totals	9,159	332,898,650

[FR Doc. 96–1790 Filed 1–30–96; 8:45 am]
BILLING CODE 4210–13–P–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for the Acquisition of Lands for the Northern Tallgrass Prairie Habitat Preservation Area as a Unit of the National Wildlife Refuge System in Western Minnesota and Northwestern Iowa

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 Northern Tallgrass Prairie Habitat Preservation Area in Minnesota and Iowa. Public meetings will be held with dates, times, and locations published through the 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 on the scope of issues to be addressed in the EIS from other agencies, organizations and the general public. Comments and participation in this scoping process are hereby requested.

DATES: Written comments should be received by March 18, 1996. Public meetings will be held at widely scattered locations throughout the area of consideration in Minnesota and Iowa. Meeting dates are to be determined for February and March 1996 and will be announced through the media.

FOR FURTHER INFORMATION CONTACT: Howard A. Lipke, Project Manager, Northern Tallgrass Prairie Project, c/o Hamden Slough National Wildlife Refuge, Route 1 Box 32, Audubon, MN 56511; Telephone 218/439–6319.

SUPPLEMENTARY INFORMATION: The Service proposes to permanently protect 77,000 acres, more or less, of native prairie lands and buffer lands at widespread locations in western Minnesota and northwestern Iowa for management as a unit of the National Wildlife Refuge System. The project area encompasses 48 counties of Minnesota and 37 counties of Iowa from the Canadian border to near Des Moines, Iowa. Land would be acquired from willing sellers through fee title, easement, lease, or other property management rights transfer arrangements. The project would involve less than one percent of the presettlement prairie uplands with associated wetlands within this 150 mile wide by 520 mile long area even if the entire remaining prairie acreage were to be acquired.

Purpose of Action

The purpose of the proposed action is to help achieve resource responsibilities, as stated in the Service's mission statement, through conserving, protecting and enhancing Minnesota and Iowa tallgrass prairie lands for 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 and trust responsibilities for threatened and endangered species, migratory birds and interjurisdictional fish. A fourth trust responsibility, Service-owned lands, would be enhanced as project lands complement and buffer existing refuge and Waterfowl Production Area lands. Conversion to cropland and grazing land, drainage, and other development has resulted in the loss of more than 99 percent of the 25 million acres of original tallgrass prairie. Today, only 320,000 acres remain in Minnesota and Iowa, much of it in a degraded condition. Consequently, native fish, wildlife and vegetative resources dependent upon the prairie and associated wetlands have declined dramatically. Acquisition of land or other property rights along with habitat restoration would benefit a diversity of fish and wildlife resources, including native lake and river fishes; mammals; birds such as waterfowl, shorebirds, and passerine birds; and would help in the recovery of Federally-listed threatened and endangered species.

Related Actions of Other Agencies

Acquisition of lands and interests therein under existing Service authorities would complement other prairie land acquisition being done within this northern region of the tallgrass prairie by the Minnesota Department of Natural Resources, Iowa Department of Natural Resources, Iowa County Conservation Boards, and The Nature Conservancy. Dependent upon respective agency and organization missions and goals, each effort is made to conserve remnants of the native prairie to save a part of the natural and cultural heritage of this once vast prairie area. Some efforts conserve, restore and enhance prairie wildlife and plant communities for compatible public enjoyment and educational uses.

Alternatives

Alternatives for the Service to pursue protecting and enhancing the Tallgrass Prairie ecosystem to benefit fish and wildlife and their habitats include: (1) Acquiring appropriate ownership interest to prairie lands and managing those lands as Northern Tallgrass Prairie Habitat Preservation Area—a unit of the National Wildlife Refuge System, (2) non-acquisition methods, such as private lands initiatives or providing public information to landowners, (3) non-acquisition by the Service, promoting other agency and organization acquisition, and (4) no action.

These alternatives, along with others identified during the scoping process, may or may not be examined in detail in the EIS.

Issue

The following would likely be issues under the Service's proposed action: (1) Land use: Cultivated cropland uses would mostly cease. Grazing and haying agricultural uses would be restricted. Gravel mining would not occur. Prairie with associated riparian 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, drainage and utility systems across project land could be authorized through Service issuance of right-of-way permits. (2) Fish and wildlife: Prairie-dependent wildlife need important plants and plant communities preserved as unique habitats, assuring their continued existence. Numbers and diversity of fish and wildlife including Federally-listed threatened and endangered species would increase. Likelihood of the need to list threatened and endangered species from State and Federal candidate lists would be reduced. (3) Economics: Economic returns from cultivated cropland use would cease. Economic returns from haying and grazing would be reduced. There could be a shift of local business opportunities toward visitor services. Economic returns from outdoor recreation would likely increase. (4) Water and wetlands: Agricultural drainage across project lands could continue under previously established, recorded or prescriptive rights. Natural wetlands and riparian areas associated with prairie would remain. Water quality (surface and underground supplies), as a leading environmental issue, could be

improved. Wellhead protection for city/town domestic water supplies could be protected, even enhanced. (5) Tax revenues: Service fee title lands would be removed from county tax rolls resulting in tax revenue losses—could be offset by payments through the Refuge Revenue Sharing Act, and tax shortfall and offset provisions. Prairie tax credit or exemption could place added burden upon local governments. (6) Recreation: Opportunity would exist to balance consumptive and non-consumptive recreational uses—increased recreation would occur. Historical and cultural sites and values would be important prairie values to protect. (7) Other: Approach to acquisition relative to use of condemnation, concern that landowners would not receive just-compensation, and widespread fee purchase and government ownership could be perceived as a loss of local control. Concern of project size and cost to the taxpayer in relation to other priorities. Impact upon other programs and uncertainty as to how the project is to be integrated with other program efforts and lands currently protected.

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 for public review by summer 1996.

Dated: January 23, 1996.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 96–1872 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–930–06–1020–00]

Notice of Intent To Develop Standards for Rangeland Health and Guidelines for Grazing Management in New Mexico, Modify Land Use Plans, and Prepare National Environmental Policy Act (NEPA) Analysis Pursuant to the Planning Regulations (43 CFR Part 1600)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in New Mexico intends to develop statewide Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100) and modify all existing Land Use Plans (LUP) in the State. The appropriate National Environmental Policy Act (NEPA) analysis will be prepared in accordance with the Planning Regulations (43 CFR Part 1600) for the adoption of statewide Standards for Rangeland Health and Guidelines for Grazing Management. This notice invites public input on the development of Standards and Guidelines for New Mexico, on issues to be addressed and on alternatives to be considered in the NEPA analysis.

DATES: Comments will be accepted throughout the process or until further notice. Public comment periods specifically for the plan modification and NEPA process will be provided later.

ADDRESSES: Any comments or requests to be placed on the mailing list should be sent to Rangeland Health Project (93100), Bureau of Land Management, P.O. Box 27155, Santa Fe, NM, 87502.

FOR FURTHER INFORMATION CONTACT: J.W. Whitney at (505) 438–7438.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR Part 4100), which became effective August 21, 1995, provide for the development of state Standards for Rangeland Health and Guidelines for Grazing Management. These Standards and Guidelines are to be approved through BLM planning and NEPA processes. Incorporating Standards and Guidelines into existing plans will require some form of plan modification, ranging from plan maintenance to plan amendment. All LUPs for public lands in the State of New Mexico may be affected. At this point in time, it is undecided what level of plan modification (maintenance or amendment) and NEPA analysis (Environmental Assessment or Environmental Impact Statement) will be needed.

The NEPA analysis will be conducted using an interdisciplinary team of specialists.

Description of Possible Alternatives

At this time three preliminary alternatives have been identified: the continuation of current management as provided for in existing LUPs (no action alternative); the application of fall-back Standards and Guidelines contained in the Grazing Regulations (43 CFR Part 4100); and the adoption of Standards and Guidelines developed locally and in consultation with New Mexico's Resource Advisory Council.

Anticipated Issues

Anticipated issues to be addressed during the NEPA analysis include, but may not be limited to, the following: the effect that adoption of Standards will have on resource conditions, uses, and users of public land, and the effect that adoption of Guidelines will have on livestock operations.

Dated: January 23, 1996.

Bill Calkins,

State Director.

[FR Doc. 96–1761 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–FB–M

[UT–056–1430–01–24–1A]

Mountain Valley Management Framework Plan; Intent to Amend

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend plan.

SUMMARY: This Notice of Intent is to advise the public that the Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted within the thirty day period commencing with the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dave Henderson, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701. Exiting planning documents and information are available at the above address or telephone (801) 896–8221. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Sanpete County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands identified for direct sale comprise 10.2 acres described as follows: T. 19 S., R. 2 E., Sec. 19, Lot 8, and Section 30, Lots 5 and 8, Salt Lake Meridian, Utah. The existing plan does not identify these lands for disposal. However, because of the resource values, public values, and objectives involved, the public interest may well be served by sale of these

lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Dated: January 23, 1996.

G. William Lamb,

State Director.

[FR Doc. 96–1857 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–DQ–P–M

[CO–030–06–1610–00–1784]

Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Colorado Resource Advisory Council will meet on Thursday, February 22, 1996, at the Bureau of Land Management's (BLM) Montrose District Office in Montrose, Colorado, and on Wednesday, March 20, 1996, at the Federal Building in Durango, Colorado.

DATES: The meetings will be held on Thursday, February 22, 1996, and on Wednesday, March 20, 1996. Both meetings will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For further information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970–249–7791; TDD 970–249–4639.

SUPPLEMENTARY INFORMATION: The February 22, 1996, meeting is scheduled to begin at 9:00 a.m. in BLM's Montrose District Office conference room, 2465 South Townsend, Montrose, Colorado. The agenda for the morning will focus on sage grouse management, while the afternoon agenda will focus on the development of standards for rangeland health and guidelines for livestock grazing. Time will be reserved to address other issues identified by advisory council members or the public.

The March 20, 1996, meeting is scheduled to begin at 9:00 a.m. in the first floor conference room in the Federal Building, 701 Camino Del Rio, Durango, Colorado. The agenda will focus on the use of prescribed fire and fire ecology. Time will be reserved to address additional issues identified by advisory council members or the public.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for the Council meeting will be maintained in the Montrose District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 25, 1996.

Mark W. Stiles,

District Manager.

[FR Doc. 96–1961 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–JB–P

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Seagull Energy E&P, Inc., Exploration Activity, SEA Nos. R–2981 and R–2985A.	High Island Area, East Addition, South Extension, Block A–377, Lease OCS–G 11406, 110 miles southeast of the nearest coastline on Galveston Island, Texas.	11/04/94
Seagul Energy E&P, Inc., Exploration Activity, SEA No. S–3280B.	High Island Area, East Addition, South Extension, Block A–377, Lease OCS–G 11406, 110 miles southeast of the nearest coastline on Galveston Island, Texas.	08/26/94
Mesa Petroleum, NORM Disposal Operations, SEA No. NORM 94–136.	South Pelto Area, Block 13, Lease OCS–G 3171, 8 miles south of the Isles Dernieres of Terrebonne Parish, Louisiana.	10/28/94
Century Offshore Management Corporation, Structure-Removal Operations, SEA No. ES/SR 94–073.	Eugene Island Area, Block 298, Lease OCS–G 5199, 92 miles south of Morgan City, Louisiana.	08/05/95
Samedan oil Corporation, Structure-Removal Operations, SEA Nos. ES/SR 94–083 and 94–084.	South Timbalier Area, Block 186, Lease OCS–G 1570, 38 miles south of Lafourche Parish, Louisiana.	08/24/94
Taylor Energy Company, Structure-Removal Operations, SEA No. ES/SR 96–004.	Vermilion Area, Block 190, Lease OCS–G 1133, 50 miles from the nearest shoreline off the State of Louisiana.	10/17/95
Cockrell Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 96–005.	East Cameron Area, Block 117, Lease OCS–G 6618, 51 miles southeast of Cameron Parish, Louisiana.	10/16/95
OXY USA, Inc., Structure-Removal Operations, SEA No. ES/SR 95–106A.	High Island Area, East Addition, South Extension, Block A–355, Lease OCS–G 2745, 104 miles southeast of Galveston County, Texas.	09/29/95
Samedan Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 95–107.	West Cameron Area, West Addition, Block 433, Lease OCS–G 5324, 68 miles south of Cameron Parish, Louisiana.	10/16/95
Samedan Oil Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–111 and 95–112.	West Cameron Area, South Addition, Blocks 457 and 459, Leases OCS–G 5331 and 3383, 82 miles south of Cameron Parish, Louisiana.	10/26/95
Kerr-McGee Corporation, Structure-Removal Operations, SEA No. ES/SR 95–113.	West Cameron Area, Block 132, Lease OCS–G 4754, 23 miles south of Cameron Parish, Louisiana.	10/23/95
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 95–121 through 95–125.	Bay Marchand Area, Block 2; Grand Isle Area, Block 37; and South Timbalier Area, Blocks 23 and 24; leases OCS 0369, 0392, 0166, 0386, and 0387; 8–10 miles south of Lafourche Parish, Louisiana.	10/31/95

Activity/operator	Location	Date
Chevron U.S.C., Structure-Removal Operations, SEA Nos. ES/SR 96–001 through 96–003.	South Timbalier Area, Blocks 21, 27, and 28, Leases OCS 0263, OCS–G 1443 and 1362.	10/30/95
DALEN Resources Oil and Gas Co., Structure-Removal Operations, SEA No. ES/SR 95–126.	South Marsh Island Area, North Addition, Block 273, Lease OCS–G 10714, 26 miles south of Freshwater City, Louisiana.	12/06/95
Cockrell Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 96–006.	East Cameron Area, Block 118, Lease OCS–G 0938, 48 miles southeast of Cameron Parish, Louisiana.	10/17/95
Cockrell Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 96–007.	Galveston Area, Block 291, Lease OCS–G 10245, 30 miles southeast of Galveston County, Texas.	11/08/95
Murphy Exploration & Production Company, Structure-Removal Operations, SEA Nos. ES/SR 96–08 through 96–14.	Vermilion Area, Block 86, Lease OCS–G 14400, 25 miles south of Vermilion Parish, Louisiana.	11/27/95
Elf Exploration, Inc., Structure-Removal Operations, SEA No. ES/SR 96–016.	West Cameron Area, West Addition, Block 392, Lease OCS–G 4768, 63 miles south of Cameron Parish, Louisiana.	12/04/95

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: January 19, 1996.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 96–1795 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects From Spring Lake, Utah Under the Control of the Unita National Forest, United States Forest Service and Currently in the Possession of the Museum of Peoples and Cultures, Brigham Young University, Provo, UT

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects under the control of the Unita National Forest, United States Forest Service, and currently in the possession of the Museum of Peoples and Cultures, Brigham Young University, Provo, UT.

A detailed inventory and assessment of the human remains and associated funerary objects was done by the U.S. Forest Service and the Museum of Peoples and Cultures's professional staff in consultation with representatives of the Unitah-Ouray Ute Tribe.

The human remains—an adult male approximately 45–60 years old—and a minimum of 13,558 associated objects were reportedly excavated by local miners in 1917 from Forest Service lands above Spring Lake, UT. The objects found with the remains include brass bells, an iron spur, approximately 13,500 multi-colored glass seed beads, a metal axe head, bridle rosettes, a metal bit, and copper bracelets.

The human remains and associated objects were accessions by the Museum of Latter-Day Saints Church History in 1919. At that time, a local physician attempted to confirm a report that the human remains were those of the Timpanogots' chief Black Hawk who had died in 1870 and had been buried in the same approximate location. The physician collected statements from Chana E. Hales, William E. Croft, Louise N. Pace, and Ben H. Bullock who had known Black Hawk. These individuals identified many of the objects as Black Hawk's personal effects.

The human remains and associated objects were curated by the Museum of Latter-Day Saints Church History until 1994, when they were tranferred to the Museum of Peoples and Cultures for purposes of inventory and repatriation. Osteological analysis confirmed the human remains to be of a 45–60 year old male. Although Black Hawk's exact age was unknown, reports from the era estimate his age as being in his fifties at the time of his death. Many of the associated objects were identified by representatives of the Unitah-Ouray Ute tribe as being common in late nineteenth century Ute burials. No evidence contradicts the identification of the human remains as those of Black Hawk.

Mr. Richard Mountain, Ms. Arlene Appah, and Ms. Silvia Cornpeach, great-great grandchildren of Black Hawk's brother Mountain, have claimed Black Hawk's remains and funerary objects on the basis of lineal descent. On November 20, 1995, the Unitah-Ouray Ute Tribal Business Committee passed a formal resolution recognizing their claim and its consistency with Ute tribal kinship practice.

Based on the above mentioned information, officials of United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of Black Hawk, an individual of Native American ancestry. Museum officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 13,558 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of

the death rite or ceremony. Lastly, U.S. Forest Service officials have determined that, pursuant to 43 CFR 10.2 (b)(1), Mr. Richard Mountain, Ms. Arlene Appah, and Ms. Silvia Cornpeach can trace their ancestry directly and without interruption by means of the traditional kinship system of the Unitah-Ouray Ute tribe to the remains and associated funerary objects of Black Hawk.

This notice has been sent to Mr. Richard Mountain, Ms. Arlene Appah, Ms. Silvia Cornpeach, and officials of the Unitah-Ouray Ute Tribe, the Skull Valley Executive Committee, the Southern Ute Tribe, the Ute Mountain Ute Tribe, the Goshute Indian Tribe, the Paiute Tribe of Utah, and the Kaibab Paiute Tribe of Arizona. Any other individuals that believe themselves to be lineal descendants of Black Hawk should contact Ms. Charmaine Thompson, Heritage Program Leader, Unita National Forest, United States Forest Service, 88 West 100 North, Provo, UT 84601, telephone: (801) 342–5119, before March 1, 1996. Repatriation of these human remains and associated funerary objects to Mr. Richard Mountain, Ms. Arlene Appah, Ms. Silvia Cornpeach, may begin after that date if no additional claimants come forward.

Dated: January 25, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program.

[FR Doc. 96–1827; Filed 1–30–96; 8:45 am]

BILLING CODE 4310–70–F

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 January 20, 1996. 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, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 15, 1996.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Covington County
Avant House, 909 Sanford Rd., Andalusia, 96000046
De Kalb County
Gorman, Dr. J. A., House, Lookout St., Mentone, 96000045
Lauderdale County
Walnut Street Historic District (Boundary Increase II), Jct. of Poplar and Tuscaloosa Sts., Florence, 96000021
Wood Avenue Historic District (Boundary Increase), Roughly, along E. Hawthorne, Meridian and Kendrick Sts., Florence, 96000020
Talladega County
Butler, Charles, House, Jct. of First St. and Tenth Ave., Childersburg, 96000054

ALASKA

Anchorage Borough-Census Area
Alaska Engineering Commission Cottage No. 25, 645 W. Third Ave., Anchorage, 96000094
Fairbanks North Star Borough-Census Area
F. E. Company Manager's House, 757 Illinois St., Fairbanks, 96000095
Ketchikan Gateway Borough-Census Area
Stedman—Thomas Historic District, Stedman, Thomas, Inman, Brown, and Tatsudu Sts., Ketchikan, 96000062

ARIZONA

Maricopa County
Laveen School Auditorium, 5001 W. Dobbins Rd., Laveen, 96000040

COLORADO

Boulder County
Fox Stone Barn, S. Cherryvale Rd., .5 mi. S of US 36, Boulder vicinity, 96000070
Fremont County
Oil Spring, Address Restricted, Canon City vicinity, 96000043
Pueblo County
El Pueblo, Jct. of 1st St. and Union Ave., Pueblo, 96000039

CONNECTICUT

Hartford County
Endee Manor Historic District, Roughly, along Sherman, Mills and Putnam Sts., Bristol, 96000027
Windham County
Lawton Mills Historic District, Roughly bounded by Second St., Railroad Ave., Norwich Rd. and Fifth and Ninth Sts., Plainfield, 96000028

DISTRICT OF COLUMBIA

District of Columbia State Equivalent
Sears, Roebuck and Company Department Store, 4500 Wisconsin Ave., NW, Washington D.C., 96000061

FLORIDA

Sumter County
Pierce, Thomas R., House, 202 W. Noble Ave., Bushnell, 96000022

ILLINOIS

Bureau County
Allen School, 301 Main St., LaMoille, 96000081
First Congregational Church of LaMoille, 94 Franklin St., LaMoille, 96000059
Cook County
Boyce Building, 500–510 N. Dearborn St., Chicago, 96000080
Quigley Preparatory Seminary, 103 E. Chestnut St., Chicago, 96000093
Edgar County
Morton, Asher, Farmstead, Lower Terre Haute Rd., 4.5 mi. S of Paris, US 150, Paris vicinity, 96000096
Jo Daviess County
Chicago Great Western Railroad Depot, Myrtle St. between N. Madison and Vine Sts., Elizabeth, 96000098
Johnson County
Smith, Tina Weedon, Memorial Hall, 805 S. Mathews Ave., Urbana, 96000097
Lake County
Ryerson, Edward L., Area Historic District, 21950 N. Riverwoods Rd., Deerfield, 96000086
Livingston County
Fairbury City Hall, 101 E. Locust St., Fairbury, 96000090
McLean County
LeRoy Commercial Historic District, 111–123, 200–223, 300 Center and 106–118 Chestnut Sts., LeRoy, 96000089
Mercer County
Sherrard Banking Company, 314 Third St., Sherrard, 96000092

IOWA

Hamilton County
Zitterell, William J. and Hattie J., House, 821 Division St., Webster City, 96000057
Lee County
Herschler, Christian and Katharina, House, Barn and Outbuildings Historic District, Jct. of 6th and Green Sts., Franklin, 96000064

KANSAS

Finney County
Sabine Hall, 201 Buffalo Jones Ave., Garden City, 96000075
Thompson, Sen. William H., House, 902 N. 6th St., Garden City, 96000037

MASSACHUSETTS

Norfolk County
Cohasset Common Historic District, Bounded by Highland Ave., N. Main St., William B. Long, Jr., Rd. and Robert E. Jason Rd., Cohasset, 96000058
Worcester County
Farnumsville Historic District,

Roughly bounded by Providence Rd., Cross, Main, Harding and Depot Sts. and Maple Ave., Grafton, 96000052
Fisherville Historic District, Roughly bounded by Main, Elmwood, Ferry and Sampson Sts., Grafton, 96000056

MISSOURI

Audrain County
Lincoln School, 301 Lincoln St., Vandalia, 96000060
Boone County
East Campus Neighborhood Historic District, Roughly bounded by Bouchelle, College, University and High Sts. including parts of Willis, Bass, Dorsey and Anthony Sts., Columbia, 96000019
St. Louis Independent City
Maryland Hotel, 205 N. Ninth St., St. Louis (Independent City), 96000044

NEBRASKA

Perkins County
Grant City Park, Bounded Central Ave., 9th St., alley line and 8th St., Grant, 96000066
Grant Commercial Historic District, Roughly, Central Ave. from 1st St. to 4th St., Grant, 96000025

NEW JERSEY

Cumberland County
Bivalve Oyster Packing Houses and Docks (Marine and Architectural Resources of the Maurice River Cove MPS) Shell Rd., Miller and Howard Sts., Commercial Township, Bivalve, 96000079
Essex County
Edison Storage Battery Company Building, 177 Main St., West Orange, 96000055
Middlesex County
Livingston Avenue Historic District, Area surrounding Livingston Ave. between Half and Morris Sts., New Brunswick, 96000072
Morris County
Brookside, Bounded by Tingley Rd., E. and W. Main Sts., Cold Hill Rd. and Cherry Ln., Mendham Township, Brookside, 96000041
Combs Hollow, Jct. of Combs Ave. and Combs Hollow Rd., S of Doby Rd., Randolph and Mendham Townships, Mount Freedom vicinity, 96000042
Morristown School, Jct. of Whippany Rd. and Hanover Ave., Morris Township, Morristown, 96000047

NEW YORK

Orange County
Dutchess Quarry Sites, Address Restricted, Goshen, 96000100

PENNSYLVANIA

Berks County
Lutz, John F., Furniture Co. & Funerary, 3559 & 3561 St. Lawrence Ave., St. Lawrence, 96000085
Chester County
Ostheimer, Martha and Maurice, Estate, 620 W. Lincoln Hwy., West Whiteland Township, Exton, 96000099
St. Mary's Episcopal Church, Warwick Rd., Warwick Township, Elverson, 96000082
Franklin County
Red Run Lodge, Buchanan Trail E. (PA 16), Washington Township, Rouzerville, 96000083
Huntingdon County
Marklesburg Historic District, Jct. of PA 26 and PA 3010, Marklesburg, 96000084
Washington County
Caldwell Tavern (National Road in Pennsylvania MPS) Jct. of US 40 and TR 474, Buffalo Township, Claysville, 96000087
Cement City Historic District, Roughly, Chestnut and Walnut Sts. from Mooisette Ave. to Bertha Ave. and along Ida and Bertha Sts., Donora, 96000023
LeMoyne Crematory, Jct. of Redstone Rd. and Elm St., NW corner, North Franklin Township, Washington, 96000078
Little, Moses, Tavern (National Road in Pennsylvania MPS), 438 E. National Pike, Amwell Township, Laboratory, 96000088
Ringland Tavern (National Road in Pennsylvania MPS), US 40, W. Bethlehem Township, Scenery Hill, 96000091

TEXAS

Bastrop County
Elgin Commercial Historic District, Roughly, along Main St., Ave. C, Central and Depot Aves. and 1st and 2nd Sts., Elgin, 96000024
Bexar County
Lee, Robert E., Hotel, 111 Travis St., San Antonio, 96000063
Livingston—Hess House, 228 W. Huisache Ave., San Antonio, 96000036
Scottish Rite Cathedral, 308 Ave. E, San Antonio, 96000068
Woodward, David J. and May Bock, House, 1717 San Pedro Ave., San Antonio, 96000069
Dallas County
Dallas High School Historic District, 2218 Bryan St., Dallas, 96000035
Harris County
Stewart, Dr. James M. and Dove, House, 5702 Fourth St., Katy, 96000067
Nueces County
Seale, Wynn, Junior High School, 1701 Ayers St., Corpus Christi, 96000065
Williamson County
Cooper, Jesse and Sara, House (Georgetown MRA), 1.8 mi. E of Georgetown Hwy. 29, Georgetown vicinity, 96000073
Dimmitt, John J., House (Georgetown MRA), W. University (TX 29) 0.5 mi. W of jct. with Austin Hwy., Georgetown vicinity, 96000076
Georgetown Light and Water Works (Georgetown MRA), 403 W. 9th, Georgetown, 96000074
Hewitt, M. S., House (Georgetown MRA), 1019 S. College, Georgetown, 96000071

UTAH

Washington County
Cable Creek Bridge (Zion National Park MPS)
Floor of the Valley Rd. at milepost 4.48, S of Weeping Rock Parking Area entrance, Springdale vicinity, 96000053
Floor of the Valley Road (Zion National Park MPS), From jct. with Zion—Mt. Carmel Hwy. along the N. Fork of the Virgin R., Zion National Park, Springdale vicinity, 96000048

VIRGINIA

Culpeper County
Culpeper National Cemetery (Civil War Era National Cemeteries MPS), 305 U.S. Ave., Culpeper, 96000029
Henrico County
Glendale National Cemetery (Civil War Era National Cemeteries MPS), Jct of VA 156 and VA 600, 1 mi. S, Providence Forge vicinity, 96000026
Hampton Independent City
Hampton National Cemetery (Civil War Era National Cemeteries), Jct. of Cemetery Rd. and Marshall Ave., Hampton (Independent City), 96000038
Roanoke Independent City
Hotel Roanoke, 110 Shenandoah Ave., Roanoke (Independent City), 96000033
Staunton Independent City
Staunton National Cemetery (Civil War Era National Cemeteries), 901 Richmond Ave., Staunton (Independent City), 96000034
Winchester Independent City
Winchester National Cemetery (Civil War Era National Cemeteries), 401 National Ave., Winchester (Independent City), 96000032

WASHINGTON

King County
Bothell Pioneer Cemetery (Bothell MPS), Jct. of 108th Ave. NE. and NE. 180th St., NE and SE corners,

Bothell, 96000050
Spokane County
Meese, Gustav, Building, 1727 Sinto Ave., Spokane, 96000049
Yakima County
Masonic Temple, 321 E. Yakima Ave., Yakima, 96000051

WYOMING

Platte County
Wheatland Railroad Depot, 701 Gilchrist Ave., Wheatland, 96000077

[FR Doc. 96–1962 Filed 1–30–96; 8:45 am]
BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains in the Possession of the Office of the State Archeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service

ACTION: Notice

Notice if hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of an inventory for Native American human remains from the State of Washington currently in the possession of the Office of the State Archeologist, University of Iowa, Iowa City, IA.

A detailed inventory and assessment has been made by members of the professional staff of the Office of the State Archeologist Burials Program in consultation with representatives of the Confederated Tribes and Bands of the Yakama Indian Nation.

In 1994, the human remains were transferred to the Iowa Office of the State Archeologist Burials Program as part of a collection from the estate of Mr. John Morrie. Limited provenience information indicated the remains were found on the Columbia River near the city of Vantage, Kittias County, Washington. It is not known when or how these human remains came into the donor's possession.

The human remains represent one individual. Face morphology indicates the individual is an adult Native American woman. Mummified tissue and a small amount of hair remain attached to the cranium. No known individual was identified. No associated funerary objects are present.

Representatives of the Confederated Tribes and Bands of the Yakama Indian Nation have identified the banks of the Columbia River in Kittias county as part of their traditional occupation area from pre-contact times. The representatives have also presented evidence that occupation areas often contain burials.

Based on the above mentioned information, officials of the Office of the State Archeologist Burials Program have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Burials Program officials have further determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and the Confederated Tribes and Bands of the Yakama Indian Nation.

This notice has been sent to officials of the confederated Tribes and Bands of the Yakama Indian Nation. Representatives of any other Indian tribe which believes itself to be culturally affiliated with the human remains should contact Shirley Schermer, Burials Program Director, Office of the State Archeologist, Eastlawn, University of Iowa, Iowa City, IA 52242, telephone (319) 335–2400 before March 1, 1996. Repatriation of these human remains to the Confederated Tribes and Bands of the Yakama Indian Nation may begin after this date if no additional claimants come forward.

Dated: January 24, 1996.

Francis P. McManamon,

Chief Archeologist, Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 96–1826 Filed 1–30–96; 8:45 am]
BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

In the Matter of certain salinomycin biomass and preparations containing same; certain neodymium-iron-boron magnets, magnet alloys, and articles containing same; certain electrical connectors and products containing same; certain microprocessors having alignment checking and products containing same; certain asian-style kamaboko fish cakes.

[Investigation Nos. 337–TA–370, 337–TA–372, 337–TA–374, 337–TA–377, 337–TA–378]

Notice of Commission Decisions To Extend Deadlines for Determining Whether To Review Two Initial Determinations and Notice That Three Initial Determinations Have Become Final

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to extend by 15 business days the administrative deadlines for determining whether to review two initial determinations (IDs) issued by the presiding administrative law judges in the above-captioned *Salinomycin* and *Magnets* investigations and to declare the *Salinomycin* investigation ''more complicated.'' These actions are necessary because of the recent loss of 15 business days due to the partial government-wide shutdown, snow emergency days, and an agency furlough. The loss of these 15 business days is an ''other significant factor'' within the meaning of Commission rule 210.22(a), 59 F.R. 39049 (Aug. 1, 1994), which governs the *Salinomycin* investigation. Notice is also hereby given that three IDs issued in the above-captioned *Fish Cakes, Electrical Connectors,* and *Microprocessors* investigations have become final by operation of Commission rule 210.42(h)(3), 19 C.F.R. 210.42(h)(3).

FOR FURTHER INFORMATION CONTACT: Lyle Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3107.

SUPPLEMENTARY INFORMATION: The Commission was closed 11 business days (December 18, 1995—January 7, 1996) due to the partial government-wide shutdown. Following this shutdown, the agency was closed for three days due to a snow emergency (January 8–10, 1996). The Commission opened for one day, then closed again on January 12, 1996, for a Commission furlough. As a result, the Commission was closed for a total of 15 business days during which time no work could be performed by Commissioners and staff on the IDs in the *Salinomycin* and *Magnets* investigations. In order to recoup this time, the Commission has decided to extend by 15 business days the administrative deadlines for deciding whether to review the IDs issued by the presiding ALJs in those two investigations. The following are the IDs to which the extensions apply and their new deadlines:

Investigation	ALJ order No.	Old deadline	New deadline
Inv. No. 337–TA–370.	Final order.	Jan. 19, 1996.	Feb. 9, 1996.
Inv. No. 337–TA–372.	Final order.	Jan. 26, 1996.	Feb. 16, 1996.

The Commission decided not to exercise its authority to extend retroactively the review deadlines for

three IDs issued in the *Fish Cakes, Electrical Connectors,* and *Microprocessors* investigations because those IDs were not controversial and were not the subject of any petitions for review. The following are the IDs that became final and the dates on which they became final:

Investigation	ALJ order No.	Date ID became final
Inv. No. 337–TA–374.	Order No. 35	Jan. 11, 1996.
Inv. No. 337–TA–377.	Order No. 5 .	Jan. 16, 1996.
Inv. No. 337–TA–378.	Order No. 5 .	Jan. 9, 1996.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rules 210.42(h), 19 C.F.R. § 210.42(h), and 210.22, 59 F.R. 39049 (Aug. 1, 1994). Copies of the public versions of the IDs and all other nonconfidential documents filed in connection with these investigations are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 23, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–1941 Filed 1–30–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium: Near Zero Stamping Joint Venture

Notice is hereby given that, on September 14, 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''), Auto Body Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Allen-Bradley Company, Troy, MI; APX International, Inc., Madison Heights, MI; ASC Inc., Southgate, MI; Atlas Technologies, Inc., Fenton, MI; Auto Body Consortium, Inc., Ann Arbor, MI; Autodesk, Inc., Novi, MI; Autodie International, Inc., Grand Rapids, MI; Bethlehem Steel Corp., Southfield, MI; The Budd Company, Auburn Hills, MI; Chrysler Corporation, Auburn Hills, MI; Deneb Robotics, Inc., Auburn Hills, MI; Detroit Center Tool, Detroit, MI; Ford Motor Company, Dearborn, MI; General Motors Corporation, Flint, MI; Helm Instrument Co., Inc., Maumee, OH; HMS Products Co., Troy, MI; ISI Automation Product Group, Mt. Clemens, MI; ISI Robotics, Fraser, MI; Lamb Technicon, Warren, MI; Lobdell-Emery, Alma, MI; Modern Engineering, Troy, MI; Perceptron, Inc., Farmington Hills, MI; Sekely Industires, Inc., Salem, OH; Signature Technologies, Inc., Carrollton, TX; Tecnomatix Technologies, Inc., Novi, MI; Tower Automotive, Farmington Hills, MI; Verson, Chicago, IL; and The Ohio State University, Columbus, OH.

The purpose of this joint venture is to develop and demonstrate a new generation of sheet metal stamping technologies to achieve precision and agility in sheet metal stamping by improving the standard of accuracy in stamped sheet metal parts from present industry standards of a few millimeters to submillimeter tolerances and reducing the time currently required for sheet metal die design, try-out and production by 30 percent. The activities of the joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1802 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Research and Production Act of 1993; Financial Services Technology Consortium, Inc.; Electronic Check Project

Notice is hereby given that, on August 10, 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''), the Financial Services Technology Consortium, Inc. (''the Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Electronic Check Project sponsored by the Consortium and (2) the nature and objectives of the Project. 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. Pursuant to Section 6(b) of the Act, the identities of the parties to the Project are: Citibank, N.A., New York, NY; The First National Bank of Boston, a national banking association, Boston, MA; Bank of America National Trust and Savings Association, Concord, CA; Banc One Services Corporation, Waterville, OH; Wells Fargo & Company, San Francisco, CA; National Semiconductor Corporation, Sunnyvale, CA; IRE, Inc., Baltimore, MD; Bank of Montreal, Toronto, CANADA; and Telequip Corporation, Nashua, NH.

The objective of the Project is development activities concerning early technology for, and demonstration of the feasibility of, an electronic check payment instrument and system.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1803 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Osinet Corporation

Notice is hereby given that, on July 11, 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''), OSINET Corporation (''OSINET'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. 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 change is as follows: Hewlett-Packard Company has ceased membership in OSINET effective June 2, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSINET intends to file additional written notifications disclosing all changes in membership.

On April 15, 1991, OSINET 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 November 19, 1991 (56 FR

58400). The last notification was filed with the Department on May 22, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on July 25, 1995 (60 Fed. Reg. 38058).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1800 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project 94–12

Notice is hereby given that, on December 12, 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''), members of the Petroleum Environmental Research Forum (''PERF'') participating in Project No. 94–12 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two member of Project No. 94–12. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new members are: Star Enterprises, Houston, TX; and BP Exploration & Oil, Inc., Cleveland, OH.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group remains open, and PERF Project 94–12 intends to file additional written notification disclosing all changes in membership.

On September 14, 1995. PERF Project 94–12 filed it 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 December 5, 1995 (60 FR 62260).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1799 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project No. 95–02

Notice is hereby given that, on November 30, 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''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–02, titled ''Basic Principles and Control of Crude Oil Emulsion Formation-Part 3,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties of PERF Project No. 95–02 and (2) the nature and objectives of the research program to be performed in accordance with the Project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the current parties participating in PERF Project No. 95–02 are: ARCO Petroleum Production Company, Anaheim, CA; BP America, Inc., Cleveland, OH; Chevron Petroleum Company, La Habra, CA; Exxon Research & Engineering Company, Florham Park, NJ; and Shell Oil Products Company, for itself and as agent for Shell Oil Company, Houston, TX. Research and development work required in furtherance of the Project is to be carried out by North Carolina State University, Raleigh, NC, under contract with the above participants.

The nature and objective of the research program performed in accordance with PERF Project No. 95–02 is to develop a fundamental understanding of the factors causing formations of stable crude oil/water emulsions, and the methods for destabilizing them.

Participation in this Project will remain open to interested persons and organizations until issuance of the final Project Report, which is presently anticipated to occur approximately twenty-four (24) months after the date of publication of this Notice. The Participants intend to file additional notification(s) disclosing all changes in membership in this Project.

Information about participation in Petroleum Environmental Research Forum (''PERF'') Project No. 95–02 may be obtained from Ms. Catherine Peddie, Shell Oil Products Company, Houston, TX.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1801 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; PMT, L.L.C.

Notice is hereby given that, on December 13, 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''), PMT, L.L.C. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the production joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are Modern Group, Inc., Blue Island, IL, controlled by the Clarence W. Heim Trust dated 6/10/71 and by Richard L. Heim and Gregory P. Heim.; and CDP-North America, Inc., Bingham Farms, MI, controlled by Carl Dan. Peddinghaus, GmbH & Co. KG, Ennepetal, GERMANY. The objective of the venture is the production of high volume chassis, engine and suspension components for the automotive industry and forged components for ground engagement equipment. The primary focus of the production joint venture will be the manufacture of high volume, low cost products which are highly engineered and manufactured on forging presses for customers located in the Americas.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–1804 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Pursuant to RCRA

In accordance with Department policy, 28 C.F.R. 50.7, and 42 U.S.C. 6973(d), notice is hereby given that on January 19, 1996, a proposed Final Consent Decree in *United States* versus *Waste Industries, Inc., et al.*, (E.D. N.C.) (Civil No. 80–4–CIV–7), was lodged with the Federal District Court for the Eastern District of North Carolina. The United States filed its complaint in this action on January 11, 1980, on behalf of the Environmental Protection Agency (''EPA'') pursuant to Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The complaint sought injunctive relief to abate an imminent and substantial endangerment resulting from the disposal of solid or hazardous waste at the Flemington Landfill site (''site'') in New Hanover County, North Carolina. On August 5, 1987, a Partial Consent Decree was entered by the District Court, requiring a Settling Defendants to conduct a complete assessment of groundwater contamination in and around the site and to make a

recommendation to EPA regarding the necessity for groundwater remediation. The Settling Defendants completed their study on May 2, 1989, and submitted supplementary data in 1990 and 1991 and EPA has reviewed the results and issued a Final Decisional Document, dated June 29, 1995, concurring with their recommendation that no further groundwater remediation is necessary. The Final Consent Decree requires the Settling Defendants to monitor groundwater at the site for a period of three years secure and maintain the site and maintain institutional controls. The Settling Defendants will also reimburse the United States for past costs in the amount of $175,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Final Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Waste Industries, Inc., et al.,* D.J. ref. 90–7–1–2. Commenters may request a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Final Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of North Carolina, Suite 800 Federal Building, 310 New Bern Avenue, Raleigh, N.C. 27611 and at the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $8.75 ($.25 per page for reproduction costs) payable to Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–1793 Filed 1–30–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Office of Worker Retraining and Admustment Programs, Employment and Training Administration, Department of Labor, Room N–5426, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA or the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States indentified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to ''eligible States'' and ''eligible high unemployment States'', as set forth in section 303(a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under Title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Progam Year (PY) 1995 funds was described in Training and Employment Guidance Letter No. 5–94, dated December 21, 1994, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustments to the PY 1995 (July 1, 1995–June 30, 1996) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Section 303 of JTPA. 29 U.S.C. 1653.

Excess funds are recaptured from PY 1995 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1995 allotment.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed and relative numbers of excess unemployed, were for the October 1994 through September 1995 period. Long-term unemployment data used were for calendar year 1995. The determination of ''eligible high unemployment States'' for the reallotment of excess unexpended funds was also based on unemployment data for the period October 1994 through September 1995, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1995 formula allotments.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1995 JTPA Title III Reallotment to States

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	5.8	0	212,257	212,257	62,344	274,601
Alaska	7.2	209,620	0	0	0	(209,620)
Arizona	5.5	250	196,760	0	57,793	57,543
Arkansas	4.9	0	86,214	0	25,323	25,323
California	7.8	0	3,169,598	3,169,598	930,975	4,100,573
Colorado	3.8	0	84,197	0	24,730	24,730
Connecticut	5.3	0	176,028	0	51,703	51,703
Delaware	4.1	0	21,049	0	6,182	6,182
District of Columbia	8.4	0	74,317	74,317	21,828	96,145
Florida	5.5	3,448,128	0	0	0	(3,448,128)
Georgia	4.9	0	262,151	0	76,999	76,999
Hawaii	5.5	0	56,233	0	16,517	16,517
Idaho	5.4	0	48,659	0	14,292	14,292
Illinois	5.2	0	558,901	0	164,161	164,161
Indiana	4.5	0	179,446	0	52,707	52,707
Iowa	3.4	0	57,837	0	16,988	16,988
Kansas	4.7	0	90,206	0	26,495	26,495
Kentucky	5.0	0	145,065	0	42,609	42,609
Louisiana	7.3	0	346,118	346,118	101,662	447,780
Maine	6.2	0	86,227	86,227	25,327	111,554
Maryland	5.0	0	210,046	0	61,695	61,695
Massachusetts	5.5	0	345,382	0	101,446	101,446
Michigan	5.4	2,469,880	0	0	0	(2,469,880)
Minnesota	3.6	0	105,725	0	31,054	31,054
Mississippi	6.1	0	156,588	156,588	45,993	202,581
Missouri	4.7	0	181,000	0	53,164	53,164
Montana	5.3	0	34,316	0	10,079	10,079
Nebraska	2.5	0	23,501	0	6,903	6,903
Nevada	5.8	398,041	0	0	0	(398,041)
New Hampshire	4.1	0	34,783	0	10,216	10,216
New Jersey	6.4	0	602,648	602,648	177,010	779,658
New Mexico	5.9	0	91,124	91,124	26,765	117,889
New York	6.3	0	1,273,720	1,273,720	374,117	1,647,837
North Carolina	4.3	1,963,341	0	0	0	(1,963,341)
North Dakota	3.3	0	12,589	0	3,698	3,698
Ohio	4.6	2,927,487	0	0	0	(2,927,487)
Oklahoma	5.1	0	128,121	0	37,632	37,632
Oregon	4.9	0	119,346	0	35,054	35,054
Pennsylvania	5.9	3	712,251	712,251	209,202	921,450
Puerto Rico	13.7	0	436,991	436,991	128,353	565,344
Rhode Island	6.7	0	78,162	78,162	22,958	101,120
South Carolina	5.1	0	177,537	0	52,146	52,146
South Dakota	2.9	13,516	0	0	0	(13,516)
Tennessee	4.5	0	136,028	0	39,954	39,954
Texas	5.9	0	1,074,703	1,074,703	315,662	1,390,365
Utah	3.5	0	33,932	0	9,967	9,967
Vermont	4.2	0	16,111	0	4,732	4,732
Virginia	4.5	1,062,909	0	0	0	(1,062,909)
Washington	6.1	0	333,140	333,140	97,850	430,990
West Virginia	7.9	0	175,831	175,831	51,645	227,476
Wisconsin	3.9	0	134,599	0	39,535	39,535
Wyoming	4.6	0	13,738	0	4,035	4,035
NATIONAL TOTAL	5.6	12,493,175	12,493,175	8,823,675	3,669,500	0

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Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending September 1995.

Column 2: This column shows the amount of excess funds which are subject to recapture. PY 1995 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all ''eligible States'' by applying the regular Title III formula. ''Eligible States'' are those with unexpended PY 1994 funds at or below the level of 20 percent of their PY 1994 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 5.6 percent for the 12-month period, are ''eligible high unemployment States.'' These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $8,823, 675.

Column 5: The sum of the remaining shares of available funds ($3,669,500) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1995 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303(a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653(a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulation at 20 CFR 631.12(d).

Signed at Washington, DC, this 26th day of January, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 96–1914 Filed 1–30–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–0948, et al.]

Proposed Exemptions; Associated Hospital Service of Maine d/b/a Blue Cross and Blue Shield of Maine) and Blue Alliance Mutual Insurance Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Associated Hospital Service of Maine, (d/b/a Blue Cross and Blue Shield of Maine) and Blue Alliance Mutual Insurance Company, Located in Portland, Maine

[Application No. D–09848]

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) and (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 [1] shall not apply, effective August 18, 1993, to the past sales of certain securities (the Securities) by the Associated Hospital Service of Maine Retirement Plan (the Plan) to the Associated Hospital Service of Maine (d/b/a Blue Cross and Blue Shield of Maine) (BCBSME) and Blue Alliance Mutual Insurance Company (Blue Alliance) (collectively, the Applicants), parties in interest with respect to the Plan; provided that the following conditions were met: (a) The sales of the Securities were one-time transactions for cash; (b) the purchase price paid by BCBSME and Blue Alliance was no less than the fair market value of the Securities on the date of the sales; (c) the fair market value of the Securities were determined by reference to an objective third party pricing service, as of the date of the sales; (d) the terms of the transactions were no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; and (e) the Plan paid no costs, fees, or commissions associated with the transactions, nor other expenses associated with the application for exemption.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective on August 18, 1993, the date of the sales of the Securities to BCBSME and Blue Alliance.

Summary of Facts and Representations

1. The Plan, established in 1953, is an individually designed, tax-qualified non-contributory defined benefit pension plan. As of July 8, 1994, the Plan had 1,009 participants including current retirees, terminated vested employees, and their beneficiaries. It is represented that the Plan has been fully funded since 1991 and no contribution was required for 1994. As of December 31, 1993, the fair market value of the assets of the Plan was $26,692,805.

The Plan provides for pension, disability retirement, and death benefits. Plan benefits are funded through the Associated Hospital Service of Maine Retirement Trust (the Trust). The Board of Directors of BCBSME appoints the Board of Trustees for the Trust (the Trustees). In this regard, in 1993 when the transaction occurred, two of the five (5) Trustees were former employees of BCBSME, two (2) individuals were officers of BCBSME, and one of the Trustees was also a member of the Board of Directors of BCBSME. It is represented that the Trustees have exclusive authority and discretion to manage and control the Plan's assets in accordance with the provisions of the Trust, including the power to appoint one or more investment managers.

The Plan covers employees of BCBSME, salaried employees of Machigonne, Inc. (Machigonne), and employees of HRS Maine, Inc., a corporation in which Machigonne holds a 45 percent (45%) ownership interest.

2. BCBSME is organized under the laws of the State of Maine as a non-profit hospital, medical, and health care service corporation. BCBSME underwrites prepaid hospital, medical, and health care service plans by providing hospital, medical and health care coverage and Medicare supplemental coverage. BCBSME is the sponsor of the Plan and a party in interest with respect to the Plan, as an employer any of whose employees are covered by the plan, pursuant to section 3(14)(C) of the Act.

3. Blue Alliance, an affiliate of BCBSME, is organized under the laws of the State of Maine as a mutual insurance company. Blue Alliance underwrites major medical and dental insurance coverage that is intended to complement the health care coverage offered to subscribers of BCBSME by covering services that are not covered under the BCBSME contracts. With some exceptions, Blue Alliance and BCBSME insurance products are offered only jointly to subscribers. As a mutual insurance company owned by its policyholders, Blue Alliance is not directly or indirectly owned in whole or in part by BCBSME. However, BCBSME controls the management and policies of Blue Alliance. In this regard, the most recent by-laws of Blue Alliance provide that all of the directors of Blue Alliance must be directors or employees of BCBSME. At the time the transactions were entered on August 18, 1993, it is represented that at least seven (7) out of twelve (12) of the directors of Blue Alliance were directors or employees of BCBSME.

Blue Alliance is not an employer of employees covered by the Plan, as all of its business functions are performed by employees of BCBSME. However, Blue alliance and BCBSME own, respectively, 15 percent (15%) and 85 percent (85%) of the stock of Machigonne which is an employer of employees covered by the Plan. Accordingly, Blue Alliance is party in interest with respect to the Plan, as an 10 percent (10%) or more owner of a participating employer in the Plan, pursuant to section 3(14)(H) of the Act.

4. The sales of the Securities for which exemptive relief is requested was part of a larger, integrated transaction that resulted in a complete restructuring of the Plan's investment program. Prior to the sales of the Securities, the investment responsibilities for the Plan were divided between an external investment advisor and the Trustees. The professional investment firm of David L. Babson & Company, Inc. was retained to invest approximately 55 to 60 percent (55% to 60%) of the assets of the Plan in domestic equity securities. The balance of the Plan's assets were invested by the Trustees in fixed income securities consisting of United States Treasury and agency notes and bonds and investment-grade corporate notes and bonds.

At the Trustees' meeting of November 18, 1991, the Trustees decided to engage an independent professional pension consulting firm. Following interviews with several firms, on April 23, 1992, the Trustees selected New England Pension Consultants (NEPC), located in Cambridge, Massachusetts. NEPC assists corporations, endowments, foundations, public funds, and Taft-Hartley accounts in pension plan investment policy development, asset allocation analysis, investment manager searches, and monitoring and performance analysis of plan asset investments. NEPC's responsibilities with respect to the Plan included a complete review and analysis of the Plan's investment structure, investment policy, asset allocation, investment performance, choice of investment managers, and manager guidelines. After conducting an in-depth study of the Plan's investment performance over the previous five (5) years, NEPC proposed that the Trustees no longer manage any of the Plan's assets. Further, NEPC suggested that the asset classes in the Plan's portfolio be expanded to include international equity, global fixed income, and real estate asset classes, as well as the existing domestic equity and fixed income classes. The Trustees adopted NEPC's proposal, with minor modifications, at their February 18, 1993, meeting.

At the same meeting, NEPC also advised the Trustees to appoint five (5) new investment managers by December 31, 1994, with the first two such managers to be in place by the end of 1993. Further, NEPC expressed a preference for having each new manager liquidate the securities, if necessary, after the assets of the Plan had been transferred to them for investment purposes, rather than have the Trustees do so. It is represented that this recommendation was made because

[1] 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.

NEPC believed that in many cases a direct transfer served to minimize transaction costs. Further, NEPC believed that particularly in circumstances where plan assets are being transferred for investment from a former investment manager to a new manager, sale of such plan assets by the new manager (whose performance will be monitored on an ongoing basis) tends to maximize the return on the existing investments to such plan. It is represented that the Trustees approved NEPC's recommendations, and engaged NEPC to conduct a search for investment management candidates.

In this regard, except for the selection of a real estate investment manager which will be undertaken at the appropriate time, the restructuring of the Plan's investment program was completed by approximately May 4, 1994. Four new investment managers, Invesco Capital Management, Inc. (Invesco), Pacific Investment Management Company (PIMCO), Templeton Investment Counsel, Inc. (Templeton), and Scudder, Stevens & Clark (Scudder), were selected in 1993 and 1994 by the Trustees from a number of candidates.

With respect to the transfer of assets to Invesco, approximately 20 percent (20%) of the total assets of the Plan were transferred for purposes of active management to Invesco by June 30, 1993. It is represented that the Trustees were not required to liquidate any plan assets, because Invesco was able to accept in-kind the securities held by the Plan.

With respect to the transfer for purposes of active management of assets of the Plan to Templeton and Scudder, because these managers specialize in foreign investments, neither would accept in-kind transfers of assets from the Plan. Accordingly, the Trustees liquidated portions of the Plan's portfolio through sales to unrelated parties and instead transferred the cash proceeds to the new managers.

With respect to the transfer for purposes of active management to PIMCO of assets of the Plan, PIMCO replaced the Trustees as manager of the Plan's fixed income assets on July 22, 1993. PIMCO is a subsidiary of Pacific Financial Asset Management Corporation (PFAMCO) and manages the Managed Bond and Income Portfolio of the PFAMCO Funds, a non-load, open-end management investment company. However, as the securities owned by the Plan did not match the investment characteristics of the bonds then held in the Managed Bond and Income Portfolio, for administrative convenience, PIMCO requested that the Plan assets be transferred in cash. As of August 31, 1993, approximately 35 percent (35% of the total assets of the Plan were transferred to the Managed Bond and Income Portfolio, an investment-grade, commingled bond fund for institutional investors managed by PIMCO in cash.

5. It is represented that prior to the transfer of cash to PIMCO, the Trustees inquired of NEPC whether the securities that the Plan was required to sell in order to effectuate the transfer of assets for investment to PIMCO could be ''bundled'' and sold as a package. In this regard, NEPC advised the Trustees that either: (1) The portfolio could be liquidated in a program trade where all the securities would be sold as a group to a broker who would typically receive a premium paid by the seller to assume the market risk of subsequently liquidating such securities; or (2) the Trustees could avoid paying a premium to the broker by liquidating the securities in a series of individual transactions as market opportunities presented themselves. It is represented that after advising the Trustees of their options, NEPC did not render any advice with respect to, had no knowledge with regard to, and no further involvement with the execution of the sales of the Securities by the Plan, including the transactions with parties in interest.

The Trustees, in order to effect the transfer for purposes of active management of the assets of the Plan to PIMCO, on four (4) separate dates liquidated sixty-nine (69) different securities held by the Plan worth approximately $8.8 million. In this regard, on August 11 and August 15, 1993, the Plan sold fourteen (14) corporate bonds for approximately $1.5 million. On August 20, 1993, seventeen (17) government-backed mortgage securities and three (3) Treasury notes were sold for approximately $1.8 million. It is represented that the sales of these thirty-four (34) securities were made by the Plan on the open market to unrelated parties on the days specified.

The transactions for which retroactive relief is requested occurred on August 18, 1993, and involved one-time cash sales by the Plan of the Securities to each of the Applicants. The Securities consisted of publicly-traded United States Treasury and agency securities for which there was a readily ascertainable market price. It is represented that the Plan sold a total of twenty-six (26) securities (fourteen Treasury notes and twelve agency obligations) to BCBSME for a price of $4,470,773 and a total of nine (9) securities (five Treasury notes and four agency obligations) to Blue Alliance for a price of $1,031,516. The Securities constituted approximately 20 percent (20%) of the total Plan assets which as of July 31, 1993, were worth approximately $26,487,645. It is represented that the sales of the Securities were executed at fair market value.

6. With respect to the fair market value of the Securities, it is represented that, as of approximately 11:50 A.M. Eastern Daylight Time on August 18, 1993, the day of the sales, the Securities were worth approximately $5.4 million. In this regard, M.G.S.I. Securities, Inc., an independent brokerage firm located in Houston, Texas, supplied the fair market value contemporaneous with the actual sale of the Securities by facsimile transmission of printouts generated by The Bloomberg, a computerized, real-time independent financial reporting service. It is represented that the Trustees executed the transactions at the bid price for each of the Securities involved. Further, the application contains a schedule that compares the prices paid by the Applicants for the Securities and the prices for the Securities quoted on August 19, 1993, in the Wall Street Journal (WSJ), which reflect the market prices of the Securities, as of August 18, 1993, the day of the sales. It is represented that there was a total favorable variance to the Plan of $2,437.55 between the prices paid by the Applicants and the prices quoted in the WSJ for the Securities.

7. Subsequent to the sales of the Securities to the Applicants, PIMCO received in cash, on August 26, and August 30, 1993, $7.5 million and $1.5 million, respectively, for reinvestment in the Managed Bond and Income Portfolio. It is represented that the second transfer for management purposes included approximately $84,000 of the Plan's cash reserves in addition to the balance of cash realized from sales of the Securities to the Applicants and from sales of other securities to unrelated parties.

8. It is represented that none of the Trustees was aware that the sales of the Securities to the Applicants violated the prohibited transaction provisions of the Act until May 1994, when Ernst & Young conducted the annual independent audit of the Plan. In this regard, it is represented that the transactions were fully disclosed in the Plan's audited financial statements for the Plan Year ending December 31, 1993. It is represented that the Trustees acted entirely in good faith in believing that the transactions were not prohibited and acted to protect the Plan from abuse and unnecessary risk by

obtaining current price quotations on the date of the sales from objective third party sources to ensure that the Plan received the fair market value for the Securities. Immediately upon becoming aware that the sales to the Applicants were prohibited, the Trustees consulted legal counsel, and subsequently, filed an application for retroactive exemption, based on the applicable provisions of the Act, the Department's regulations, and ERISA Technical Release 85–1.

The Applicants submit that undoing the transactions is not possible without, at best, creating an undue risk of loss to the Plan through a series of transactions required to liquidate Plan investments with PIMCO, repurchase the Securities from the Applicants, resell those Securities to unrelated parties, and reinvest the proceeds with PIMCO. In addition, were these steps taken the Plan would be subject to brokerage fees and other transactions costs.

9. The Applicants maintain that the transactions were in the interest of the Plan in that the Trustees sought to liquidate the Securities as expeditiously as possible. In addition, although certain of the Securities were sold at a loss, the sales took place at fair market value, and such loss would not have been avoided by sales to unrelated parties. Moreover, it is represented that in the aggregate the Plan realized a substantial gain. In this regard, the Plan obtained a slightly better price for the Securities sold to the Applicants by not having to pay a premium to a broker for the liquidation of the fixed income assets and by avoiding brokerage fees (or dealer margins) and ''odd lot'' discounts. It is represented that the total sales price of the Securities aggregated $5.4 million, and the Plan gained approximately $317,000 on the sales to the Applicants.

10. It is represented that the transactions were feasible in that the sales of the Securities to the Applicants were one-time transactions in which the Plan received only cash. In addition, it is represented that the Plan was not required to pay any commissions, costs, premiums or expenses in connection with the sales. Further, the costs of filing the exemption application and of notifying interested persons will be borne by BCBSME.

11. It is represented that at the time the transactions were entered there were sufficient safeguards in place to protect the interests of the Plan and its participants and beneficiaries. In this regard, it is represented that the sales were an integral part of a comprehensive restructuring of the Plan's investment program and asset management that the Trustees had undertaken and were carrying out, pursuant to the expert advice of NEPC, an independent pension consultant. Further, the Applicants maintain that all terms and conditions of the sales were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party. In this regard, the Securities are publicly traded on an established market, and the Plan received a sales price equal to at least the fair market value of the Securities on the date of the sales. In addition, the sales price for such Securities was determined by an independent brokerage firm, using a well-established pricing service and based on current market quotations on the date of the sales.

12. In summary, the Applicants represent that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The sales of the Securities to the Applicants were one-time transactions for cash;

(b) The purchase price paid by BCBSME and Blue Alliance was no less than the fair market value of the Securities on the date of the sales;

(c) The fair market value of the Securities were determined by reference to an objective third party pricing service, as of the date of the sales;

(d) The terms of the transactions were no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; and

(e) The Plan paid no costs, fees, or commissions associated with the transactions, nor other expenses associated with the application for exemption.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Spreckels Industries, Inc. Employee Stock Ownership Plan (the ESOP); Spreckels Industries, Inc. Incentive Savings Plan for Union Hourly Employees (the Hourly Plan); and Spreckels Industries, Inc. Employees' Incentive Savings Plan (the Incentive Plan; collectively, the Plans) Located in Pleasanton, California,

[Application Nos. D–09999 through D–10001

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)(1)(A), 406(a)(1)(E), 406(a)(2), 407(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) and (E) of the Code,[2] shall not apply to the proposed acquisition, holding or exercise by the Plans of certain warrants (the Warrants) for the purchase of Class A new common stock (the New Common Stock) of Spreckels Industries, Inc. (the Employer), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) An independent fiduciary (the I/F) will manage the Warrants and monitor the value of the Warrants at all times and will be empowered to assign, transfer, sell, and exercise the Warrants in order to serve the best interest of the Plans and their participants and beneficiaries;

(b) The fair market value of the Warrants will at no time exceed twenty-five percent (25%) of the value of the total assets of the Hourly Plan or the Incentive Plan;

(c) The Warrants that the Plans will acquire resulted from a bankruptcy proceeding, in which all holders of the Class A old common stock (the Old Common Stock) in Spreckels Industries, Inc. (Old Spreckels) were treated in a like manner, including the Plans;

(d) The Plans will not incur any expenses or fees in connection with the proposed transactions;

(e) Any assignment, sale, or other transfer of the Warrants will not involve a party in interest with respect to the Plans, as defined in section 3(14) of the Act, unless such transfer is to the Employer, pursuant to an exercise of the Warrants; and

(f) The I/F will determine the fair market value of the Warrants upon acquisition by the Plans, and an independent qualified appraiser will determine the fair market value of the Warrants on a periodic basis (but not less frequently than annually).

Summary of Facts and Representations

1. The Employer, a Delaware corporation with offices in Pleasanton California, is a holding company that operates through ten (10) wholly-owned subsidiaries. Through these subsidiaries, the Employer engages in three principal businesses: (a) The production and marketing of sugar products in the United States; (b) the production and marketing of electrical

[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.

and manual hoists, actuators, rotating joints, jacks, and other materials-handling equipment; and (c) the production and sale of a wide range of speciality industrial products, including circuit breakers, hydraulic scissors-lifts, and machine parts.

2. The Plans are defined contribution plans created for its employees by Old Spreckels. Pursuant to the reorganization in bankruptcy of Old Spreckels, as more fully discussed below, the Employer became the sponsor of the ESOP, the Hourly Plan, and the Incentive Plan.

The ESOP was designed to compensate employees for services rendered by giving them an equity interest in Old Spreckels. In this regard, all of the ESOP's stock in Old Spreckels was acquired in a leveraged transaction in January of 1988. It is represented that such stock in Old Spreckels was allocated to the accounts of the participants in the ESOP, over a five (5) year period ending in 1992.[3] As of April 14, 1995, the ESOP had 947 participants and beneficiaries. The assets of the ESOP totalled $1,344,599, as of December 31, 1994.

A committee of five (5) individuals serves as named co-fiduciary with the Employer, with respect to the administration, operation, control, and management of the ESOP. The trustee for the ESOP is the Business Trust Department of First Interstate Bank in San Francisco, California. It is represented that the trustee's fees and other administrative expenses of the ESOP are paid by the Employer.

The Hourly Plan is intended to qualify as a profit-sharing plan under section 401(a) of the Code and contains a salary deferral agreement that is intended to qualify under section 401(k) of the Code. As of April 14, 1995, the Hourly Plan had 1084 participants and beneficiaries. The assets of the Hourly Plan totalled $1,251,916, as of December 31, 1994.

The Hourly Plan was established by Old Spreckels, as of July 1, 1991, to assist eligible employees in accumulating funds for retirement by providing a regular means of savings. Eligible employees include union hourly employees of the Employer or any participating subsidiary. Enrollment in the Hourly Plan is voluntary, and employees are eligible to become participants after the completion of thirty (30) days of employment. It is represented that the Hourly Plan is an eligible individual account plan, as defined under section 407(d)(3) of the Act. Employee contributions are directed by participants in the Hourly Plan into two investment fund options. The first option is a common stock and short-term investment fund that invests primarily in the common stock of the Employer. The second option is a guaranteed income fund that invests in contracts issued primarily by insurance companies. Participants may also elect to make after-tax and tax-deferred contributions to the Hourly Plan. The Employer's matching contributions to the Hourly Plan are based on the attainment of financial targets by the Employer and each of its operating subsidiaries.

The Incentive Plan was established by Old Spreckels to assist eligible employees in accumulating funds for retirement by providing a regular means of savings. Eligible employees include any salaried or non-union hourly employee who is employed on a regular full-time basis by the Employer or a participating subsidiary. Such employee is eligible to become a participant on the first day of the month following the completion of a month of continuous service. It is represented that the Incentive Plan is an eligible individual account plan, as defined under section 407(d)(3) of the Act. Participants in the Incentive Plan may direct their contributions (and earnings thereon) into various investment funds offered by the Incentive Plan, including a common stock and short-term investment fund that invests primarily in the common stock of the Employer. The Employer may elect to make matching contributions to the Incentive Plan, based on total eligible tax-deferred and after-tax employee contributions. As of April 14, 1995, the Incentive Plan had 1006 participants and beneficiaries. The assets of the Incentive Plan totalled $35,207,827, as of December 31, 1994.

All of the assets of the Hourly Plan and the Incentive Plan are held in trust by the same trustee. Effective January 1, 1995: (a) The trustee of the Hourly Plan and the Incentive Plan changed from Bank of America to Harris Bank & Trust; (b) the recordkeeper of the Hourly Plan and the Incentive Plan changed from Buck Consultants to William M. Mercer, Inc.; and (c) the Hourly Plan and the Incentive Plan became responsible for paying the trustee's fees, instead of the Employer.

3. On October 14, 1992, Old Spreckels filed a voluntary petition for bankruptcy with the United States Bankruptcy Court for the Northern District of California (Case No. 92–47497–J), pursuant to Chapter 11 of the Bankruptcy Code. It is represented that the bankruptcy filing was made as a result of the inability of Old Spreckels to meet scheduled payments of principal and interest on long-term debt in the amount of approximately $140 million dollars. At the time the bankruptcy petition was filed, Old Spreckels was a holding company with ten (10) wholly-owned operating subsidiaries. It is represented that none of the operating subsidiaries of Old Spreckels were part of the Chapter 11 filing.

On June 22, 1993, the Bankruptcy Court held a hearing on the Third Amended Plan of Reorganization (the Reorganization Plan) of Old Spreckels. The Reorganization Plan was confirmed by the Bankruptcy Court on August 4, 1993. Subsequently, on September 2, 1993, Old Spreckels emerged from Chapter 11 of the federal bankruptcy law, reorganized as the Employer.

4. Prior to its reorganization, the authorized capital stock of Old Spreckels consisted of 15 million shares of Class A voting Old Common Stock, 15 million shares of Class B non-voting Old Common Stock, and one million shares of preferred stock. Pursuant to the Reorganization Plan of Old Spreckels, all of the shares of outstanding Old Common Stock were cancelled and exchanged for shares of the New Common Stock of the Employer, and approximately $75 million dollars worth of the long term debt of Old Spreckels was converted into equity of the Employer. The effect of such conversion was to significantly reduce the debt of the Employer in comparison to Old Spreckels. It is represented that the exchange ratio of 9.9088387 shares of Old Common Stock for one share of New Common Stock was the same for all equity holders.

Old Spreckels was required prior to the hearing on August 4, 1993, which confirmed the Reorganization Plan to file with the Bankruptcy Court a new certificate of incorporation and new by-laws for the Employer. The certificate of incorporation of the Employer authorized the issuance of 15 million shares of New Common Stock, but did not authorize the issuance of preferred or other non-voting stock. As provided in the Reorganization Plan, 6 million shares of New Common Stock were issued along with Warrants to purchase New Common Stock. On September 3, 1993, it is represented that the par value of the New Common Stock was $.01 per share. On January 6, 1994, the New Common Stock was listed on the National Association of Security Dealers Automated Quotations System (NASDAQ). It is represented that on

[3] The Department expresses no opinion herein, as to whether the described transactions relating to the ESOP satisfy the conditions set forth under section 408(b)(3) of the Act.

September 14, 1995, the closing price of the New Common Stock on the NASDAQ National Market was $9.00 per share.

5. Prior to confirmation on August 4, 1993, of the reorganization of Old Spreckels, it is represented that the ESOP, the Hourly Plan, and the Incentive Plan held, respectively, 2,054,250 shares, 39,586 shares, and 419,064 shares of Class A Old Common Stock, which constituted approximately 41%, .8%, and 8.3% of the Old Common Stock then issued. As of June 30, 1993, the fair market value of the old Common Stock held by the ESOP, the Hourly Plan, and the Incentive Plan, respectively, was approximately $1,705,028, $32,856, and $347,823. As of June 30, 1993, the Old Common Stock represented approximately 100%, 4.8% and 1%, respectively, of the total assets of the ESOP, the Hourly Plan, and the Incentive Plan.

It is represented that post-confirmation, the Plans, like all other similarly situated shareholders of Old Common Stock, received their *pro rata* share of the New Common Stock in exchange for Old Common Stock. The ESOP, the Hourly Plan, and the Incentive Plan, respectively, were issued 207,315 shares, 3,995 shares, and 42,292 shares of New Common Stock, which constituted approximately 3.5%, .1%, and .7% of the then issued shares of New Common Stock. As of October 31, 1993, the New Common Stock constituted 100 percent (100%) of the assets of the ESOP. As of November 30, 1993, the New Common Stock held by the Hourly Plan and the Incentive Plan represented approximately 4.1% and 1% of the total assets of those two plans, respectively. It is represented that the Old Common Stock and the New Common Stock are ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act.[4]

On April 14, 1995, the ESOP, the Hourly, and the Incentive Plan, respectively, held 186,680 shares, 18,735 shares, and 11,252 shares which constituted approximately 3.11%, .31% and .187% of the then issued shares of New Common Stock. Subsequently, as of September 20, 1995, the percentage of shares of New Common Stock in the ESOP, the Hourly Plan, and the Incentive Plan when compared to the approximately 5,599,900 shares of New Common Stock then issued and outstanding was, respectively, 2.5% (151,352 shares), .74% (44,412 shares) and 3.9% (233,252 shares).

6. Pursuant to the reorganization, the Plans, like all other similarly situated shareholders of Old Common Stock, in addition to receiving New Common Stock were also entitled to receive a *pro rata* share of Warrants to purchase additional shares of New Common Stock. The Warrants are not registered with the Securities and Exchange Commission, and are not freely transferrable or marketable. Holders of the Warrants are not generally entitled to vote, to receive dividends, or to be deemed holders of New Common Stock. It is represented that the Warrants will expire on September 2, 2001, and are subject to all applicable federal and state securities laws. The Plans will receive the Warrants following the grant of this exemption.

Once acquired the Warrants must be held, by the Plans and all other similarly situated shareholders of Old Common Stock, until such time as the Warrants may be exercised, transferred, or assigned pursuant to their terms. The Warrants to be received by the Plans are divided into three classes as follows: (a) The First Old Equity Warrants—Series B (the First Old Equity Warrants); (b) the Second Old Equity Warrants; and (c) the Third Old Equity Warrants. Generally, each of the First Old Equity Warrants and each of the Second Old Equity Warrants are exercisable for one share of New Common Stock by the holder at the price discussed in the paragraph below, at any time or from time to time, during the term of such Warrants, in whole or in part (but, if in part, in multiples of 1,000 shares). Each of the Third Old Equity Warrants are exercisable, at the price discussed in the paragraph below, for one share of New Common Stock, but not until the closing price of the New Common Stock shall have equaled or exceeded $17.50 for twenty (20) consecutive days, and thereafter, regardless of whether or not the closing price of such stock shall be above or below $17.50, may be exercisable by the holder in whole or in part (but, if in part, in multiples of 1,000 shares).

The terms of the Warrants provide for the adjustment of the exercise price and the number of shares of New Common Stock purchasable under the Warrants upon the occurrence of certain events, such as a change in the corporate structure of the Employer and changes in the form and/or value of New Common Stock. Subject to adjustment under certain circumstances, the exercise price for the First Old Equity Warrants, the Second Old Equity Warrants, and the Third Old Equity Warrants is, respectively $11.67, $15.00, and $1.00.

7. The applicant represents that it believes that the Warrants are securities under federal securities law but are not ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act. Accordingly, the ESOP, the Hourly Plan, and the Incentive Plan seek exemptive relief to acquire and hold, in the aggregate, 132,189 First Old Equity Warrants, 462,664 Second Old Equity Warrants, and 132,189 Third Old Equity Warrants. The Employer represents that the Plans will be amended in all necessary respects to provide for, among other things, the acquisition, retention, exercise, transfer, assignment, and distribution of the Warrants. It is represented that the Warrants will not be issued to the Plans, unless this proposed exemption is granted.

8. The applicant points out that the transactions do not arise from the ordinary course of business, but arise as a result of an extraordinary event (i.e. the issuance of the Warrants to stockholders of Old Common Stock under the terms of the Reorganization Plan of Old Spreckels approved by the Bankruptcy Court). It is represented that the Bankruptcy Court has approved the Reorganization Plans as the best means of providing creditors and equity holders, including the Plans, with a fair opportunity to recover from the reorganization of Old Spreckels and to profit from the success of the Employer. It is represented that the Warrants which the Plans will acquire resulted from the bankruptcy proceeding, in which all holders of the Class A Old Common Stock were treated in like manner, including the Plans. It is further represented that during the bankruptcy proceeding, the ESOP was represented by the law firm of Wendel, Rosen, Black, Dean, and Levitan, an independent fiduciary appointed by the Bankruptcy Court. In this regard, the applicant maintains that the interests of the Hourly Plan and the Incentive Plan were substantially similar to those of the ESOP and that thus such plans were well protected during the bankruptcy proceeding.[5]

The applicant maintains that the transactions are in the interest of the

[4] The Department, herein, expresses no opinion as to whether the Old Common Stock or the New Common Stock constitute ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act, or whether the acquisition and holding by the Plans of such securities satisfied the conditions, as set forth under section 408(e) of the Act. Further, the Department, herein, is offering no relief for transactions other than those proposed.

[5] The relief provided in this exemption is limited to the acquisition, holding or exercise by the Plans of the Warrants. The Department, herein, expresses no opinion as to whether any of the relevant provisions of part 4, subpart B, of Title I of the Act have been violated regarding the representation of the Plans' interest in the bankruptcy proceeding or the ultimate outcome of such proceeding, and no exemption from such provisions is proposed herein.

Plans. In this regard, it is represented that the acquisition of the Warrants offers an opportunity for economic gain to the Plans, in that the Plans could exercise the Warrants and purchase New Common Stock at a favorable price, if the price of such stock rises above the exercise price. Further, the Plans would experience a loss if they, unlike all other similarly situated shareholders of Old Common Stock, were not permitted to receive the full value under the terms of the Reorganization Plan. The applicant maintains that the Plans should not be made to suffer a detriment relative to such other shareholders of Old Common Stock.

The applicant maintains that the Plans and their participants and beneficiaries were protected during the bankruptcy proceedings, in that the process afforded the Plans the same opportunity pursuant to the terms of the Reorganization Plan to acquire the New Common Stock and the Warrants. In this regard, it is represented that the terms of the Reorganization Plan apply in the same manner to all shareholders of the Class A Old Common Stock, including the Plans.

It is represented that the Plans will not incur any expenses or fees in connection with the proposed transactions. Further, the costs of filing the exemption application and of notifying interested persons will be borne by the Employer.

9. If this proposed exemption is approved, the Employer will issue in the aggregate approximately 594,343 Warrants to the ESOP. Specifically, the ESOP will receive 108,062 First Old Equity Warrants, 378,219 Second Old Equity Warrants, and 108,062 Third Old Equity Warrants. With regard to the allocation of the Warrants, it is represented that each participant will receive a *pro rata* share of the Warrants issued to the ESOP based on the number of shares of Old Common Stock in such participant's account just prior to the conversion to New Common Stock. It is represented that this allocation of the Warrants to the ESOP participants will be made in whole numbers of Warrants, and any fractional interest will be rounded to the nearest whole number. If a participant in the ESOP terminates employment and requests a distribution when unexercised and unsold Warrants still remain allocated to this account, the Warrants will be distributed to the participant in-kind, in the same manner and at the same time as any New Common Stock in such account is distributed to such participant.

Provided this proposed exemption is granted, the Employer will also issue approximately 11,452 Warrants to the Hourly Plan. Specifically, the Hourly Plan will receive 2,082 First Old Equity Warrants, 7,288 Second Old Equity Warrants, and 2,082 Third Old Equity Warrants. With respect to the Hourly Plan, the Warrants will be allocated to and held in a fund which currently holds the New Common Stock and investments with up to 360 days' maturity. Once the Warrants are allocated to the fund, the value of the Warrants in such fund, as determined by the I/F, will be reflected in the units received by each participant of the Hourly Plan invested in such fund.

If the Department grants this proposed exemption, the Employer will issue approximately 121,247 Warrants to the Incentive Plan. Specifically, the Incentive Plan will receive 22,045 First Old Equity Warrants, 77,157 Second Old Equity Warrants, and 22,045 Third Old Equity Warrants. With respect to the Incentive Plan, the Warrants will be allocated to an investment fund which holds New Common Stock and investments with up to 360 days' maturity. Each participant in the Incentive Plan invested in such fund will receive units based on his investments in the fund and on the addition of the value of the Warrants, as determined by the I/F, to such fund. It is represented that the Incentive Plan will manage the Warrants in exactly the same manner as the Hourly Plan.

10. Pursuant to the terms of an agreement signed January 17, 1995, L. Scott Maclise (Mr. Maclise), a registered investment advisor with Linsco/Private Ledger Financial Services (LPL), in San Rafael, California, has accepted the appointment to serve as the I/F on behalf of the Plans for purposes of this exemption, and except in the event of his discharge or resignation, as described below, will serve throughout the duration of the transactions which are the subject of this exemption. In this regard, Mr. Maclise states that he understands his duties as I/F under the Act and shall assume all duties, responsibilities, and obligations imposed upon him as I/F of the Plans in connection with the proposed transactions, pursuant to the provisions of the Act and the Code.

Mr. Maclise represents that he is qualified to serve as I/F with respect to the Plans. In this regard, Mr. Maclise states that he is experienced in representing clients as a fiduciary in stock transactions. Mr. Maclise is a graduate of California State University in San Francisco. Before joining LPL in 1992, Mr. Maclise had sixteen (16) years of investment experience with other firms, including Dean Witter, Merrill Lynch, and Shearson Lehman Brothers.

Mr. Maclise represents that he is independent of the Employer and its officers, directors, shareholders, agents, and representatives. In this regard, Mr. Maclise represents that he is not affiliated with the Employer and that his income from the Employer represents less that 1 percent (1%) of his income annually. It is further represented that Mr. Maclise shall have the power to negotiate and act independently of the Employer, and its officers, directors, shareholders, agents, and representatives with respect to the proposed transactions.

In fulfilling his responsibility as I/F to the Plans, Mr. Maclise represents that he will take whatever acts are necessary to review, analyze, negotiate, monitor, and approve or disapprove the proposed transactions, and will be responsible for the Plans' acquisition and holding of the Warrants. Bearing in mind his fiduciary duties under the Act, Mr. Maclise represents that he shall determine whether the proposed transactions: (a) Are prudent and for the exclusive purpose of providing benefits to participants; (b) are fair to the Plans from a financial point of view; and (c) are in accordance with terms and conditions, as set forth in this proposed exemption.

With respect to the acquisition of the Warrants by the Plans, Mr. Maclise represents that he will conduct due diligence to evaluate whether the Plans should enter into the proposed transactions. In this regard, Mr. Maclise will decide on behalf of the Plans (a) whether or not the Plans should acquire and hold the Warrants; and (b) when, if at all, the Warrants should be exercised to acquire New Common Stock, or sold and the proceeds used to acquire such stock.

With respect to the holding of the Warrants by the Plans, Mr. Maclise has determined that the Plans' holding of the Warrants will not impair diversification, prudence, or liquidity as mandated by the Act. In this regard, Mr. Maclise represents that he retains full power to manage and monitor the value of the Warrants at all times and is empowered to assign, transfer, sell, and exercise the Warrants in order to serve the best interests of the participants and beneficiaries of the Plans.

Mr. Maclise may resign his appointment as I/F at any time upon six (6) months prior written notice, unless the Employer and Mr. Maclise mutually agree to a shorter period of time. In addition, it is represented that the Employer can remove Mr. Maclise as I/F ''for cause,'' upon thirty (30) days' prior written notice, unless the Employer and Mr. Maclise mutually

agree to a shorter period of time. It is represented that ''for cause'' means a breach of the agreement between the Employer and Mr. Maclise, or the I/F's negligence, gross negligence, willful misconduct or lack of good faith in the execution of his duties, or in the event Mr. Maclise's fee for the services is being renegotiated, the inability of the Employer and Mr. Maclise to agree upon the fee under such agreement.

11. It is represented that the I/F will determine the fair market value of the Warrants upon acquisition by the Plan. It is further represented that, as appropriate, the Warrants will be appraised by an independent appraiser. Such appraisals will be done on a periodic basis (but not less frequently than annually).

12. In summary, the applicant represents that the proposed transactions meet the statutory critiera of section 408(a) of the Act because:

(a) The I/F will manage the Warrants and monitor the value of the Warrants at all times and will be empowered to assign, transfer, sell, and exercise the Warrants in order to serve the best interest of the Plans and their participants and beneficiaries;

(b) The fair market value of the Warrants will at no time exceed twenty-five percent (25%) of the value of the total assets of the Hourly Plan or the Incentive Plan;

(c) The Warrants that the Plans will acquire resulted from a bankruptcy proceeding, in which all holders of the Class A Old Common Stock in Old Spreckels were treated in a like manner, including the Plans;

(d) The Plans will not incur any expenses or fees in connection with the proposed transactions;

(e) Any assignment, sale, or other transfer of the Warrants will not be to a party in interest with respect to the Plans, as defined in section 3(14) of the Act, unless such transfer is to the Employer, pursuant to an exercise of the Warrants; and

(f) The I/F will determine the fair market value of the Warrants upon acquisition by the Plans, and an independent qualified appraiser will determine the fair market value of the Warrants on a periodic basis (but not less frequently than annually).

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are all fiduciaries, all active participants, and all inactive participants of the Plans. It is represented that these various classes of interested persons will be provided with a copy of the Notice of Proposed Exemption (the Notice), plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) within fifteen (15) calendar days of publication of the Notice in the Federal Register. Notification will be provided to all fiduciaries and all inactive participants of the Plans either by mailing first class or overnight express delivery of a copy of the Notice, plus a copy of the Supplemental Statement. Notification will be provided to active participants by posting a copy of the Notice, plus a copy of the Supplemental Statement at those locations within the principal places of employment of the Employer which are customarily used for notices regarding labor-management matters for review.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

H.E.B. Investment and Retirement Plan (the Plan), Located in San Antonio, Texas

[Application No. D–10035]

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 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, shall not apply to the proposed cash sale by the Plan to H.E. Butt Grocery Company (the Company), a party in interest with respect to the Plan, of an interest in a certain parcel of improved real property (the Property) known as the South Congress Shopping Center in Austin, Texas, provided that the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The Plan will receive an amount equal to the greater of either: (1) $2,975,666, or (2) the fair market value of the Property at the time of the transaction, as determined by a qualified, independent appraiser;

(c) The Plan will not pay any commissions or other expenses with respect to the sale; and

(d) The Plan's trustees determine that the sale of the Property to the Company is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries at the time of transaction.

Summary of Facts and Representations

1. The Company is a Texas corporation engaged primarily in the retail grocery business in Texas. The Company has sponsored the Plan since 1956. The Plan has also been adopted by the following entities which are affiliated with the Company: HEBCO Partners, Ltd., Parkway Distributors, Inc., Parkway Transport, Inc., C.C. Butt Grocery Company and High-Tech Commercial Services, Inc. Parkway Distributors, Inc. and Parkway Transport, Inc., are engaged in the business of intrastate and interstate trucking.

2. The Plan is a defined contribution plan incorporating a qualified cash or deferred arrangement and had approximately 20,773 participants as of December 31, 1994. As of that date, the Plan had total assets with a fair market value of approximately $386,537,043, of which approximately 8.7% reflect direct real estate investments.

The trustees of the Plan are John C. Broulliard, James F. Clingman, Jr., Richard M. Ellwood, Bea Weicker Irvin, Louis M. Laguardia, Allen B. Market, Robert A. Neslund, Wesley D. Nelson, Todd A. Piland, Charles W. Sapp, and Edward C. Gotthordt (collectively, the Trustees). The Trustees are all either current or former officers and/or employees of the Company or its affiliates.

3. The Plan and the Company currently own interests in a tract of realty known as the South Congress Shopping Center (the Shopping Center Property), located at 2400 South Congress Avenue in the City of Austin, County of Travis, State of Texas.[6]

The Shopping Center Property consists of approximately 6.21 acres of land (the Land) and a single-story masonry, multi-tenant building with approximately 98,918 square feet (the Building). The Land is described as a

[6] The Department is providing no opinion in this proposed exemption as to whether the joint ownership by the Plan and the Company of interests in the Shopping Center Property resulted in any Plan fiduciary violating his fiduciary responsibilities under Part 4 of Title 1 of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 406(b) of the Act, in pertinent part, prohibits a fiduciary of a plan from dealing with the assets of a plan in his own interest or for his own account or from acting in any transaction on behalf of a party whose interests are adverse to the interests of the plan.

nearly rectangular corner site with 420 feet of frontage on South Congress Avenue, 620 feet along Oltorf Avenue, and 53 feet along Euclid Avenue. The Company owns the eastern 29,638 square feet of the Land, and the portions of the Building related thereto, and an additional 55x135 foot strip of the Land (i.e., 7425 square feet) at the southwest corner of the Shopping Center Property. The Plan owns the remaining portions of the Building, the Land related thereto, and a three-quarter (¾) undivided interest in the Land used for the parking lot. (The portions of the Land and the Building owned by the Plan are referred to herein as ''the Property''.) The Company owns the remaining one-quarter (¼) interest in the Land used for the parking lot.

The Plan acquired the Property in 1960 from the Company as an employer contribution to the Plan.[7] The Property has generated a cash-on-cash return, based on its current appraised value, of 9.1 percent, 9.5 percent, and 12.4 percent for the years 1992, 1993, and 1994, respectively. The applicant represents that the Property's total net income to the Plan has produced a reasonable rate of return as an investment for the Plan since 1960, but that there is no assurance that the current income stream from the existing leases (as noted below) will continue.

The Property is currently subdivided into separate leasehold parcels. These leasehold parcels are subject to existing leases (the Existing Leases) to the following tenants:

(i) Tandy Corporation (lease expiring December 7, 1997 with no renewal options);

(ii) Texas State Optical, Inc. (lease expiring August 31, 1996 with no renewal options);

(iii) Gregory J. Tomczyk (Mother Nature's Health Foods) (lease on a month-to-month tenancy);

(iv) Walgreen Company (lease expiring June 30, 1996 with no renewal options);

(v) Western Auto Supply Company (lease expiring January 31, 1996 with no renewal options); and

(vi) H.E. Butt Grocery Company (lease expiring June 14, 2001 with four renewal options of five years each).

The applicant states that the Plan's lease to the Company of a portion of the Property, as noted in item (vi) above, constitutes ''qualifying employer real property'' (QERP) within the meaning of section 407(d)(4) of the Act. In this regard, the applicant represents that the leasing of such parcel of the Property to the Company is and has been statutorily exempt under section 408(e) of the Act.[8]

The applicant requests an exemption for the proposed sale of the Property by the Plan to the Company. The applicant states that because the Property encompasses leasehold parcels which are *not* leased to the Company, the proposed sale of the Property to the Company would not meet the statutory requirements for an exempt sale of QERP under section 403(e) of the Act.

4. With respect to the reasons for the proposed transaction, the applicant states that the Property is in excess of 30 years old, is antiquated in appearance, and needs both interior and exterior refurbishing to compete with more modern shopping center facilities. In addition, in order to be competitive in the retail grocery market, the Company desires to expand its existing grocery store beyond the current portion of the Property which it leases from the Plan.[9] In order to effect such expansion, the applicant represents that it will be necessary to demolish other portions of the Building on the Property that are currently leased to third parties and to effect significant construction. The Company believes that it would be in a better position to effect such demolition and construction activities without the participation of the Plan and that, in fact, entering into such activities with the Plan would be inappropriate.

5. The Trustees have determined that it would be in the best interests of the Plan and its participants and beneficiaries to sell the Property to the Company for a number of reasons.

First, retail shopping centers have a certain ''life cycle'' (i.e., a period of time over which they are commercially viable without significant renovation and updating). The trustees believe that the Property has reached the end of its ''life cycle'' and needs a substantial amount of capital to renew itself and go forward on a commercially competitive basis in the future. Second, the Trustees have determined that it is not in the Plan's best interest to undertake the type of demolition and construction activities, as well as the additional interior and exterior cosmetic refurbishing, which will be necessary for the Property in order to maintain its commercial viability for the future. Third, after reviewing a current appraisal of the Property, the Trustees have concluded that it would be in the best interests of the Plan to liquidate such investment and reinvest the cash in assets which would not require the oversight, updating, construction and expenditure that will be necessary for the Property in the future.

In sum, the Trustees believe that the sale of the Property to the Company at the present time would enable the Plan to convert an existing illiquid real estate investment, which will require significant expenditures to preserve and maintain, into more liquid and potentially more profitable investments.

6. The applicant represents that the sale of the Property to the Company will be a one-time transaction for cash at a price which is no less than the fair market value of the Property as determined by an independent, qualified appraiser.

7. The Property has been appraised by Russell T. Thurman (Mr. Thurman) of Sayers & Associates, Inc., an independent, qualified real estate appraiser in Austin, Texas, as of July 31, 1995 (the Appraisal).

Mr. Thurman states that the Appraisal relied primarily on the income approach (the Income Approach) to value the Property, taking into consideration the present value of the income stream on the Existing Leases. The Income Approach was based on actual contract rents for occupied space (approximately 88% of the leasable space) and current economic market rents for vacant space (approximately 12% of the leasable space) on the Property as of July 31, 1995. In addition, the Appraisal considered the market approach (the Market Approach) to value the Property, with an analysis of recent sales of similar properties in the area. Finally, the Appraisal considered the cost approach (the Cost Approach) to value the Property, with an estimation of the reproduction cost for the improvements, minus accrued depreciation, added to the value of the Land obtained from a sales comparison approach.

[7] The applicant represents that the acquisition preceded the effective date of the Act, but that it met the requirements of the Code which governed such transactions at that time. However, the Department expresses no opinion in this proposed exemption as to whether the Plan's acquisition of the Property satisfied the requirements of the Code.

[8] The applicant states that the parcel of the Property leased to the Company is one of several such parcels of real property leased by the Plan to the Company. The applicant maintains that such leasehold parcels are located throughout the State of Texas and that these parcels are suitable or adaptable without excessive cost for more than one use, as required by section 407(d)(4) of the Act. In addition, the applicant states that these leases did not involve the payment of any commissions and were entered into for adequate consideration, as required by section 408(e) of the Act.

In this regard, the Department is expressing no opinion as to whether the Property constitutes QERP, within the meaning of section 407(d)(4) of the Act, or whether the Plan's leasing transactions with the Company meet the conditions of section 408(e) of the Act and the regulations thereunder (see 29 CFR 2550.408e).

[9] The Company owns and occupies the eastern 29,638 square feet of the existing grocery store and leases the western 19,100 square feet of the grocery store from the Plan.

Based on this analysis, the Appraisal concluded that the fair market value of the Property, as of July 31, 1995, was $2,825,000, based on the Income Approach. However, the data provided by the Appraisal indicated that the current market value of the Property, as of such date, was approximately $3,178,000, based on the Market Approach, and $2,924,000, based on the Cost Approach. The Appraisal also concluded that the fair market value of the Shopping Center Property as of such date, including the portions of the Land and the Building owned by the Company, was $4,541,000, based on the Market Approach, and $4,287,000, based on the Cost Approach.

After reviewing the results of the Appraisal, the Company agreed to pay the Plan at least $2,975,666 for the Property, an amount determined based on the average of values provided by the Income Approach, the Market Approach, and the Cost Approach.[10]

The applicant states that the Appraisal will be updated by Mr. Thurman at the time of the proposed transaction to establish the current fair market value of the Plan's leased fee interest in the Property. For purposes of establishing the fair market value of the Property under the Income Approach, Mr. Thurman will determine the value of the Company's leasehold interest based on the greater of either (i) the actual contract rent under the Existing Lease,[11] or (ii) the fair market rental value of the leased space currently occupied by the Company.

Finally, the applicant represents that the Plan will not pay any commissions or other expenses in connection with the proposed sale.

8. In summary, the applicant represents that the proposed transaction will satisfy the statutory requirements of section 408(a) of the Act because: (a) The sale of the Property will be a one-time transaction for cash; (b) the Plan will receive a sale price for the Property which is equal to the greater of either (i) $2,975,666, or (ii) the fair market value of the Plan's leased fee interest in the Property at the time of the transaction, as determined by an independent, qualified appraiser; (c) the transaction will enable the Plan to divest itself of an illiquid real estate asset and invest the proceeds of the sale in more profitable, liquid investments; (d) the Plan will not pay any commissions or other expenses in connection with the transaction; and (3) the Trustees have determined that the sale of the Property to the Company would be appropriate for and in the best interest of the Plan and its participants and beneficiaries.

Notice of Interested Persons

The applicant states that notice of the proposed exemption shall be made to all interested persons by first class mail, except that persons who are participants in the Plan and who are actively employed by the Company, or an affiliate thereof, may be provided such notice by posting upon bulletin boards customarily used for the provision of information required to be provided to employees or by publication in one or more general employee communications.

Notice to interested persons shall be made within thirty (3) 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 sixty (60) 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.)

Aircon Energy, Inc. 401(k) Profit Sharing Plan (the Plan), Located in Sacramento, California

[Application No. D–10073]

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 office equipment (the Workstations) to Aircon Energy, Inc. (Aircon), 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; (3) the purchase price is the greater of: (a) The fair market value of the Workstations as determined by a qualified, independent appraiser, or (b) the Plan's initial acquisition cost plus opportunity costs attributable to the Workstations while in storage; (4) Aircon reimburses the Plan for the fair market rental value with respect to the prohibited use of certain of the Workstations; (5) Aircon reimburses the Plan for losses and opportunity costs assocaited with the sale of certain of the Workstations to an unrelated third party; and (6) within 90 days of the publication in the Federal Register of the grant of this notice of proposed exemption, Aircon files Form 5330 with the Internal Revenue Service (the Service) and pays all applicable additional excise taxes that are due by reason of the prohibited use transactions.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Aircon. As of December 31, 1994, the Plan had approximately 43 participants and total assets of approximately $1,638,373. The trustees of the Plan are officers, employees, or shareholders of Aircon as follows: Scott Slavensky, President; Atlthea Slavensky, Administrative Clerk; Frank Slavensky, Service Consultant; and Chris Costi, Shareholder. Aircon, a California corporation, is engaged in the business of installing and repairing residential and commercial heating and air conditioning systems and is located in Sacramento, California.

2. Among the assets of the Plan are 45 Workstations. The Plan originally purchased 48 used mahogany Workstations on December 8, 1989 for a total of $41,125 ($856.77 per unit), including shipping and handling costs, from an unrelated third party, R&M Office Furniture of Sacramento, California. Scott Slavensky, a Plan trustee, made the decision to invest in the Workstations after determining that the purchase price was well below the then prevailing market rate.[12] On September 30, 1993, three of the Workstations owned by the Plan were sold to an unrelated third party for $3,600 ($1,200 per unit) through Innovators Office Furniture, a broker of used office furniture. Net of commissions and other expenses of sale, the Plan received a total of $2,160 ($720 per unit).

[10] In this regard, please note that $2,825,000+$3,178,000+$2,924,000=$8,927,000 divided by 3=$2,975,666.

[11] The Appraisal states that the Company pays the Plan a base rental rate of $4,628.41 per month plus a percentage rent of 40% of the increase on gross sales over the base year (1991) for the entire premises.

[12] The Department expresses no opinion herein on whether the acquisition and holding of the Workstations by the Plan violated any of the provisions of Part 4 of Title I in the Act.

Of the remaining 45 Workstations, 25 Workstations are being held in storage, while 20 Workstations are currently being used by Aircon. The applicant represents that various Workstations were set up in Aircon's offices at various times. Initially, the Plan trustees set up four Workstations in January 1990 for demonstration purposes. Subsequently, additional Workstations came into use as follows: Six in May 1990, three in December 1992, and seven in September 1994. Aircon has paid all storage costs associated with the Workstations.

3. The applicant obtained an independent appraisal of 18 of the Workstations currently being used by Aircon from Alex Sabbadini, F.A.S.A., of Alex Sabbadini, Inc., a professional personal property appraiser in Sacramento, California. Using the sales comparison valuation method, Mr. Sabbadini estimated that the aggregate fair market value of the 18 Workstations as of March 17, 1995 was $7,245 ($402.50 per unit).

4. The applicant represents that despite diligent marketing efforts paid for by Aircon, the Plan trustees have been unable to sell the remaining Workstations and have concluded that there is no current market for the Workstations. In order to divest the Plan of non-income producing, illiquid assets, and to correct the ongoing prohibited transactions resulting from the use of 20 of the Workstations, Aircon proposes to purchase all 45 Workstations from the Plan for the greater of: (a) The fair market value of the Workstations as determined by a qualified, independent appriaser, or (b) the Plan's initial acquisition cost plus opportunity costs attributable to the Workstations. Because the fair market value of the Workstations is less than their acquisition cost, Aircon will purchase the Workstations from the Plan for the amount specified under (b) above. Accordingly, Aircon wil pay the Plan a purchase price of $51,770.34. The purchase price was calculated by taking the Workstations' acquisition cost ($38,564.65) and adding to that amount an assumed eight percent annual return [13] for each of the years the Plan has held the Workstations in storage since December 1989 ($13,205.69). Accordingly, the total opportunity costs attritutable to the Workstations while in storage was calculated as follows: [(Unit cost×No. Units×.08)/(12 Mos.)]×(No. Mos.).

Period	Unit cost	No. units	Mos. @ 8%	Opp'ty cost
12/89–4/90	$856.77	41	5	$1,170.90
5/90–11/92	856.77	35	31	6,197.21
12/92–8/94	856.77	32	21	3,838.38
9/94–10/95	856,77	25	14	1,999.20
Subtotal				13,205.69

The Plan will pay no commissions nor any other expenses relating to the sale.

5. The applicant acknowledges that Aircon's ongoing use of 20 Workstations without paying any compensation to the Plan constitutes a violation of the prohibited transaction provisions of the Act. Aircon proposes to make the Plan whole by paying the fair market rental value with respect to the prohibited use of these Workstations. The applicant represents that because the custom for the industry is a lease-to-own arrangement (rather than a pure rental), and because the total rent paid under a lease-to-own arrangement would greatly exceed the purchase price of the Workstations within a short time, a rental rate of $20 per month per unit is an appropriate rate of compensation to the Plan, a total of $17,580. This rate is at least as favorable to the Plan as that obtainable in an arm's length transaction because it is based on the average of quotes received from various local office furniture rental companies with respect to the rental value of a new executive desk with a retail price of $500. The applicant represents that the three companies contacted provided the following rental rates for such an office desk, based on a one-year contract: Evans Furniture Rental ($21 per month); Globe Furniture Rental ($19 per month); and Brook Furniture Rental ($21 per month). Moreover, a rental rate of $20 per month represents a 28 percent annual return on the initial cost per Workstation paid by the Plan. The rent is to be assessed from the time that each Workstation came into use through October 31, 1995, as follows:

Period	No. units	Mos.	Rent/mo.	Amount
01/90–10/95	4	70	$20	$5,600.00
05/90–10/95	6	66	20	7,920.00
12/92–10/95	3	35	20	2,100.00
09/94–10/95	7	14	20	1,960.00
Subtotal				17,580.00

The applicant represents that within 90 days of the publication in the Federal Register of the grant of this notice of proposed exemption, Aircon will file Form 5330 with the Service and pay all applicable additional excise taxes that are due by reason of the prohibited use transactions.

6. Aircon will also reimburse the Plan $1,267.25 for losses and opportunity costs associated with the sale of three of the Workstations to an unrelated third party on September 30, 1993. This amount was calculated as follows. Aircon will restore to the Plan $410.31, which represents the difference between the three Workstations' acquisition cost ($2,570.31) and the net sales price ($2,160). In addition, Aircon will pay the Plan $788.44, which represents an assumed eight percent annual return on the acquisition cost of the three Workstations while in storage for the period from December 1989 to

[13] The Department notes the applicant's representation that the eight percent figure is 105% of the five-year average of the Applicable Federal Funds Rate (AFR). The AFR is calculated by the Service and is used for determining reasonable rates of interest. The applicant represents that the AFR is thus an appopriate measure to calculate opportunity costs attributable to the Workstations.

September 30, 1993. Finally, Aircon will pay the Plan $68.50, which represents an assumed eight percent annual return for the period from October 1993 to October 31, 1995 on the $410.31 loss the Plan incurred on the sale of the three Workstations.

7. Aircon's total obligation to the Plan will thus be $70,617.59 and was calculated as follows:

Acquisition cost of 45 Workstations	$38,564.65
Opp'ty costs on 45 Workstations in storage	13,205.69
Fair market rental value of 20 Workstations	17,580.00
Loss and opp'ty costs on 3 Workstations sold	1,267.25
Total	70,617.59

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 Workstations on the open market, the Plan will receive substantially less than the amount the applicant is willing to pay. In addition, the sale will convert non-income producing, illiquid assets into liquid assets that could then be redirected into more productive investments.

8. 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; (4) the sale will enable Aircon to correct ongoing prohibited transactions; (5) the purchase price will be the greater of: (a) The fair market value of the Workstations as determined by a qualified, independent appraiser, or (b) the Plan's initial acquisition cost plus opportunity costs attributable to the Workstations while in storage; (6) Aircon will reimburse the Plan for the fair market rental value with respect to the prohibited use of 20 of the Workstations; (7) Aircon will reimburse the Plan for losses and opportunity costs associated with the sale of three of the Workstations; and (8) within 90 days of the publication in the Federal Register of the grant of this notice of proposed exemption, Aircon will file Form 5330 with the Service and pay all applicable additional excise taxes that are due by reason of the prohibited use transactions.

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 15 days of the date of publication of the notice of pendency 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/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 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.)

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 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 25th day of January, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–1778 Filed 1–30–96; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 96–1; Exemption Application No. D–09877, et al.]

Grant of Individual Exemptions; First Hawaiian Bank, 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, DC. 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.

First Hawaiian Bank Located Honolulu, HI

[Prohibited Transaction Exemption 96–1; Exemption Application No. D–09877]

Exemption

Section I. Exemption for In-Kind Transfer of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the in-kind transfer to any opened investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which First Hawaiian Bank or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services, of the assets of various employee investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds, providing the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosure described in paragraph (g) of Section II below.

(b) On the basis of the information described in paragraph (g) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commission are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds.

(d) All or a *pro rata* portion of the assets of the Plans held in the CIFs or all or a *pro rata* portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers of pricing services independent of the Bank.

(g) Not later than 30 business days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the '40 Act;

(2) The price of each of the assets involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets; and

(h) No later than 90 days after completion of each in-kind transfer of assets of the plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q), and (r) of Section II below are satisfied.

Section II. Exemption for Receipt of Fees from Funds

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) through (F) of the Code shall not apply to the receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 under the '40 Act in connection with the transactions.

(f) The Plans are not sponsored by the Bank.

(g) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund (including, but not limited to, a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing and a statement describing the fee structure).

(h) On the basis of the information described in paragraph (g) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Plans in shares of the Funds and the fees received by the Bank in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(i) The authorization, described in paragraph (h) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

(j) Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between the Bank and the Funds.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accomplained by the Termination Form, as defined in paragraph (i) of Section III below.

(1) In the event of an addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for a Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this Section II, the Bank will at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank redeeming shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the redemption of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of such Plan.

(n) The Second fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date this exemption is published in the Federal Register and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, except to the extent required by said paragraphs (k) and (l) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most

recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

(p) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(q) The Bank maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (r) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of Section II below;

(r)(1) Except as provided in paragraph (r)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of Section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) The term ''Bank'' means First Hawaiian Bank and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund or Funds'' means any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or redemption by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

(h) The term ''Secondary Service'' means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of Section II. Such Termination Form may be used at will by the Second fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

Written Comments

The Department received two written comments with respect to the proposed exemption and no requests for a public hearing. The comments were submitted by the Bank and concerned clarifications to the Summary of Facts and Representations of the proposed exemption and notification of interested persons. Following is a discussion of the applicant's comments.

1. Clarifications to the Proposed Exemption

a. The Bank notes that the word ''Pooled'' should be inserted in Representation #1c. before the words ''Equity Fund'' in the last line of the middle column of page 47601.

b. The Bank explains that in Representation #3, the word ''close,'' appearing in the fourth line of the last paragraph of the right column on page 47602, should be replaced with the word ''opening.'' As described in Representation #3 of the proposed exemption (see page 47603, the last paragraph of the left column, carrying over to the top of the middle column, and the last paragraph of the middle column), the Bank asserts that the transferred assets are valued as of the ''CIF Valuation Date,'' which is the close of business on the last business day prior to the date of transfer to the Funds. The transfer of the assets so valued is made to the Funds before the opening of business on the transfer date. Before the opening of business, the Bank further explains that the assets will have the same value as determined at the CIF Valuation Date, and the shares of the corresponding Funds will have the same value as the assets transferred. By the close of business on the transfer date, the Bank points out that the assets transferred in-kind to a Fund may change in value (i.e., increase or decrease) from the CIF Valuation Date, and thus the aggregate value of the corresponding fund may also change between opening and closing of business on the transaction date.

c. The Bank explains that the following language should be added after the words ''Bishop Street Funds'' in the eight line of Representation #4 on page 47603: ''in exchange for an appropriate number of shares of certain portfolios of the Bishop Street Funds.''

2. Notification of Interested Persons

Due to unavoidable delays and an error in the dates specified in its first notice, the Bank explains that it renotified all interested persons on or before November 13, 1995. In the second notice, the Bank indicates that it gave interested persons an extension of the comment period until December 15, 1995 which was more than 30 days from the mailing date of the second notice. As a result of the extended comment period, no further comments were received by the Department.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption as clarified and modified above. The comment letters 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 and 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 of proposed exemption published on September 13, 1995 at 60 FR 47598.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Chase Manhattan Bank (National Association) Pooled Investment Trust for Employee Benefit Plans (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 96–2; Exemption Application No. D–9983]

Exemption

The restrictions of sections 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, shall not apply to the past cash sale of certain commercial paper notes (the Notes) for $25,129,748 by two collective investment funds in the Trust known as VAN 1 and VAN 18 (the VANs) to The Chase Manhattan Bank, N.A. (the Bank), a party in interest with respect to the employee benefit plans invested in the VANs at the time of the transaction; provided the following conditions were met:

(a) The sale of each of the Notes was a one-time cash transaction;

(b) The terms and conditions of the sale were at least as favorable to the VANs as those obtainable in an arm's-length transaction with an unrelated party;

(c) The VANs received an amount for the Notes that was equal to the greater of: (i) In the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as of the time of sale as determined by an independent, qualified appraiser;

(d) The VANs did not pay any commissions, costs or other expenses in connection with the sale of the Notes;

(e) If the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. $25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and

(f) Each employee benefit plan with interests in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and receives its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs, as described in condition (e) above.

EFFECTIVE DATE: This exemption is effective as of December 19, 1994.

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 October 17, 1995, at 60 FR 53806.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Retirement Plan for Employees of Concord Hospital Capital Region Healthcare Corp. (the Plan) Located in Concord, New Hampshire

[Prohibited Transaction Exemption 96–3; Exemption Application No. D–10027]

Exemption

The restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(a)(1) (A) through (E) of the Code, shall not apply to: (1) The July 7, July 13, July 18, August 19, and August 22, 1994, transfers to the Plan of $7,376,039

of publicly—traded securities from non-ERISA accounts (the Accounts) of Concord Hospital, Inc. and its parent corporation, Capital Region Health Care Corporation; (2) the transfer of $3,761,319 of publicly-traded securities from the Plan to the Accounts in August of 1994; and (3) the proposed transfer of approximately $3.6 million from the Plan to the Accounts, provided the following conditions are satisfied: (a) The decision for the Plan to enter the subject transactions was made at the recommendation of the Plan's independent investment advisor; (b) the Plan has not paid and will not pay commissions or other fees in connection with the subject transactions; (c) the transactions involve publicly-traded securities, the fair market values of which were based upon published prices on established markets; and (d) the Plan's independent fiduciary has reviewed the transactions and has determined that the transactions were in the best interest of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 3, 1995 at 60 FR 55857.

EFFECTIVE DATE: This exemption is effective July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Larson Distributing Co. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 96–4; Exemption Application No. D–10083]

Exemption

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 (1) the extension of credit to the Plan (the Loan) by Larson Distributing Co., Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's investments in annuity accounts maintained with USG Annuity and Life Co. and All American Life Insurance Company (the Annuities), and (2) the Plan's potential repayment of the Loan (the Repayments); provided the following conditions are satisfied:

(A) The Plan does not pay any interest or incur any expenses with respect to the Loan;

(B) The Repayments are restricted solely to the amounts recovered by the Employer on behalf of the Plan (the Recovery Amounts) in litigation concerning the Annuities; and

(C) To the extent that Loan exceeds the total Recovery Amounts, the Repayments shall be waived.

For a more complete statement of the facts and representations supporting the exemption, refer to the notice of proposed exemption published on November 3, 1995 at 60 FR 55881.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Retirement Savings Plan and Trust for Employees of the J.H. Heafner Company, Inc. (the Plan) Located in Lincolnton, North Carolina

[Prohibited Transaction Exemption 96–5; Exemption Application No. D–10125]

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 sale of the Plan of certain limited partnerships units (the Units) in two limited partnerships to the J.H. Heafner Company, Inc. (Heafner), provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plans pays no commissions or other expenses in connection with the transaction; and (c) the Plan receives no less than the greater of: (1) Its cost for the Units; or (2) the fair market value of the Units on the date of the sale.

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 November 3, 1995 at 60 FR 55862.

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 accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of January 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 96–1777 Filed 1–30–96; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–09627, et al.]

Proposed Exemptions; Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name,

address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan) Located in Moorestown, New Jersey

[Application No. D–09627]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The purchase by the individual accounts (the Accounts) in the Plan of Hassan Zekavat and Pouran Zekavat (the Zekavats) from a certain limited partnership (the Partnership), a party in interest with respect to the Plan, of interests (the Interests) in the Partnership; and (2) the sale back to the Partnership of the Interests, provided that the following conditions are met:

1. The fair market value of the real property (the Property) which is the sole asset of the Partnership upon which is based the value of the Interests is established by an appraiser independent of the Plan, the Zekavats and Hassan Zekavat M.D., P.A. (the Employer);

2. The Accounts pay no more than current fair market value for the Interests in the Partnership as of the time of purchase;

3. The Interests account for no more than 25 percent of the assets of each Account as of the time of purchase;

4. The purchase of the Interests is a one-time transaction for cash;

5. An independent fiduciary approves on behalf of the Accounts the proposed purchase of the Interests from the Partnership;

6. No additional capital contributions or other contributions will be made by the Accounts to the Partnership;

7. The Partnership will only sell the Property, in any future sale of the Property, to an unrelated third party and the independent fiduciary must approve such sale;

8. Each Account receives no less than fair market value for its Interest in the Property as a result of any sale of the Property to a third party.

9. If an independent fiduciary so determines, the Partnership must repurchase the Interests for cash at a price set forth by an independent appraiser chosen by the independent fiduciary acting on behalf of the Accounts;

10. The Partnership cannot sell the Property, admit additional partners or allow the general partners to sell their Partnership interests to a third party without the consent of the independent fiduciary;

11. The independent fiduciary receives disclosure of the annual financial report of the Partnership containing a balance sheet and a statement of changes in financial position within 90 days after the end of Partnership's taxable year; and

12. All above transactions are determined by an independent fiduciary to be in the best interests of the Accounts and the Plan.

13. The Independent Fiduciary shall approve and monitor the lease between the Partnership and the Employer; and the lease between Zekavat & Associates (''Related Party Leases'').

Summary of Facts and Representations

1. The Employer is engaged in the business of a medical practice in Moorestown, New Jersey. Hassan Zekavat is the sole shareholder and the president of the Employer. He and his wife, Pouran Zekavat, are the trustees of the Plan and participants in the Plan. The Plan is a money purchase plan which had six participants. Only the Accounts in the Plan of Hassan Zekavat and Pouran Zekavat will invest in the Partnership. As of October 31, 1994, the Account balance of Hassan Zekavat was $1,304,000 and the Account balance of Pouran Zekavat was $297,000.

2. The Partnership is the York House East Ltd. limited partnership, a New Jersey partnership of which Hassan Zekavat is a general partner with a 63 percent capital and profits interest and Pouran Zekavat is a general partner with a 37 percent capital and profits interest.[1] In February, 1979 the Partnership purchased the Property, located in Moorestown, for $400,000 from an unrelated party. A mortgage on the Property is held by Commerce Bank of Cherry Hill, New Jersey, a party unrelated to the Plan or the Employer. The balance remaining on the mortgage was $289,203 as of May 1, 1994.

The Property consists of a two-story office building constructed in 1970, with 24 separate office suites. In 1994 the Property had a 91.6% occupancy rate with a yearly rental income of $190,682. The Employer and a business

[1] Section 3(14)(G) of the Act defines the term ''party in interest'' with respect to a plan to include a partnership which is 50 percent or more owned by a 50 percent or more owner of an employer of employees covered by the plan.

operated by the Zekevat's son, Zekevat & Associate, lease office suites in the building under a lease agreement with yearly rent of $22,000 and $6,000 per year respectively, with options extending until 1998.

3. Colin L. Necky (Necky), a real estate appraiser located in Cherry Hill, prepared an appraisal (the Appraisal) on the Property dated April 18, 1994. The applicant represents that Necky is independent of the Employer and the Plan. Utilizing the cost, income and comparable sales approaches to value, Necky estimated that the Property had a fair market value of $980,000 as of the date of the appraisal.

4. The Accounts now propose to purchase Interests in the Partnership from the Partnership and to become limited partners with a combined 37 percent capital and profits interest.[2] The Accounts will pay no more than current fair market value for their Interests in the Partnership as of the date of acquisition. The purchase of the Interests will be entirely for cash. The Accounts will pay no fees or commissions in regard to the proposed transaction. As limited partner, the Accounts will receive a cumulative priority return of eight percent on its initial capital contribution. That is, net cash from operations will be distributed first to the Accounts as a limited partner in payment of the priority return.

The applicant represents that the investment in the Partnership will represent less than 25 percent of the assets of each of the Accounts. The proceeds of the investment will be used to pay the existing mortgage and to fund planned capital improvements on the Property. The initial Account purchase of Interests in the Partnership, the possible sale of the Property to a third party and the sale back of Interests to the Partnership will be approved in advance by an independent fiduciary on behalf of the Accounts and the Plan.

5. The Employer has selected Michael J. Winter (Winter), an employee of the Chase Manhattan Bank, to serve as independent fiduciary for the Accounts in regard to the acquisition, and ownership or disposition by the Accounts of the Interests in the Partnership. According to the applicant, Winter has no other relationship to the Plan or the Employer. Winter is currently employed in the real estate resources department of the Chase Manhattan Bank and represents that he has had many years of experience involving the acquisition, management and disposition of industrial, commercial and residential real estate. Winter acknowledges that he understands the duties of a fiduciary under the Act. Winter reviewed the Appraisal which discloses existing leases, vacancies and the Property's net income. In view of the potential appreciation in the value of the Property and the priority return of eight percent on the Plan's initial contribution, Winter believes that the proposed investment is in the best interests of the Plan and its participants. Winter will make certain that the Plan does not pay more than fair market value for the 37 percent Interest in the Partnership.

Winter states that he will exercise the rights of the Plan in the Partnership in the best interests of the Plan. Also, Winter will: (a) Approve the Related Party Leases and monitor them on an on going basis for the Plan; (b) approve changes to the Related Party Leases; and (c) take any and all required actions to protect the Plan in the event of default under the Related Party Leases.

6. Further, the Partnership Agreement has been amended to provide that the independent fiduciary's approval is necessary before the Partnership makes any sale of the Property to a third party. The applicant represents that this third party will be unrelated to the Plan, Zekavats or the Employer and that such sale will be at fair market value. Also, the Partnership Agreement has been amended to require the Partnership to repurchase the Accounts Interests, if, in the opinion of the independent fiduciary disposing of the Interests to the Partnership is in the best interests of the Accounts. Such ''put option'' will be for cash at a price set forth by an independent appraiser chosen by the independent fiduciary acting of behalf of the Plan.

The Plan will not make a decision to acquire or sell an Interest in the Partnership without the approval of the independent fiduciary. Furthermore, the Plan will not be permitted to invest additional money in the Partnership or make any additional capital contributions to the Partnership. In the event of the need of cash with respect to the Property, such cash will come from the general partner. However, under the Partnership Agreement the Plan's percentage interest in the Partnership cannot be changed and will not be changed by virtue of the contribution by the general partner.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) An independent fiduciary has determined that the proposed purchase of the Interests is in the best interests of the Plan; (2) the fair market value of the Property will be established by a real estate appraiser independent of the Plan and the Employer; (3) the Plan will pay no more than current fair market value for the Interests; (4) the Accounts may require the Partnership to repurchase the Interests at a price set forth by an independent appraiser chosen by the independent fiduciary; (5) the sale of the Property by the Partnership or interest in the Partnership to an unrelated third party will require the consent of the independent fiduciary; and (6) the Independent Fiduciary shall approve and monitor the Related Party Leases and take all required action to protect the Plan in the event of default.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Rose's Stores, Inc. Retirement Savings 401(k) Plan (the Retirement Savings Plan) Located in Henderson, NC

[Application No. D–10062]

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 to (1) the past acquisition and holding by the Rose's Stores, Inc. Variable Investment Plan (the Variable Investment Plan) of subscription rights (the Subscription Rights) offered by Rose's Stores, Inc. (the Employer) to purchase shares of new common stock (the New Stock) upon the emergence of the Employer from bankruptcy; (2) the past acquisition and continued holding by the Variable Investment Plan and subsequently, the Retirement Savings Plan, of warrants (the Warrants) to purchase shares of the Employer's New

[2] The applicant represents that, subsequent to the Plan's investment in the Partnership, the ongoing lease between the Partnership and the Employer will not be a prohibited transaction because the Partnership is a ''real estate operating company'' under 29 CFR 2510.3–101(e) and, therefore, the real estate held by the Partnership does not constitute plan assets. The Department expresses no opinion herein in that regard. The applicant states that the Partnership is a real estate operating company pursuant to the regulation, because at least 50 percent of its assets are invested in real estate, the Partnership has the right to substantially participate directly in the management or development activities, and in the ordinary course of business the Partnership engages in real estate management or development.

Stock; and (3) the proposed acquisition of shares of the New Stock by the Retirement Savings Plan upon the exercise of the Warrants.

This proposed exemption is subject to the following conditions:

(a) The acquisition and holding of the Subscription Rights and the Warrants by the Variable Investment Plan occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the old common stock (the Old Stock) of the Employer were treated in the same manner.

(b) The Variable Investment Plan had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding.

(c) The Subscription Rights and the Warrants were acquired automatically and without any action on the part of the Variable Investment Plan.

(d) The Variable Investment Plan did not pay any fees or commissions in connection with the receipt and holding of the Subscription Rights and the Warrants, nor will the Retirement Savings Plan pay any fees or commissions in connection with the holding and exercise of the Warrants.

(e) Any decision to exercise the Warrants now held by the Retirement Plan will be made by participants in accordance with the terms of such Plan.

EFFECTIVE DATE: If granted, this proposed exemption will be effective February 7, 1995 with respect to the acquisition and holding by the Variable Investment Plan of the Subscription Rights and April 28, 1995 with respect to the acquisition and holding by the Variable Investment Plan (and subsequently the Retirement Savings Plan) of the Warrants.

Summary of Facts and Representations

1. The Retirement Savings Plan is a defined contribution plan that provides for participant-directed investments. As of September 30, 1995, the Retirement Savings Plan had total assets of approximately $59,025,284 and 9,155 participants. First Union National Bank of North Carolina serves as the trustee (the Trustee) of the Retirement Savings Plan but it exercises no investment discretion over the assets involved in the transactions that are described herein.

The Retirement Savings Plan was formed, effective July 1, 1995, as the result of the merger of the Variable Investment Plan and the Rose's Stores, Inc. Profit Sharing Plan (the Profit Sharing Plan). The terms of the merged plan are consistent with those of the Variable Investment Plan, which was amended to reflect the merger. The name of the merged plan was changed to ''Rose's Stores, Inc. Retirement Savings 401(k) Plan.''

Both the Variable Investment Plan and the Profit Sharing Plan had common participants and shared the same bank trustee. The Subscription Rights and the Warrants that are described herein were assets of the Variable Investment Plan but they were never assets of the Profit Sharing Plan.

2. The Employer is a Delaware corporation maintaining its principal place of business in Henderson, North Carolina. The Employer operates a chain of retail stores called ''Roses'' in 11 southeastern states of the United States.

3. The Employer recently emerged from a reorganization proceeding under Chapter 11 of Title 11 of the United States Code. Under the bankruptcy proceeding, the First Amended Joint Plan of Reorganization of Rose's Stores, Inc. (the POR) was approved and confirmed by the U.S. Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division (the Court) on December 14, 1994. A modified and Restated First Amended Joint Plan of Reorganization (the Modified POR) was confirmed by the Court on April 24, 1995 and became effective on April 28, 1995 (the Effective Date). It is represented that the Variable Investment Plan had little, if any, bargaining power in the structuring of the POR or the Modified POR.

4. Under the terms of the POR, the holders of record of the Old Stock, as of February 7, 1995, were entitled to purchase shares of New Stock at a subscription price of $6.50 per share. Each holder received one Subscription Right for each 1.8758 shares of Old Stock owned as of February 7, 1995, provided that the aggregate amount of subscription proceeds received in connection with the Subscription Rights on or before March 31, 1995 totaled at least $25 million.[3]

5. To effect Subscription Rights, each holder, including participants in the Variable Investment Plan, was notified of the Subscription Rights. Approximately 300 participants elected to exercise Subscription Rights. A check in the amount of the total subscription price that was attributable to the Subscription Rights was issued by the Variable Investment Plan's former trustee and held in escrow by State Street Bank and Trust Company (State Street), as distribution agent, pending a determination of whether a $25 million threshold amount had been achieved. In the event that the threshold was achieved and the exercise of the Subscription Rights became effective, an amount equal to the total price attributable to the Subscription Rights would have been deducted *pro rata* from other assets in a participant's account. Because the $25 million threshold amount was not achieved, State Street returned the check to the trustee. No adjustments were ever made to participants' accounts due to Subscription Rights nor did any affected participants pay any fees or commissions in connection with the receipt and holding of the Subscription Rights.

6. By its terms, the Modified POR entitled holders of record of the Employer's Voting Common Stock and Non-Voting Class B Stock (i.e., the Old Stock) to receive their *pro rata* share of 4,285,714 Warrants that were issued by the Employer within 30 days after the Effective Date of the Modified POR. The Employer's Old Stock was also cancelled and extinguished.

7. Each Warrant[4] entitles the holder to purchase one share of New Stock during the period commencing on the date the Warrants were issued and ending on the seventh anniversary of the Effective Date. Under the Modified POR, the initial exercise price of the Warrants per share of New Stock is $14.45. This price has been determined by dividing the amount of the Employer's unsecured creditors' allowed claims (and reserve disputed claims) (collectively, the Recovery Amount) as of the Effective Date by 10 million (the total number of shares of New Stock to be issued under the

[3] Because the Variable Investment Plan provided for participant-directed investments, one investment option offered to participants was the Company Stock Fund which was invested in shares of Old Stock. As of September 1, 1993, the Variable Investment Plan held 255,290 shares of Old Stock. At the time of the bankruptcy filing described herein, the Variable Investment Plan's Advisory Committee determined that the investment by such plan in the Old Stock would be discontinued as of September 1, 1993. However, the Advisory Committee also determined that it would permit each participant to direct, in writing, that the portion of his or her Variable Investment Plan account balance that was invested in the Company Stock Fund on September 1, 1993 remain so invested until such time as the participant directed otherwise. Participants were advised that there were risks associated with the continued investment in the Old Stock due to the Employer's reorganization proceeding. Because some participants elected to have their accounts remain invested in the Old Stock, the Variable Investment Plan continued to hold shares of the Old Stock until April 28, 1995 which is the Effective Date of the Modified POR (see Representation 6).

[4] The Warrants are treated as separate securities under the Federal securities laws. Although the Warrants were originally quoted on the NASDAQ system, they were subsequently delisted due to the absence of two market makers making a market for such securities. According to the applicant, the Warrants were relisted by the NASDAQ on October 13, 1995.

Modified POR).[5] As reported in the Wall Street Journal on December 11, 1995, the trading prices for the Warrants on the NASDAQ were as follows: (High) 3⁄16, (Low) 1⁄8, (Close) 3⁄16, (Net Change) 0.

8. The exercise price will be adjusted on each of the first three anniversaries of the Effective Date to reflect changes in the Recovery Amount on each of these three dates. The exercise price will be adjusted on the fourth, fifth and sixth anniversaries of the Effective Date to equal 105 percent, 110 percent and 115 percent, respectively, of the Recovery Amount divided by 10 million shares. The exercise price is also subject to further adjustment.

9. No participant in the Variable Investment Plan has paid any fees or commissions in connection with the holding of the Warrants and no participant in the Retirement Savings Plan will pay any fees or commissions in connection with the continued holding or exercise of the Warrants. With respect to the exercise of the Warrants, the Trustee will follow the participant's directions. Under such circumstances, a participant will exercise Warrants pursuant to procedures and forms that will be established by the Retirement Savings Plan's Advisory Committee. Such procedures may provide that the exercise price under the Warrants will be paid from that portion of the participant's account that is invested in assets other than in the Employer's securities. In the event that the fair market value of the New Stock is less than the exercise price under the Warrants, it is represented that a participant will not exercise Warrants to acquire shares of New Stock.

10. The Employer represents that it has analyzed the impact of the POR and the Modified POR on the Variable Investment Plan and the Retirement Savings Plan. In particular, the Employer has analyzed the prohibited transaction implications of the automatic exchange of the Old Stock previously held by the Variable Investment Plan for the Warrants under the Modified POR and the acquisition and holding of the Subscription Rights by the Plan under the POR. For these reasons, the Employer has concluded that these transactions have resulted in prohibited transactions in violation of the Act. Therefore, the Employer has requested retroactive exemptive relief from the Department.[6]

11. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The acquisition and holding of the Subscription Rights and the Warrants by the Variable Investment Plan occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the Old Stock of the Employer were treated in the same manner; (b) the Variable Investment Plan had little, if any, ability to affect the negotiation of the Employer's plans of reorganization with respect to the bankruptcy proceeding; (c) the Subscription Rights and the Warrants were acquired automatically and without any action on the part of the Variable Investment Plan; (d) the Variable Investment Plan did not pay any fees or commissions in connection with the receipt and holding of the Subscription Rights and the Warrants nor will the Retirement Savings Plan pay any fees or commissions in connection with the continued holding and exercise of the Warrants; and (e) any decision to exercise the Warrants now held by the Retirement Savings Plan will be made by participants in accordance with the terms of such plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 10 days of the publication of the notice of proposed exemption in the Federal Register. The notice will be provided to interested persons by posting and by first class mail. Such notice will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 40 days of the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

[5] The applicant represents that the Old Stock and the New Stock constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and therefore, the ownership of such stock by either the Variable Investment Plan or the Retirement Savings Plan would satisfy the requirements of section 407(a) of the Act. However, in this proposed exemption, the Department expresses no opinion on whether the requirements of section 407 have been met.

[6] As noted above, the POR was confirmed by the Court on December 14, 1994. However, the applicant explains that there could be no assurance that the POR would become effective. The applicant also explains that it was required to meet several financial hurdles in order for the Modified POR to become effective. One of these hurdles, according to the applicant, culminated in the negotiation of a revolving credit agreement, the closing of which occurred on April 27 and 28, 1995 with unrelated lenders.

W.W. Taylor, Jr., M.D., P.C. Money Purchase Pension Plan (the Plan) Located in Memphis, Tennessee

[Application No. D–10118]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past contribution by W.W. Taylor, M.D., P.C. (the Employer) to the Plan of certain publicly traded securities (the Securities), provided: (a) The contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution as determined by an independent broker; (c) no commissions were paid in connection with the transaction; and (d) the Securities represented less than 25% of the assets of the Plan at the time of the contribution.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective October 7, 1994.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase pension plan that currently has 7 participants and had assets of $721,597 as of June 30, 1995. W.W. Taylor, M.D. (Dr. Taylor) is the trustee of the Plan.

2. On October 7, 1994, and November 2, 10, 17 and 22, 1994, the Securities were transferred from a corporate account of the Employer to an account of the Plan in order to satisfy the minimum funding requirements of the Plan for the year ending June 30, 1994. The Securities consisted of 100 shares of Sofamor/Danek Group, Inc. (S/D), valued at $18 per share, for a total value of $1,800; 100 shares of GTE Corporation (GTE), valued at $30.25 per share, for a total value of $3,025; and 470.108 shares of Putnam Corporate Asset Trust, valued at $40.01 per share, for a total value of $18,809.02. Thus, the total contribution of the Securities was valued at $23,634.02. The values of the Securities were obtained from the New York Stock Exchange firm of Morgan Keegan & Company (MK).

3. The applicant represents that the contribution in kind of the Securities

instead of cash was made in error. Ms. Nancy Cochran of Burleigh-Dunger-Cochran (BDC) in Memphis, Tennessee, an independent firm which provides pension consulting and administrative services to the Plan, has represented that the Plan and the Employer each maintain a separate brokerage account with MK. Ms. Cochran represents that prior to the contribution of the Securities, Dr. Taylor called BDC to inquire whether the contribution could be made by the transfer of funds from the Employer's brokerage account at MK to the Plan's brokerage account. BDC informed Dr. Taylor that this could be done, but since BDC did not specify that it meant that only a cash disbursement was permissible, Dr. Taylor understood the response to mean that the contribution could be paid by the transfer of either cash or marketable securities. As a result of this misunderstanding, Dr. Taylor instructed the broker at MK to transfer the Securities directly from the Employer's account to the Plan's account to satisfy a portion of the required contribution to the Plan.

4. Michael D. Uiberall, C.P.A., an independent certified public accountant with Uiberall, Lieb, Blockman, Perry, P.C. (ULBP) in Memphis, Tennessee, represents that ULBP is the certified public accounting firm for the Employer. He further represents that in the process of preparing the Employer's 1994 U. S. Corporate Income Tax Return in late January or early February, 1995, it came to ULBP's attention that the Employer had contributed the Securities to the Plan. ULBP contacted Dr. Taylor, who did not realize that this was a prohibited transaction. On the contrary, Dr. Taylor was of the opinion that this had been a permissible transaction. ULBP then contacted BDC, which followed up with Dr. Taylor in resolving this issue by filing a request for the exemption proposed herein. The applicant represents that neither the Plan nor the Employer is the subject of an investigation or enforcement action by the Department or the Internal Revenue Service.

5. The applicant represents that the transaction was in the best interest of the Plan. The Plan had already purchased shares in two of the three investments involved in the subject transaction before the erroneous transfers occurred. The Plan held 100 shares of GTE and 150 shares of S/D prior to the subject transaction. The applicant represents that had cash been contributed to the Plan, the same Securities would have been purchased by the Plan on the open market. The Securities represented approximately 3.5% of the Plan's assets as of the time of the contribution. Further, since the time of the contribution, the Securities have appreciated in value by 11.45%. The applicant also states that since no brokerage commissions were paid with respect to the transfers as they would have been had the Securities been purchased on the open market, the Plan has saved additional money by virtue of the contribution in kind.

6. In summary, the applicant represents that the subject transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The contribution was a one-time transaction; (b) no commissions were paid by the Plan in connection with the transfer of the Securities; (c) the Securities were valued by MK, an independent brokerage firm, as of the dates of each transfer; (d) the transaction occurred as a result of a misunderstanding between Dr. Taylor and the pension consulting firm of BDC; and (e) when the prohibited transaction was discovered by the Employer's independent C.P.A. firm, the Employer requested the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and 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, DC, this 25th day of January, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration.

Department of Labor.

[FR Doc. 96–1775 Filed 1–30–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–06; Exemption Application No. D–09987, et al.]

Grant of Individual Exemptions; WLI Industries, Inc. Employees' Stock Ownership Plan (the Plan), 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, DC. 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.

WLI Industries, Inc. Employees' Stock Ownership Plan (the Plan), Located in Villa Park, IL

[Prohibited Transaction Exemption 96–06; Exemption Application No. D–09987]

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) shall not apply to the cash sale by the Plan of its interest (the Interest) in a limited partnership (the Partnership), on December 29, 1995, to James Van DeVelde and Robert Van DeVelde, the general partners of the Partnership and parties in interest with respect to the Plan, provided (1) all terms and conditions of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale was a one-time transaction for cash; (3) the Plan was not required to pay any commissions, costs or other expenses in connection with the sale; (4) the Plan received a price for the Interest which was not less than the greater of: (i) $2,500 or (ii) the fair market value of the Interest as determined by a qualified, independent appraiser and; (5) within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI files a Form 5330 with the Internal Revenue Service and pays all applicable excise taxes by reason of such prior or continuing prohibited transactions.

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 October 17, 1995 at 60 FR 53808.

EFFECTIVE DATE: This exemption is effective as of December 29, 1995.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption and no requests for a public hearing. The written comment was submitted by the applicants. It informed the Department that the sale had been consummated by the parties on December 29, 1995 in accordance with the terms and conditions of the proposed exemption. In response to this comment, the Department has made the exemption retroactive to December 29, 1995 and has determined to grant the exemption as initially proposed.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady 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

[Prohibited Transaction Exemption 96–07; Application No. D–10024]

Exemption

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: The exemption is effective for the period from May 12, 1995 until June 21, 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 published on November 28, 1995, at 60 FR 58664.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Industrial Bank of Japan Limited, New York Branch (IBJ), Located in New York, New York

[Prohibited Transaction Exemption 96–08; Exemption Application Nos. D–10065 and D–10066]

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, shall not apply to (1) the granting to IBJ, as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in the Tiger Real Estate Fund, L.P. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's length transactions with unrelated parties; and (b) the decisions on behalf of each Plan

to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

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 November 3, 1995 at 60 FR 55859.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fidelitone, Inc. Employees' Profit Sharing and Savings Plan & Trust (the Plan), Located in Wauconda, Illinois

[Prohibited Transaction Exemption 96–09, Exemption Application No. D–10077]

Exemption

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) shall not apply to the 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.

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 November 28, 1995 at 60 FR 58668.

FOR FURTHER INFORMATION CONTACT: Ms. 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

[Prohibited Transaction Exemption 96–10; Exemption Application No. D–10095]

Exemption

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) shall not apply to the 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.

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 November 28, 1995 at 60 FR 58670.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

ContiFinancial Services Corporation (ContiFinancial), Located in New York, New York

[Prohibited Transaction Exemption 96–11; Exemption Application No. D–10102]

Exemption

Section I. Transactions

A. Effective November 28, 1995, 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 a 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) 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.[1]

B. Effective November 28, 1995, 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 and underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment or 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 had 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.(i)(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

[1] A provide 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) The continued holding of certificates acquired by a plan pursuant to Subsection I.B. (1) or (2).

C. Effective November 28, 1995, 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.[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 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. Effective November 28, 1995, 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.

Sec. 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 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.

Sec. 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);

[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.

(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);[4]

(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.

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);

[4] 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.

(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 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.

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 November 28, 1995 at 60 FR 58671.

EFFECTIVE DATE: This exemption is effective for transactions occuring on or after November 28, 1995.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption and no requests for a public hearing. The written comment, which was submitted by ContiFinancial, requested that the exemption be made effective as of November 28, 1995. This was the date that the notice of proposed exemption was published in the Federal Register. The Department has considered this comment and has revised the exemption, accordingly.

Thus, after giving full consideration to the entire record, the Department has decided to grant the subject exemption. ContiFinancial'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, NW, Washington, DC 20210.

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 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, DC, this 25th day of January, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–1776 Filed 1–30–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–009]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: February 20, 1996, 1:00 p.m. to 4:30 p.m.; February 21, 1996, 8:30 a.m. to 4:30 p.m.; and February 22, 1996, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Shafto, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–6170.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room Agenda topics for meeting as follows:

—National Perspective: NASA Aeronautics Overview
—NASA Human Factors Program Overview & Response to AAC/ARTS Recommendations from Last Review
—National Plan for Civil Aviation Factors FAA–NASA Program Coordination
—Human Factors Research Methodology

—Human Factors R&T Base
—Airframe Systems Applications
—Airspace Operations Systems Applications

It is imperative that the meeting be held on these dates to accommodate the scheduling priority of the key participants. Visitor will be request to sign a visitors register.

Dated: January 25, 1996.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 96–1833 Filed 1–30–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–010]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Monday, March 4, 1996, 8:30 a.m. to 5:00 p.m.; Tuesday, March 5, 1996, 8:30 a.m. to 5:00 p.m.; Wednesday, March 6, 1996, 8:00 a.m. to 12:00 noon.

ADDRESSES: Jet Propulsion Laboratory, Building 180, Room 101, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Guenter R. Riegler, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0339.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Status of prior SScAC recommendations
—Office of Space Science Reorganization
—FY 96 Budget Update; FY 97 Budget Request
—Subcommittee Business

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: January 25, 1996.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 96–1832 Filed 1–30–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96-008]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: NASA hereby gives notice that Imitec, Inc. of Schenectady, New York 12308, has requested an exclusive license to practice the inventions protected by U.S. Patent Application No. 08/359,752 entitled ''TOUGH, SOLUBLE, AROMATIC, THERMOPLASTIC COPOLYIMIDES,'' for which a U.S. Patent was applied for on December 16, 1994; and U.S. Patent Application No. 08/144,185 entitled ''PROCESS FOR PREPARING TOUGH, SOLUBLE, THERMOPLASTIC COPOLYIMIDES,'' which was applied for on May 18, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this Notice must be received by April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F, Helfrich, NASA, Langley Research Center, Mail Code 212, Hampton, VA 23681-0001; telephone (804) 864-3521.

Dated: January 22, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–1834 Filed 1–30–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection:

—DOE/NRC Forms 741 & 741A, ''Nuclear Material Transaction Report,'' and NUREG/BR–0006, ''Instructions for completing forms 741, 741A, and 740M''
—DOE/NRC Form 740M, ''Concise Note''

3. The form number, if applicable:

—DOE/NRC Forms 741 & 741A, ''Nuclear Material Transaction Report,'' and
—DOE/NRC Form 740M, ''Concise Note''

4. How often the collection is required:

—DOE/NRC Form 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.
—DOE/NRC Form 740M: When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U. S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement

5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U. S. eligible list who have been notified in writing by the Commission that they are subject to 10 CFR part 75.

6. An estimate of the number of responses:

—DOE/NRC Form 741/741A: 20,000
—DOE/NRC Form 740M: 1,140

7. The estimated number of annual respondents:

—DOE/NRC Form 741/741A: 1,200
—DOE/NRC Form 740M: 38

8. An estimate of the total number of hours needed annually to complete the requirement or request:

—DOE/NRC Form 741/741A: 15,000
—DOE/NRC Form 740M: 855

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or

for transfer or receipt of 1 kilogram or more of source material. Licensees affected by 10 CFR Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U. S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement. The use of Forms 740M, 741, and 741A, together with NUREG/BR–0006, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the OMB reviewer by March 1, 1996. Troy Hillier, Office of Information and Regulatory Affairs (3150–0057 & –0003), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, MD, this 25th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–1864 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 part CFR 81, Standard Specifications for the Granting of Patent Licenses.

2. Current OMB approval number: (3150–0121).

3. How often the collection is required: Applications for licenses are submitted once. Other reports are submitted annually or as other events require.

4. Who is required or asked to report: Applicants for and holders of NRC licenses to NRC inventions.

5. The number of annual respondents: 0.

6. The number of hours needed annually to complete the requirement or request: 35 hours, however, none are anticipated during the next three years.

7. Abstract: 10 CFR part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications vested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

Submit, by April 1, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L. Street NW. (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 702–321–3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, MD., this 25th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 96–1865 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 483, ''Registration Certificate—*In Vitro* Testing with Byproduct Material Under General License''

2. Current OMB approval number: 3150–0038

3. How often the collection is required: There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

4. Who is required or asked to report: Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units

of byproduct material in certain *in vitro* clinical or laboratory tests.

5. The number of annual respondents: 104 NRC licensees and 260 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 42 hours or approximately 7 minutes per NRC or Agreement State licensee.

7. Abstract: Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital, has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

Submit, by April 1, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, MD., this 25th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 96–1866 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

Consolidated Edison Company of New York, Inc.

[Docket No. 50–3]

Indian Point Unit No. 1; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order authorizing the decommissioning of Indian Point Unit No. 1 (IP–1) that is licensed to Consolidated Edison Company of New York, Inc. (Con Edison). The proposed Decommissioning Plan involves safe storage (SAFSTOR) of IP–1 until after IP–2 is permanently shut down, at which time both units would be decontaminated and dismantled. The staff has evaluated the proposed SAFSTOR of IP–1 to 2013, consistent with the licensee's amended Decommissioning Plan. The IP–1 license is being renewed only to October 14, 2006, to be consistent with a Notice of Consideration of Issuance of Amendment and Opportunity for Hearing which was published in the Federal Register on December 31, 1985 in order to put new Technical Specifications for the current shutdown condition in place.

Description of Proposed Action

IP–1 has been shut down since October 31, 1974, and all spent fuel has been removed from the reactor and transferred to the IP–1 spent fuel storage pools. Approval of the Decommissioning Plan will allow Con Edison to retain IP–1 in a SAFSTOR status in accordance with an approved Decommissioning Plan. SAFSTOR of IP–1 will allow continued use of the site for electric power production by IP–2. A significant portion of IP–1 equipment is being used to support IP–2 operations.

Finding of No Significant Impact

The staff has reviewed the proposed decommissioning relative to the requirements given in 10 CFR Part 51. In the SAFSTOR alternative, IP–1 will be safely stored and subsequently decontaminated to levels that permit release of the property to unrestricted use. IP–1 data on radionuclide inventories for activation and contamination shows that cobalt-60 is the dominant gamma-emitting radionuclide and that an initial 378,000 curies of cobalt-60 in the reactor vessel and its internals at reactor shutdown will decrease the 2,390 curies by 2013. Data on primary system contamination shows that the inventory of cobalt-60 will decrease from 198 curies in 1988 to 7 curies in 2013 and that cesium-137 will decrease from 23 curies to 13 curies over the same period of time. Data on auxiliary systems contamination also shows a decrease during the SAFSTOR period. These reductions in radioactivity will reduce potential exposures to personnel during final dismantling and also may reduce waste volume for disposal.

Based upon its Environmental Assessment, the staff concluded that there are no significant environmental impacts associated with the proposed decommissioning and that the proposed decommissioning will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed decommissioning of IP–1.

For further details with respect to this action, see: (1) the licensee's application for authorization to decommission IP–1, dated October 17, 1980, as revised October 13, 1981; July 31, 1986; March 28, 1988; August 10, 1989; March 28 and July 17, 1990; February 5, April 2, July 31, September 20, and October 12, 1993; May 13 and August 11, 1994; and July 19, 1995; (2) the NRC's Environmental Assessment and Finding of No Significant Impact; and (3) the NRC's Safety Evaluation. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 25th day of January 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–1870 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

Testing of Safety-Related Logic Circuits; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 96–01 to notify licensees of nuclear power reactors about problems with testing of safety-related logic circuits, request that licensees implement certain actions, and require that all licensees submit a written response. This generic letter is available in the Public Document Rooms under accession number 9601050193.

DATES: The generic letter was issued on January 10, 1996.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Hukam C. Garg at (301) 415–2929.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 23rd day of January, 1996.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–1871 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 5, 1996, through January 19, 1996. The last biweekly notice was published on January 22, 1996.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 a hearing and petitions for leave to intervene is discussed below.

By March 1, 1996, 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 for the particular facility involved. 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If 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 (Project Director): 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 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 for the particular facility involved.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 12, 1996

Description of amendment request: Compliance with 10 CFR Part 50, Appendix J, provides assurance that the primary containment, including those systems and components that penetrate the primary containment, do not exceed the allowable leakage rate values specified in the Technical Specifications and Bases. The allowable leakage rate is determined so that the leakage assumed in the safety analyses is not exceeded.

On February 4, 1992, the NRC published a notice in the Federal Register (57 FR 4166) discussing a planned initiative to begin eliminating requirements marginal to safety that impose a significant regulatory burden. Appendix J to 10 CFR Part 50, ''Primary Containment Leakage Testing for Water-Cooled Power Reactors,'' was considered for this initiative and the staff undertook a study of possible changes to this regulation. The study examined the previous performance history of domestic containments and examined the effect on risk of a revision to the requirements of Appendix J. The results of this study are reported in NUREG–1493, ''Performance-Based Leak-Test Program.''

Based on the results of this study, the staff developed a performance based approach to containment leakage rate testing. On September 12, 1995, the NRC approved issuance of this revision to 10 CFR Part 50, Appendix J, which was subsequently published in the Federal Register on September 26, 1995, and became effective on October 26, 1995. The revision added Option B ''Performance-Based Requirements'' to Appendix J to allow licensees to voluntarily replace the prescriptive testing requirements of Appendix J with testing requirements based on both overall and individual component leakage rate performance.

Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' was developed as a method acceptable to the staff for implementing Option B. Accordingly, the licensee has submitted, in its application dated January 12, 1996, proposed changes to the TS to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.''

Basis for proposed no significant hazards consideration determination: 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:

1The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment leak rate testing is not an initiator of any accident; the proposed change does not affect reactor operations or accident analysis, and has no significant radiological consequences. Therefore, this proposed change will not involve an increase in the probability or consequences of any previously-evaluated accident.

2. The proposed change will not create the possibility of any new accident not previously evaluated.

The proposed change does not affect normal plant operations or configuration, nor does it affect leak rate test methods. The test history at Catawba (no ILRT [integrated leak rate test] failures) provides continued assurance of the leak tightness of the containment structure.

3. There is no significant reduction in a margin of safety.

The proposed changes are based on NRC-accepted provisions, and maintain necessary levels of reliability of containment integrity. The performanced-based approach to leakage rate testing recognizes that historically good results of containment testing provide appropriate assurance of future containment integrity; this supports the conclusion that the impact on the health and safety of the public as a result of extended test intervals is negligible.

Based on the above, no significant hazards consideration is created by the proposed change.

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.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: December 27, 1995

Description of amendment request: The proposed amendments would modify Tables 3.3–11 and 4.3–7 of Beaver Valley Power Station Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specification (TS) 3.3.3.8 such that only one valve position indication system for the power operated relief valves and safety valves is required to be operable. The licensee stated that the proposed amendments would then be consistent with the NRC's Improved Standard Technical Specifications, NUREG–1431, Revision 1, and with the guidance of Regulatory Guide 1.97, NUREG–0578, and NUREG–0737.

Basis for proposed no significant hazards consideration determination: 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:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves instrumentation which is redundant in monitoring the position of valves and, as such, does not influence the potential for an initiating event involving the power operated relief valves (PORVs) or the safety valves (SVs). Implementation of these changes will reduce the potential for challenges to the plant due to a potential shutdown which should not be necessary due to the restrictive nature of having unnecessary redundant position indication in the technical specification. By deleting the Unit No. 1 technical specification operability requirements for the PORV acoustic detectors, and by deleting, on both units, the technical specification operability requirements for the SV temperature detector position indicators, the potential for unnecessary shutdowns is reduced. When inoperable, the PORV acoustic detectors and the SV temperature detectors presently invoke an unnecessary action statement as another fully qualified safety-related position indication system exists to provide indication. The proposed change modifies Specification 3.3.3.8 actions and surveillance requirements, but does not affect the BASES.

The remaining instrumentation on these tables [3.3–11 and 4.3–7] will be unaffected. The remaining position indication systems for the PORVs and SVs are fully qualified and satisfy regulatory criteria for post accident monitoring of valve position. These changes do not affect the ability to satisfy analysis assumptions regarding operation of the PORVs and SVs. They do not affect the ability to continue to meet the guidance of Regulatory Guide 1.97, the post Three Mile Island criteria contained in NUREG 0578 and NUREG 0737, and reflect the guidance provided in NUREG 1431, ''Improved Standard Technical Specifications'' (ISTS). Therefore, we have concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will reduce the potential to challenge safety systems due to eliminating the potential for unnecessary plant shutdowns. The proposed changes are limited to PORV and SV position indication and do not involve any physical changes to the PORVs or SVs or their setpoints. These changes do not delete any design basis accident functions previously provided by the PORVs or SVs nor has the probability of inadvertent opening been increased. Accordingly, no new single failure has been identified as a result of these changes. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes have been incorporated to eliminate a degree of equipment redundancy and is consistent with the Improved Standard Technical Specifications (ISTS). The Unit No. 1 specification presently requires operability of both redundant PORV position indication systems and the primary and backup SV position indication systems. The Unit No. 2 specification also requires operability of the primary and backup SV position indication systems. These changes will potentially eliminate some challenges and potential unnecessary shutdowns by eliminating equipment determined to be no longer necessary. Only one safety-related position indication system is necessary to satisfy regulatory criteria; therefore, operation of the plant in accordance with the proposed amendment would not involve a significant reduction in a 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.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 22, 1995

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS) Sections 3.7.A and 4.7.A, ''Primary Containment,'' by deleting information also contained in 10 CFR Part 50, Appendix J, Option A and incorporating references to the Primary Containment Leakage Rate Testing Program. These changes will allow the use of the performance based option of containment leak testing. The request also adds Operability and Surveillance Requirements (SRs) for the drywell air lock. Minor administrative changes are also made. These changes are consistent with comparable specifications in the Improved Standard Technical Specifications (ITS), NUREG–1433. In addition to the licensee's proposed revision to the DAEC TS, the staff will be executing administrative changes and corrections to the TS Bases, as submitted in letters(2) dated February 13, 1995. Sections that will be changed or corrected are Section 1.2, Bases; Section 2.2, Bases Reactor Coolant System Integrity; Section 3.2, Bases; Section 3.7.H/4.7.H, Bases Containment Atmosphere Dilution; and Section 3.7.I/4.7.I, Bases Oxygen Concentration.

Basis for proposed no significant hazards consideration determination: 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:

. The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Information contained in 10 CFR 50, Appendix J was deleted and references to the Primary Containment Leakage Rate Testing Program were added. These are administrative changes to allow the use of performance-based containment leakage testing methods. The containment testing program will conform with the requirements of Option B of 10 CFR Part 50, Appendix J and approved exemptions. The performance of the leakage tests themselves is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring. The same operability requirements remain for the primary containment, therefore the consequences of an accident are not significantly increased.

Drywell air lock operability and surveillance requirements were added. Actions for one air lock door inoperable have been added consistent with the ITS. In addition, notes have been added to allow entry and exit to perform repairs of the air lock components and to explain that the previous overall leak test is not invalidated by an inoperable door. This change represents an additional restriction on plant operation, since the previous condition of one air lock door inoperable did not require any actions to be taken. A requirement to verify proper operation of interlock mechanism was also added. This will ensure that one door is always closed which maintains primary containment integrity.

The addition of these new drywell air lock requirements provides more stringent provisions than previously existed in the [current Technical Specifications]. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. These changes will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses.

The TS revision includes the relocation of certain requirements from the current technical specification (CTS) to licensee controlled documents. CTS 4.7.A.1.e contains a requirement to replace the T-ring inflatable seals for the 18 inch purge valves every four years. This provision is not in the ITS as it is a maintenance issue and not a surveillance for operability. CTS 4.7.A.1.e also contains a requirement to verify (during Type C testing) that the mechanical modification which limits the maximum opening angle for the 18 inch purge valves is intact. The ITS only requires this surveillance if the mechanical modification is not permanent. At DAEC, the 18 inch purge valves are permanently blocked to restrict opening to 30°. These CTS provisions will be relocated to plant procedures. Any changes to these relocated requirements will require an evaluation in accordance with 10 CFR 50.59. CTS 4.7.A.1.a and 4.7.A.1.d contain some procedural details that are not contained in Appendix J. These details will also be relocated to plant procedures, consistent with the ITS. Since any changes to these licensee controlled documents will be evaluated in accordance with 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed.

The proposed revision does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it affect any assumptions or conditions in the accident analysis. The proposed revision does not degrade any existing plant programs, nor modify any functions of safety related systems or accident mitigation functions previously credited at the DAEC. The proposed changes do not impact initiators of analyzed events. They also do not impact the assumed mitigation of accidents or transient events. These TS changes will not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deleting information from the TS which is contained in 10 CFR 50, Appendix J and adding references to the Primary Containment Leakage Rate Testing Program are purely administrative changes to allow the use of performance-based containment leakage testing methods. The containment testing program will conform with the requirements of Option B of 10 CFR Part 50, Appendix J and approved exemptions. The use of Option B will maintain the containment safety functions as a barrier to the release of radioactivity to the environment.

The proposed revision does not make any physical or operational changes to existing plant systems or components, nor does it alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. The proposed revision does not change any transient responses assumed in the Design Bases of the plant.

The proposed changes which relocate requirements to licensee controlled documents will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes will not alter assumptions made in the safety analysis or licensing basis.

The proposed changes which add more restrictive requirements to the CTS will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes do impose different requirements. However, they are consistent with assumptions made in the safety analyses.

Therefore, the revision does not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed revision will not significantly reduce any margin of safety.

Deleting information from the TS which is contained in 10 CFR 50, Appendix J and adding references to the Primary Containment Leakage Rate Testing Program do not involve a significant reduction in the margin of safety. These changes are administrative in nature and either eliminate a redundant requirement or clarify the applicability and acceptability of an alternative, NRC approved, leak rate testing provision within the TS. The containment testing program will conform to the requirements of Option B of 10 CFR Part 50, Appendix J and approved exemptions. The use of Option B will maintain the containment safety functions as a barrier to the release of radioactivity to the environment.

The proposed revision does not require any modifications to existing plant systems or equipment, safety limit settings, or parameters utilized in the licensing bases for the safety analysis. The proposed revision does not change any safety analysis or any accident mitigation action for which DAEC has previously taken credit. The proposed changes do not involve any technical changes; they have no impact on any safety analysis assumptions. The addition of new requirements either increases or does not affect the margin of safety.

The proposed changes that relocate requirements from the CTS to licensee controlled documents will not reduce a margin of safety since they have no impact on any safety analysis assumptions. In addition, the requirements to be relocated from the CTS to the licensee controlled document are unchanged. Since any future changes to this licensee controlled document will be evaluated in accordance with the requirements of 10 CFR 50.59, no significant reduction in a margin of safety will be allowed.

The proposed changes are consistent with NUREG–1433, which was approved by the NRC Staff. The changes are also consistent with NRC guidance provided for the implementation of Option B. The change controls for proposed relocated details and requirements are acceptable. Therefore, revising the TS to reflect the NRC accepted level of detail and requirements ensures that there is no reduction in a margin of safety.

Therefore, the proposed revision will not significantly reduce any 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.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis, & Bockius, 1800 M Street, NW., Washington, DC 20036–5869

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 14, 1995

Description of amendment request: The proposed amendment would modify Technical Specifications 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' and 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' to eliminate periodic response time testing of selected analog trip modules (ATMs). This request is supported by analyses prepared by the Boiling Water Reactor Owners' Group topical report NEDO–32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' which demonstrate that other periodic tests required by technical specifications, such as channel calibrations, channel functional tests and logic system functional tests, are adequate to ensure ATM response times remain within acceptable limits.

Basis for proposed no significant hazards consideration determination: 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:

(1) The purpose of the proposed Technical Specification (TS) change is to eliminate response time testing requirements for selected analog trip modules (ATMs) in the Reactor Protection System (RPS) and the main steam isolation valve (MSIV) isolation actuation instrumentation. The Boiling Water Reactor Owners' Group (BWROG) has completed an evaluation which demonstrates that response time testing is redundant to the other TS-required testing. These other tests, in conjunction with actions taken in response to NRC Bulletin 90–01, ''Loss of Fill-Oil in Transmitters Manufactured by Rosemount,'' and Supplement 1, are sufficient to identify failure modes or degradations in instrument response time and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by other TS-required testing. This evaluation was documented in NEDO–32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' January 1994. Illinois Power (IP) has confirmed the applicability of this evaluation to Clinton Power Station (CPS). In addition, IP has completed the actions identified in the NRC staff's safety evaluation of NEDO–32291.

Because of the continued application of other existing TS-required tests such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. As a result, IP has concluded that the proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

(2) The proposed changes only apply to the testing requirements for ATMs in the systems identified above and do not result in any physical change to these or other components or their operation. As a result, no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The current TS-required response times are based on the maximum values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. The potential failure modes for the components within the scope of this request were evaluated for impact on instrument response time. This evaluation confirmed that the remaining TS-required testing is sufficient to identify failure modes or degradations in instrument response times and to ensure that operation of the instrumentation within the scope of this request is within acceptable limits. As a result, it has been concluded that plant and system response to an initiating event will remain in compliance with the assumptions of the safety analysis.

Further, although not explicitly evaluated, the proposed changes will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing the potential for safety system actuations, reducing plant shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel resources to conduct unnecessary testing. Therefore, IP has concluded that this request will result in an overall increase in 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.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Gail H. Marcus

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 11, 1995

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 4.7, Surveillance Requirements for Primary Containment Automatic Isolation Valves. Specifically, the proposed amendment would delete TS Surveillance Requirement 4.7.D.4, which requires replacement of the seat seals for the drywell and suppression chamber purge and vent valves every 5 years.

Basis for proposed no significant hazards consideration determination: 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:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An evaluation of the operational performance of the 18-inch purge and vent valves has concluded that deletion of the Monticello Technical Specification surveillance requirement 4.7.D.4 will have no adverse impact on the seat leakage performance of these primary containment isolation valves, no adverse impact on the testing performed in accordance with 10 CFR 50, Appendix J, and thus no adverse impact on the containment isolation function of these primary containment isolation valves. The material of which the T-shaped elastomer seat is comprised of has been found to withstand normal and accident thermal exposures for the design life of the plant based on a thermal aging analysis. Radiation effects will not have an adverse impact on the elastomer seat material. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change to the Technical Specifications for the Primary Containment Purge and Vent valves does not alter the function of these components or their interrelationships with other systems. Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

The operating experience of these valves has demonstrated that the testing performed

in accordance with 10 CFR 50, Appendix J, provides a high level of confidence in the ability of these valves to perform their safety function with respect to valve leak tightness. The proposed amendment will not involve a significant reduction in 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.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 27, 1995

Description of amendment requests: The amendments would revise the combined Technical Specifications (TS) 3/4.6.1.1, ''Containment Integrity;'' 3/4.6.1.2, ''Containment Leakage;'' 3/4.6.1.3, ''Containment Air Locks;'' 3/4.6.1.6, ''Containment Structural Integrity;'' 3/4.6.3, ''Containment Isolation Valves;'' and their associated Bases; and would add TS 6.8.4.j, ''Containment Leakage Rate Testing Program,'' to implement the performance-based leakage rate testing program, as permitted by 10 CFR Part 50, Appendix J. These changes will support the implementation of the performance-based testing of Option B to Appendix J for Types A, B, and C containment leakage rate testing and the appropriate rescheduling of testing. The amendment changes the TS to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage Test Program.''

Basis for proposed no significant hazards consideration determination: 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specification (TS) 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 3/4.6.1.6, 3/4.6.3, and the addition of 6.8.4 j., to implement the performance-based Containment Leakage Rate Testing Program have no effect on plant operation. The proposed changes only provide mechanisms within the TS for implementing a performance-based methodology for determining the frequency of leak rate testing that has been approved by the Commission. The test type and test method used for testing would not be changed. The test acceptance criteria would not be changed, and containment leakage will continue to be maintained within the required limits.

Directly referencing the Containment Leakage Rate Testing Program for containment ILRT [integrated leak rate testing] and LLRT [local leak rate test] requirements does not involve any modification to plant equipment or affect the operation or design basis of the containment. Leakage rate testing is not a precursor to or an initiating event for any accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes only allow for the implementation of 10 CFR 50, Appendix J, Option B, testing frequencies and do not involve any modifications to any plant equipment or affect the operation or design basis of the containment. The proposed changes do not affect the response of the containment during a design basis accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect or change a Safety Limit or affect plant operations. The changes only implement the allowed 10 CFR 50, Appendix J, Option B testing frequencies that have been determined by the Commission not to involve a safety concern. The testing method, acceptance criteria, and basis for testing are not changed and still provide assurance that the containment will provide its intended function.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: November 21, 1995.

Description of amendment request: The proposed amendment would change the license and technical specifications to add GPU Nuclear Corporation (GPUN) as a licensee for the SNEF along with SNEC and would transfer from SNEC to GPUN all management-related responsibilities for the SNEF. Responsibility for safely maintaining the containment vessel and performing characterization activities would change from SNEC to GPUN. Technical specification organizational positions would be changed from SNEC titles to GPUN titles. GPUN would take responsibility from SNEC for administration of all SNEF functions, for radiation safety activities, and for providing on-site management and continuing oversight of production activities. The appointment of members to the Saxton Radiation Safety Committee and the reporting of the Committee would change from the SNEC President to the GPUN Vice President of the Nuclear Services Division. The GPUN President would have the authority to request audits and would receive audit reports instead of the SNEC President. Procedure control methodology and the administrative procedure for procedures would be changed from SNEC procedures to GPUN procedures. The responsibility for records retention and reporting would change from SNEC to GPUN. The organization chart for the facility would be changed to reflect the addition of GPUN as a licensee.

Basis for proposed no significant Hazards Consideration Determination: 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:

The proposed changes do not involve a significant hazards considerations because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the proposed changes are administrative in nature they would have no effect on the likelihood or impact on the potential accidents of fire, flood or radiological hazard.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Because the proposed changes are administrative in nature they would not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

Because the proposed changes are administrative in nature they would not involve any reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678 Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Seymour H. Weiss

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 4, 1996 (TS 95–22)

Description of amendment request: The proposed change would extend the functional testing interval for the following isolation radiation monitor instruments from monthly to quarterly: (1) Engineered Safety Feature Actuation System Instrumentation Surveillance Requirements Table 4.3–2, Item 3.c.3, Containment Purge Air Exhaust Monitor Radioactivity-High; (2) Radiation Monitoring Instrumentation Surveillance Requirements Table 4.3–3, Item 1.a, Fuel Storage Pool Area Radiation Monitor; (3) Table 4.3–3, Item 2.a, Containment Purge Air Exhaust; (4) Table 4.3–3, Item 2.b.i, Containment Gaseous Activity RCS Leakage Detection; (5) Table 4.3–3, Item 2.b.ii, Containment Particulate Activity RCS Leakage Detection; and (6) Table 4.3–3, Item 2.c, Control Room Isolation.

Basis for proposed no significant hazards consideration determination: 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:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Review of the past history for the affected and similar radiation monitors revealed that extending the functional testing interval for these monitors will not adversely affect system operability and will effectively increase system availability. These radiation monitors are not accident initiating equipment, thus increasing the surveillance interval on these monitors will not affect the probability of any accident previously evaluated. Based on the above statements, it is concluded that the probability or consequences of an accident previously evaluated is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No new type of accident or malfunction will be created since the radiation monitors are not accident initiating equipment. The proposed change merely increases the functional testing interval for the affected radiation monitors, and does not change the method and manner of plant operation. The safety design bases in the Updated Final Safety Analysis Report have not been altered.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The proposed changes do not affect applicable safety analysis acceptance criteria and will not affect system operating conditions. Additionally, plant operating experience with similar monitors has shown that there has not been additional failures due to the quarterly testing frequency. Thus, it is concluded that the margin of safety is not reduced.

The NRC 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.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 22, 1995

Description of amendment request: The proposed amendment replaces the requirements associated with the boron dilution mitigation system (BDMS) in the Wolf Creek Generating Station Technical Specifications with alarms, indicators, procedures, and controls to assure proper resolution of potential inadvertent boron dilution events.

Basis for proposed no significant hazards consideration determination: 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:

. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only event potentially impacted by the proposed change is the inadvertent boron dilution event. The discussion of the probability and consequences of an inadvertent boron dilution event at WCGS is provided in USAR [Updated Safety Analysis Report] Section 15.4.6. Primarily, the proposed changes revise the method of detecting and mitigating the event. The only aspect of the changes that impact[s] the potential causes of an inadvertent boron dilution event is the increased requirement to isolate potential dilution sources in Modes 3, 4 and 5. As a result, the overall probability of the event is slightly decreased.

The alternate methods to detect and mitigate this event achieve the same basic goal as the current BDMS; to prevent a return to critical during an inadvertent dilution event. The proposed changes to the BDMS will result in an improved system that will provide an improved response to the inadvertent boron dilution event, and that will prevent a return to critical. Thus, it can be concluded that the proposed change will not significantly increase the consequences of a postulated inadvertent boron dilution event.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to plant procedural requirements to either operate a reactor coolant pump or to isolate/control potential dilution sources does [sic] not create the potential for a new or different kind of accident because these new requirements are configurations which have always been allowed. Similarly, the new normal position for the letdown divert valve does not create a new or different accident because the new normal position has always been an allowed position. The other procedural changes only increase the plant operators' awareness of potential boron dilution problems or provide the steps needed to respond to available indications and alarms to mitigate the potential event. As a result, these procedural changes do not create the possibility of a new or different kind of accident.

The proposed changes also include addition of new redundant VCT high level alarms and a new alarm indicating that the

letdown divert valve is not in the ''VCT'' position. Because the alarms are passive, they do not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The design criterion and margin of safety for the current BDMS is that the dilution event is terminated prior to the loss of all shutdown margin. The same criterion will be met following the implementation of the proposed changes. Therefore, there is no reduction in 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.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 20, 1995

Description of amendment request: This amendment request proposes to revise Technical Specification 3/4.6.1.1, ''Containment Integrity,'' and 3/4.6.1.3, ''Containment Air Locks,'' and to add Technical Specification 6.8.4i, ''Containment Leakage Rate Testing Program,'' to implement the new performance-based leakage rate testing program as permitted by 10 CFR 50, Appendix J. Also, Technical Specification 1.7e, ''Containment Integrity,'' would be revised to reference Technical Specification 4.6.1.1.c. These proposed changes will implement the performance-based testing of Option B to Appendix J, for Type A, B, and C containment leak testing by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.''

Basis for proposed no significant hazards consideration determination: 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 3/4.6.1.1 and 3/4.6.1.3, and the addition of Technical Specification 6.8.4i to implement the new performance based Containment Leakage Rate Testing Program, have no effect on plant operation. The proposed changes only provide mechanisms within the technical specifications for implementing a performance-based methodology, for determining the frequency of leak rate testing, which has been approved by the NRC. The test type and test method used for testing would not be changed. The test acceptance criteria would not be changed, and containment leakage will continue to be maintained within the required limits.

Directly referencing the Containment Leakage Rate Testing Program for containment integrated leak rate test and local leak rate test requirements does not involve any modification to plant equipment or affect the operation or design basis of the containment. Leakage rate testing is not a precursor to or an initiating event for any accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes only allow for implementation of 10 CFR 50, Appendix J, Option B, testing frequencies and do not involve any modifications to any plant equipment or affect the operation or design basis of the containment. The proposed changes do not affect the response of the containment during a design basis accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect or change a Safety Limit, any limiting condition for operation or affect plant operations. The changes only implement the allowed Option B testing frequencies that have been determined by the NRC not to involve a safety concern. The testing method, acceptance criteria, and bases are not changed and still provide assurance that the containment will provide its intended function.

Therefore, the proposed changes do not involve a significant reduction in a 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.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items 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 rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 14, 1995, as supplemented January 4, 1996.

Brief description of amendments: The amendments revise the Technical Specifications to incorporate 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Option B. Technical Specification changes for the LaSalle facility will be addressed under separate correspondence.

Date of issuance: January 11, 1996

Effective date: January 11, 1996

Amendment Nos.: 148, 142, 169, and 165

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 7, 1995 (60 FR 62896). The January 4, 1996, supplement provided a specific implementation date for the requested amenement. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: November 14, 1995

Brief description of amendment: The amendment revises the Haddam Neck Technical Specifications (TS) to provide an one-time exception to TS 3.9.12, '' Fuel Building Storage Air Cleanup System,'' to allow the fuel storage building air cleanup system to be inoperable for a limited duration during intervals in which new fuel rack modules will be moved into and old fuel rack modules will be moved out of the fuel storage building.

Date of Issuance: January 17, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 187

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 28, 1995 (60 FR 58688) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 17, 1996 No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan Date of application for amendment: November 8, 1995, as supplemented November 17, 1995

Brief description of amendment: The amendment removes the prescriptive Type A containment leakage test rate frequency of 40 plus or minus 10 months and adds a reference to perform containment leakage rate tests in accordance with the criteria specified in Appendix J of 10 CFR Part 50 as modified by approved exemptions. In addition, the amendment revises the test pressure for Type B and C testing to correct a typographical error.

Date of issuance: January 16, 1996

Effective date: January 16, 1996

Amendment No.: 117

Facility Operating License No. DPR–6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 6, 1995 (60 FR 62489) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 29, 1995, as supplemented by letters dated September 18 and November 16, 1995

Brief description of amendments: The amendments revise Technical Specification requirements for the Low Temperature Overpressure Protection system and update the heatup and cooldown curves for both units.

Date of issuance: January 11, 1996

Effective date: As of the date of issuance to be implemented within 60 days

Amendment Nos.: Unit 1 - 162; Unit 2 - 144

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications. Date of initial notice in Federal Register: September 27, 1995 (60 FR 49933) The September 18 and November 16, 1995, letters provided clarifying information that did not change the scope of the March 29, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: December 2, 1994

Brief description of amendments: The amendments replace Appendix B, ''Environmental Technical Specifications,'' with an Environmental Protection Plan (Nonradiological) and revise the Operating Licenses to reflect these changes.

Date of issuance: December 19, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: Unit 1 - 199 - Unit 2 - 140

Facility Operating License Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications and Operating Licenses.

Date of initial notice in Federal Register: January 4, 1995 (60 FR 502) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 17, 1995, as supplemented by letter dated July 6, 1995

Brief description of amendments: The amendments revise Technical Specification 3/4.9.4, Containment Building Penetrations, to allow the personnel airlock to be open during core alterations or movement of irradiated fuel within the containment.

Date of issuance: November 30, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 92 and 70

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35077) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 17, 1995, as supplemented by letters dated November 22, and December 18, 20, and 27, 1995

Brief description of amendment: The amendment revised the primary containment air lock technical specifications to allow the air locks to be open in Mode 5 (refueling) during core alterations except for movement of recently irradiated fuel. All other provisions of the August 17, 1995, requests are defered.

Date of issuance: January 11, 1996

Effective date: January 11, 1996

Amendment No.: 85

Facility Operating License No. NPF–47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47619) The additional information contained in the supplemental letters dated November 22, and December 18, 20, and 27, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Janaury 11, 1996. No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 20, 1995

Brief description of amendment: The proposed amendment revised the technical specifications to eliminate the response time testing requirements for selected Reactor Protection System Instrumentation.

Date of issuance: January 11, 1996

Effective date: January 11, 1996

Amendment No.: 86

Facility Operating License No. NPF–47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 6, 1995 (60 FR 62492) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Janaury 11, 1996. No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 25, 1995 (AEP:NRC:1071T)

Brief description of amendments: The amendments incorporate a cycle- and burnup-dependent peaking factor penalty in the Core Operating Limits Report and add an appropriate reference to the COLR and update the topical report reference in the Technical Specifications.

Date of issuance: January 4, 1996

Effective date: January 4, 1996, with full implementation within 45 days

Amendment Nos.: Unit 1, 206, Unit 2, 190

Facility Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: October 3, 1995

Brief description of amendment: The amendment removes the Limiting Condition for Operation (LCO) and Surveillance Requirements for the loss-of-normal power (LNP) trip function from Tables 3.2.2 and 4.2.1 and inserts new LCO 3.2.F and Surveillance Requirement 4.2.F. In addition, the amendment adds a new table to specify the required LNP instrumentation for each bus, updates the Table of Contents, makes some editorial changes, and revises the associated Bases section.

Date of issuance: January 17, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 92

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1995 (60 FR 62111) The Commission's related evaluation of the amendment is contained in a Safety evaluation dated January 17, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 11, 1995, as supplemented November 15, 1995.

Brief description of amendment: The amendment changes Technical Specification Sections 3.4.8 and 3.9.9, Tables 2.2–1, 3.3–3, 3.3–5 and 3.3–8, and Bases Sections 3/4.2.1, 3/4.4.8 and 3/4.11.2.1. These changes combine several different administrative changes which will correct typographical errors, provide clarifications, or make editorial changes.

Date of issuance: January 17, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 194

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52933) The November 15, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 29, 1995, as supplemented November 9, 1995.

Brief description of amendment: The amendment provides three changes to the Technical Specifications (TS) relating to the pressurizer safety valves (PSV) and the main steam safety valves (MSSV).

The first change is to TS 3.4.2.1 and 3.4.2.2 and involves relaxing the as-found setpoint tolerance for the pressurizer safety valves (PSVs) and the main steam safety valves (MSSVs) from the current value of plus or minus 1% to plus or minus 3%. Table 4.7–1 is also modified to correct the as-found tolerance for the MSSV from plus or minus 1% to plus or minus 3%. Notes are added to TS 3.4.2.2 and Table 4.7–1 which specify that the lift setting should be determined at nominal operating conditions and should be set at plus or minus 1% of the lift setting.

For the second change, Surveillance Requirement 4.7.1.1 and Table 4.7–1 are modified to eliminate the need to verify the orifice size of each MSSV.

The third change modifies the statement for TS 3.7.1.1 so that if a MSSV is inoperable and compensating action cannot be taken, the plant must be brought to hot shutdown (Mode 4) within 12 hours instead of cold shutdown (Mode 5) in 30 hours.

Date of issuance: January 18, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 195

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 25, 1995 (60 FR 54723) The November 9, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 30, 1995

Brief description of amendments: The amendments change the technical specification requirements for control rod drive scram accumulator and charging water header minimum pressure.

Date of issuance: January 11, 1996

Effective date: Unit 2, as of date of issuance, to be implemented concurrently with Amendment 210, issued August 30, 1995; Unit 3, as of date of issuance, to be implemented concurrently with Amendment 214, issued August 30, 1995.

Amendments Nos.: 211 and 216

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 8, 1995 (60 FR 63073) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 21, 1995

Brief description of amendments: The amendments change the test pressure requirements for the high pressure coolant injection system and the reactor core isolation cooling system surveillance tests. The amendments also change Section 5.5.7 of the technical specifications to eliminate reference to a section which was previously eliminated.

Date of issuance: January 11, 1996

Effective date: As of date of issuance.

Amendments Nos.: 212 and 217

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 5, 1995 (60 FR 62271) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 19, 1995

Brief description of amendments: These amendments change the ventilation filter test program bypass and penetration leakage test acceptance criteria from less than 0.05 percent to less than 1.0 percent. The change corrects an administrative error that occurred during the development of the Peach Bottom Improved Technical Specifications which were issued as Amendments 210 and 214 to the Peach Bottom licenses on August 30, 1995.

Date of issuance: January 16, 1996

Effective date: Unit 2, effective as of date of issuance, to be implemented concurrently with Amendment 210, issued August 30, 1995; Unit 3, effective as of date of issuance, to be implemented concurrently with Amendment 214, issued August 30, 1995.

Amendments Nos.: 213 and 218

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 66997, December 27, 1995). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards

consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 26, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 16, 1996

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 23rd day of January 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[Doc. 96–1683 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–F

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 1 to Regulatory Guide 5.15, and it is temporarily identified as DG–5005, ''Tamper-Indicating Seals for the Protection and Control of Special Nuclear Material.'' The guide will be in Division 5, ''Materials and Plant Protection.'' This regulatory guide is being revised to describe features of security seal systems and types of seals that are acceptable to the NRC staff for tamper-safing containers of special nuclear material.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted 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. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by April 12, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S.D. Frattali at the NRC, telephone (301)415–6261; e-mail SDF@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301)415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 18th day of January 1996.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

Deputy Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–1878 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 AND STN 50–457]

Commonwealth Edison Co.; Consideration of Issuance of Amendments 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 amendments to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, issued to Commonwealth Edison Company for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would remove certain technical specification requirements that are applicable when one of the two source range detectors is inoperable greater than 48 hours. The affected requirements are: suspension of all operation activates involving positive reactivity changes and verifying valves CV–111B, CV–8428, CV–8441, and CV–8435 are closed and secured in position. The requirement to open the reactor trip breakers when one of the two source range detectors (SRD) is inoperable greater than 48 hours or when both SRD's are inoperable will not be changed.

Before issuance of the proposed license amendments, 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 amendments 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change does not result in the installation of any new equipment, and no existing equipment is modified. Operability of source range detectors in Modes 3, 4 and 5 with [reactor trip breakers] RTBs open is not assumed as the precursor or initiator for any accident previously analyzed.

One operable source range detector is acceptable in Modes 3, 4, and 5 with the RTBs open, since under these conditions, no core alterations that could affect core reactivity are possible, and control rod withdrawal is not possible. Under these conditions, the source range is only providing indication and input to the boron dilution protection system (BDPS). The impact of an inoperable source range detector on BDPS is addressed by compliance with the Action Requirements of TS 3.1.2.7, ''Boron Dilution Protection System.'' TS 3.1.2.7 addresses the potential for a positive reactivity addition via a dilution event. With one source range detector operable, indication of any positive reactivity changes will still be available via the operable source range detector. Also, BDPS will still respond automatically to mitigate a positive reactivity change. Thus, with one source range detector inoperable and RTBs open, indication of a positive reactivity change is still provided via the operable source range detector, and automatic mitigation is still available via BDPS to ensure that there is no significant increase in the consequences of an accident previously evaluated.

With no source range detectors operable, the proposed action statement requires that the RTBs be immediately opened, all positive reactivity changes be immediately suspended, shutdown margin be initially verified within one hour and at least once per 12 hours thereafter and dilution valves be closed. Thus, with no source range detectors available, potential sources of positive reactivity addition are disabled and the shutdown condition of the core is periodically verified which ensures that there is no significant increase in the consequences of an accident previously evaluated.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change deals only with the Action Requirements for inoperable source range instruments. No new equipment is being installed, no existing equipment is being modified. No new system configurations will be introduced as a result of this proposed change. Therefore, no new or different failure modes are being introduced.

Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

With one source range detector inoperable beyond 48 hours, this proposed revision requires that the RTBs be opened. With the RTBs open, the source range instruments provide only indication and input to BDPS. With only one source range detector inoperable, the indication function is still satisfied by the operable source range detector. The impact of an inoperable source range detector on BDPS is addressed by compliance with the Action Requirements of TS 3.1.2.7, ''Boron Dilution Protection System.'' Also, BDPS will still respond automatically to mitigate a positive reactivity change based on input from the operable source range detector. Thus with one source range detector inoperable the proposed action requirement places the affected unit in a condition where the reactor trip function of the source range is no longer required, and the remaining source range functions are satisfied by the operable source range indicator. Thus, with one source range detector inoperable, this proposed change does not involve a significant reduction in a margin of safety.

With no source range detectors operable, the proposed action statement requires that the RTBs be immediately opened, all positive reactivity changes be immediately suspended, shutdown margin be initially verified within one hour and at least once per 12 hours thereafter and dilution valves be closed and secured in position. This [is] provides protection equivalent to that provided by the current specification. Thus, with both source range detectors inoperable, this proposed change does not involve a significant reduction in a margin of safety.

Therefore, this proposed change does not involve a significant reduction in a 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 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve 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 March 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendments 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 rooms; for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. 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 amendments 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 amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

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 amendments.

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 Robert A. Capra: 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 Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 amendments dated January 11, 1996, 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 rooms; for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Md., this 26th day of January 1996.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects—IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 96–1863 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–352]

Philadelphia Electric Company (Limerick Generating Station, Unit 1)

Exemption

I

The Philadelphia Electric Company (the licensee) is the holder of Facility Operating License No. NPF–39, which authorizes operation of the Limerick Generating Station (LGS), Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The LGS, Unit 1 facility consists of a boiling water reactor, located in Chester and Montgomery Counties, Pennsylvania.

II

Section III.D.1.(a) of 10 CFR Part 50, Appendix J (hereafter referred to as Appendix J) requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection (ISI).

III

By a June 20, 1995 letter, the licensee requested a one-time exemption from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period. The requested exemption would permit a one-time interval extension of the third Type A test and would permit the third Type A test of the first 10-year ISI period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval and to be performed in the seventh refueling outage. The proposed action is requested to allow the licensee to realize cost savings and reduced worker radiation.

Subsequent to the licensee's submittal, a rulemaking was completed on Appendix J (60 FR 49495, September 26, 1995) which allows the Type A test to be performed at intervals up to once every 10 years. However, because the licensee's outage is scheduled to begin in January 1996, there is insufficient time for the licensee to implement the amended rule prior to the start of the outage.

The licensee was previously granted a similar exemption on February 16, 1994 (59 FR 9257). This 1994 exemption and the related license amendment (Amendment No. 67) allowed the licensee to perform its third Type A test during the 10-year plant ISI refueling outage by extending the test interval between the second and third test to approximately 65 months.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2), as the basis for the exemption. The licensee also stated that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. Data, supplied by the licensee, from the first (August 1989) and second (November 1990) ILRTs at LGS, Unit 1, indicate that most of the measured leakage is from the containment penetrations and not from the containment barrier. The ''as-left'' leakage rate was well below the 10 CFR Part 50, Appendix J limit. Appendix J requires the leakage rate to be less than 75% of L_a to allow for deterioration in leakage paths between tests. The allowable leakage rate, L_a, is 0.5 wt.%/day. Therefore, the established acceptable limit is <0.375 wt.%/day. The as-left leakage rates for the first two ILRTs were 0.178 and 0.334 wt.%/day, which are below the acceptable limit. The Type B and C test (Local Leakage Rate Test or LLRT) program also provides assurance that containment integrity has been maintained. LLRTs demonstrate operability of components and penetrations by measuring penetration and valve leakage.

IV

The Commission has determined, for the reasons discussed below, 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 determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the rule is to ensure that any potential leakage pathways through the containment boundary are identified such that leakage will not exceed allowable leakage rate values. The NRC staff has reviewed the basis and supporting information provided by the licensee in its exemption request. The NRC staff notes that the first and second ILRTs of the set of three tests for the first 10-year service period were conducted in August 1987 and November 1990. The third ILRT will be scheduled for Refueling Outage 7, projected to start in April 1998. In a September 29, 1995 phone call, the licensee stated to the NRC staff that they will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The regulatory guide (i.e., Regulatory Guide 1.163) accompanying Appendix J Option B specifies that the containment inspections be performed more often than the Type A tests.

The NRC staff has also made use of the information supporting the revised Appendix J, including NUREG–1493, which provides the technical justification for the 10-year test interval for Type A tests. The Type A test measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by Type B and C testing. According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found that LLRT could not detect. This is 3% of all failures. This study agrees with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now called the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data shows that in about one-third of the cases exceeding allowable leakage, the as-found leakage was lessthan $2L_a$; in one case the leakage was

found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. KFor about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of another cycle for the performance of the Appendix J, Type A test at LGS Unit 1 would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant-specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedule extension of an additional one cycle, to the seventh refueling outage, for the performance of the Appendix J, Type A test, provided the general containment inspection is performed in the sixth refueling outage, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (60 FR 57604).

This exemption is effective upon issuance, shall supersede the exemption dated February 16, 1994 and shall expire at the completion of the 1998 refueling outage.

Dated at Rockville, Maryland this 25th day of January 1996.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–1868 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–352]

Philadelphia Electric Company; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 107 to Facility Operating License No. NPF–39 issued to Philadelphia Electric Company, which revised the Technical Specifications (TSs) operation of the Limerick Generating Station, Unit 1, located in Montgomery County, Pennsylvania. The amendment is effective as of the date of issuance. The amendment modified the TSs to permit an increase in the allowable leak rate for main steam isolation valves (MSIV), and delete the MSIV leakage control system (LCS). The main steam drain lines and the main condenser would be utilized as an alternate MSIV leakage treatment system.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on September 26, 1994 (59 FR 49089). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7226).

For further details with respect to the action see (1) the application for amendments dated January 14, 1994, and supplemented by letters dated August 1, October 25, December 13, December 22, 1994 (two submittals), and February 7, 1995 (2) Amendment No. 107 to License No. NPF–39, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items 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 Pottstown Public library, 500 High Street, Pottstown, PA.

Dated at Rockville, Maryland, this 25th day of January 1996.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–1869 Filed 1–30–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36762; File No. SR–BSE–96–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Its Transaction Fee Schedule

January 24, 1996.

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 January 22, 1996, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') 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 by the self-regulatory organization. The Commission is publishing this noticed 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 BSE seeks to amend its fee schedule pertaining to transaction fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule in order to respond to the needs of the Exchange's constituents with respect to overall competitive market conditions and customer satisfaction. The Exchange plans to discontinue, effective on February 1, 1996, its BEACON subscriber credit of $.25 per trade. In conjunction with the elimination of this

credit, Trade Reporting and Comparison charges will be reduced from $.05 per 100 shares to $.04 per 100 shares for those firms that execute more than 7,500 trades per month.

2. Statutory Basis

The statutory basis for this proposal is Section 6(b)(4) of the Act.[1]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder.[2] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principle office of the Exchange. All submissions should refer to File No. SR–BSE–96–01 and should be submitted by February 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1885 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78f(b)(4).

[2] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 19b-4(e).

[Release No. 34–36764; File No. SR–SCCP–95–07]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Restate Schedule of Fees and Charges

January 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 26, 1995, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. 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 will restate SCCP's schedule of fees and charges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

SCCP last filed amendments to its fee schedule in July 1995.[3] Although no amendments to the schedule filed in July 1995 are being made, SCCP hereby consolidates and restates all existing fees and charges in the schedule. This filing is being made in accordance with SCCP's policy to file annually a comprehensive schedule of all existing fees and charges.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 36012 (July 24, 1995), 60 FR 39041.

CONSOLIDATED RESTATEMENT OF FEES

Service	Fee
1. Account fees:	
a. Maintenance fee	$150.00 per month (20 or fewer trades per month). $250.00 per month (over 20 trades per month). $650.00 per month (specialist).
b. Additional suffix	$32.00 per month per suffix.
2. Trade recording fees:	
a. Regular trades	$0.47 per side.
b. PACE trades	$0.30 per side.
c. Municipal bonds trades	$1.00 per compared side.
d. Yellow tickets (between two accounts)	$0.47 per side.
e. Basket trades (graduated fees)	$0.60 per side for 1–1,000 trades per month. $0.54 per side for 1,001–3,000 trades per month. $0.48 per side for 3,001–5,000 trades per month. $0.40 per side for more than 5,000 trades per month.
3. Value fees:	
a. CNS account	$0.05 per $1,000 of contract value.
b. Margin accounts	$0.035 per $1,000 of contract value.
c. PACE trades	None.
d. Maximum value charge	$25.00 per trade per side.
4. Volume discounts (trade recording fees and value charges):	
a. CNS trades setting at SCCP (utilizing PACE)	$0.77 per side maximum with 4,000 or more PACE trades per month.
5. Specialist discounts for trades cleared through a SCCP margin account (graduated fees):	
Volume level (sides per month) (including PACE trades)	Discount per side
2,501 to 10,000	$0.05.
10,001 to 15,000	$0.10.
15,001 to 20,000	$0.15.
20,001 to 25,000	$0.20.
25,001 to 30,000	$0.25.
30,001 to 35,000	$0.30.
35,001 to 40,000	$0.35.
40,001 and over	$0.40.
6. Municipal bond margin service	$500.00 per month with activity.
7. Treasury transactions:	
a. Per trade transaction	$40.00 (plus pass through costs).
b. Per withdrawal—bearer	$15.00.
c. Per withdrawal—registered	$10.00.
d. Per transfer	$10.00.
8. Margin account pledge fees	$1.00.
9. New York Office transactions:	
a. Over the window delivery clearing house	$5.00.
b. Over the window delivery paid or suspended	$5.00.
c. Over the window delivery ''Don't know''	$10.00.
d. Over the window receive clearing house	$6.00.
e. Dividend settlement service	$5.00.
f. Envelope settlement service/intercity/funds only settlement service.	$5.00.
g. Over the window delivery Fed funds	$22.50.
h. Over the window receive Fed funds	$22.50.
i. Syndicate re-delivery-paid	$14.00.
j. Syndicate re-delivery ''don't know''	$17.00.
k. Securities hold	$5.00.
l. Reorganization pick-up	$5.00.
m. Reorganization reject	$10.00.
n. Reorganization agent delivery	$15.00.
o. Syndicate pick-up	$17.00.
p. Miscellaneous	$5.00.
q. Deliveries to New Jersey	$12.00 per item (plus costs).
10. Margin account interest:	
Charge on net debit balances	½% above bank broker call rate.
11. Research fees:	
a. Per photocopy of input forms	$4.00.
b. Per microfiche copy	$4.00.
c. Items less than 90 days old	No charge.
d. Items 1 year old or less	$15.00 per hour.
e. Items over 1 year old	$15.00 per hour, $25.00 minimum, plus archive retrieval costs.
12. Computer transmission/tapes:	
a. Purchase and sale trade data (daily)	$100.00 per month.
b. Purchase and sale trades plus T+2 settling trades (daily)	$150.00 per month.
c. Miscellaneous	$150.00 per month; includes 6 tapes/transmission. $25.00 per additional tape/transmission..
13. Lost and stolen securities program	$100.00 per year, $2.50 per inquiry.

CONSOLIDATED RESTATEMENT OF FEES—Continued

Service	Fee
14. P&L statement charges	$0.01 per line.
15. Buy-ins	$5.00 per item submitted.
16. Member to member envelope service	$5.00 per envelope (charged to sender), plus carrier costs.

The proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] in that it provides for equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A SCCP participant bulletin will notify participants of the fee schedule and advise them to whom they may direct questions upon receipt of the fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] and Rule 19b–4(e)(2)[6] promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at SCCP. All submissions should refer to File No. SR–SCCP–95–07 and should be submitted by February 21, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1884 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1994).

[7] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21708; 811–8856]

Affinity Fund Group, Inc.; Notice of Application

January 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Affinity Fund Group, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 3, 1995 and amended on January 18, 1996.

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 February 20, 1996, 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, 1001 West Glen Oaks Lane, Suite 201, Mequon, Wisconsin 53092.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, 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 an open-end management investment company that was organized under the laws of Maryland. On November 10, 1994, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on January 4, 1995, and applicant began a public offering thereafter.

2. On May 16, 1995, applicant's board of directors approved the liquidation and dissolution of applicant. The board of directors approved the liquidation because the low level of applicant's assets did not permit applicant to economically continue its operations and liquidation was determined to be in the best interests of applicant's shareholders. Applicant's shareholders were informed of applicant's decision to liquidate and, in response, tendered their shares for redemption at net asset value.

3. During the period from May 16, 1995 through June 19, 1995, applicant distributed it assets to its shareholders in complete liquidation and redemption of all its outstanding shares. On May 16, 1995, applicant had 18,251 shares outstanding with a total net asset value of $184,598 and a per share net asset value of $10.11. Because applicant's assets were invested in money-market instruments, applicant's net asset value did not vary, except for minimal

amounts of accrued interest, in the period between May 16 and June 19, 1995.

4. All expenses incurred in connection with the liquidation were assumed by applicant's investment adviser, Benchmark Capital Management, Inc., including all unamortized organization expenses. No brokerage commissions were incurred in connection with the liquidation.

5. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant intends to file articles of dissolution with Maryland authorities.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1883 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21704; 811–7764]

MuniVest California Fund, Inc.; Notice of Application

January 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MuniVest California Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1995, and an amendment thereto on January 17, 1996.

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 February 20, 1996, 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 issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536–9011.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Maryland. On June 2, 1993, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. Applicant's registration statement has not been declared effective and was withdrawn on February 10, 1994.

2. Applicant has not issued or sold any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant intends to terminate its existence under Maryland law as soon as practicable after its deregistration.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1782 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21703; 811–7748]

MuniVest New Jersey Fund II, Inc.; Notice of Application

January 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MuniVest New Jersey Fund II, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1995, and an amendment thereto on January 17, 1996.

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 February 20, 1996, 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 issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536–9011.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, close-end management investment company organized as a corporation under the laws of Maryland. On May 25, 1993, applicant registered under the Act by filing a notification of registration on Form N–8A and a registration statement on Form N–2. Applicant's registration statement has not been declared effective and was withdrawn on February 10, 1994.

2. Applicant has not issued or sold any securities. Applicant has no shareholders, liabilities or assets. Applicant is not party to any litigation or administrative proceeding.

3. Applicant intends to terminate its existence under Maryland law as soon as practicable after its deregistration.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1783 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21702; 811–7746]

MuniVest Florida Fund II; Notice of Application

January 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MuniVest Florida Fund II.

RELEVANT ACT SECTION: Section 8(F).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1995, and an amendment thereto on January 17, 1996.

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 February 20, 1996, 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 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, 800 Scudders Mill Road, Plainsboro, New Jersey 08536–9011.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Maryland. On May 25, 1993, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. Applicant's registration statement has not been declared effective and was withdrawn on February 10, 1994.

2. Applicant has not issued or sold any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant intends to terminate its existence under Maryland law as soon as practicable after its deregistration.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12785 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21706; 811–4575]

Total Growth Trust

January 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Total Growth Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 3, 1995 and amended on January 22, 1996.

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 February 20, 1996 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 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, c/o Dain Bosworth Incorporated, Dain Bosworth Plaza, 60 South 6th Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust registered under the Act that offers shares in two series, Treasuries and Growth Stocks Series 2 (''Series 2'') and Treasuries and Growth Stocks Series 3 (''Series 3'').[1] Applicant was created under the laws of Minnesota pursuant to a Trust Indenture and Agreement dated December 18, 1985.

2. On January 31, 1986, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act, and a registration statement on Form N–8B–2 pursuant to section 8(b) of the Act. To register its Series 2 shares, applicant filed a registration statement on Form S–6 under the Securities Act of 1933 on January 31, 1986. The registration statement became effective, and the initial public offering of Series 2 shares commenced, on February 27, 1986. To register its Series 3 shares, applicant filed a registration statement on Form S–6 on March 17, 1986. This registration statement became effective, and the initial public offering of Series 3 shares commenced, on April 15, 1986.

3. Series 2 had a mandatory termination date of March 2, 1994 and on that date it distributed $11,566,246 to unitholders. Series 3 had a mandatory termination date of November 30, 1994, and it distributed $7,419,976 to unitholders on November 20, 1994. The distribution to unitholders was based on net asset value.

4. U.S. Treasury obligations held by both Series matured, and all equity securities held by the Series were sold, prior to the Series' termination dates. No brokerage commissions were paid in connection with such transactions.

5. Applicant retained $12,737 and $11,021.18 to pay expenses in

[1] Total Growth Trust, Treasuries and Growth Stocks Series 1, a separate unit investment trust, previously received an order under section 8(f) of the Act declaring that it has ceased to be an investment company. *See* Investment Company Act Release Nos. 19721 (Sept. 17, 1993) (notice) and 19781 (Oct. 13, 1993) (order).

connection with the liquidation of Series 2 and Series 3, respectively. Such expenses included trustee and audit fees, the cost of preparing tax returns and printing the annual reports, and postage charges. Although applicant does not anticipate additional expenses, Dain Bosworth Incorporated, applicant's principal underwriter and depositor, will pay such expenses if necessary.

6. As of the date of the application, applicant had no assets, other than the cash discussed in paragraph 5, no liabilities, and no unitholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1786 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21705; 812–9862]

Van Kampen American Capital Bond Fund, Inc., et al.; Notice of Application

January 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Van Kampen American Capital Bond Fund, Inc., Van Kampen American Capital Comstock Fund, Van Kampen American Capital Convertible Securities, Inc., Van Kampen American Capital Corporate Bond Fund, Van Kampen American Capital Emerging Growth Fund, Van Kampen American Capital Enterprise Fund, Van Kampen American Capital Equity Income Fund, American Capital Exchange Fund, Van Kampen American Capital Global Managed Assets Fund, Van Kampen American Capital Government Securities Fund, Van Kampen American Capital Government Target Fund (''Target''), Van Kampen American Capital Growth and Income Fund, Van Kampen American Capital Harbor Fund, Van Kampen American Capital High Income Corporate Bond Fund, Van Kampen American Capital Income Trust, Van Kampen American Capital Life Investment Trust, Van Kampen American Capital Limited Maturity Government Fund, Van Kampen American Capital Pace Fund, Van Kampen American Capital Real Estate Securities Fund, Van Kampen American Capital Reserve Fund, Van Kampen American Capital Small Capitalization Fund, Van Kampen American Capital Tax-Exempt Trust, Van Kampen American Capital Texas Tax Free Income Fund, Van Kampen American Capital U.S. Government Trust for Income, Van Kampen American Capital World Portfolio Series Trust, Common Sense Trust (referred to herein collectively as the ''Original Funds''); Van Kampen American Capital U.S. Government Trust, Van Kampen American Capital Tax Free Trust, Van Kampen American Capital Trust, Van Kampen American Capital Equity Trust, Van Kampen American Capital Tax Free Money Fund (referred to herein collectively as the ''New Funds''); each portfolio of the foregoing, and any future portfolios thereof; any other open-end management investment companies established or acquired in the future that are in the same ''group of investment companies'' with any of the above as that term is defined in rule 11a–3 under the Act; any other closed-end investment company established or acquired in the future that is advised or subadvised by Van Kampen American Capital Asset Management, Inc. (''VKACAM'') or Van Kampen American Capital Investment Advisory Corp. (''Advisory Corp.''); and VKACAM and Advisory Corp. (the New Funds and Advisory Corp. are referred to herein collectively as the ''New Applicants'').

RELEVANT ACT SECTION: Exemption requested under rule 17d–1 to permit certain joint transactions in accordance with section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits the applicants thereunder to operate a joint trading account in repurchase agreements by adding the New Funds and Advisory Corp. as applicants.

FILING DATES: The application was filed on November 29, 1995 and amended on January 16, 1996.

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 February 20, 1996, 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 write's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Staff Attorney at (202) 942–0579, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. On May 9, 1991, the Commission issued an order (the ''Original Order'')[1] that permits the Original Funds, other than Target, to operate a joint trading account in repurchase agreements. The Original Order was amended on January 13, 1993 to add Target as an additional applicant.[2] Each of the Original Funds and the New Funds is a registered investment company. VKACAM is the investment adviser to each of the Original Funds. Advisory Corp. is the investment adviser to each of the New Funds. Advisory Corp. and VKACAM are both wholly owned subsidiaries of Van Kampen American Capital, Inc., and are, therefore, affiliated persons. The New Applicants consent to the procedures set forth in the application filed in connection with the Original Order and agree to be bound by the Original Order's terms and provisions to the same extent as the other applicants.[3]

2. On December 20, 1994, American Capital Management & Research, Inc., VKACAM's former parent, was merged into the Van Kampen Merritt Companies Inc., Advisory Corp.'s former parent, to form Van Kampen American Capital, Inc. The New Applicants are seeking to

[1] Investment Company Act Release Nos. 18089 (April 10, 1991) (notice) and 18142 (May 9, 1991) (order).

[2] Investment Company Act Release Nos. 19167 (Dec. 18, 1992) (notice) and 19212 (Jan. 13, 1993) (order).

[3] Applicants also request that relief be granted to other existing open-end and closed-end investment companies advised by VKACAM or Advisory Corp. that currently do not intend to rely on the requested relief and are not named as applicants in the application, but that in the future may wish to rely on the requested relief, provided that they determine to participate in the joint trading account in accordance with the procedures set forth in the application filed in connection with the Original Order and agree to be bound by its terms and provisions to the same extent as the other Applicants.

have the exemptive relief granted under the Original Order, as amended, extended to include them so that they may also participate in the joint trading account used by the other applicants. In so doing, the advantages and benefits associated with the joint account would be extended to the New Applicants, and the other current applicants could also gain incremental benefits that may result from having even larger sums to invest in repurchase agreements. Because VKACAM and Advisory Corp. are under common control, they can easily coordinate their efforts in investing the available cash balances of the funds they advise and ensure compliance with the procedures and conditions specified in the Original Order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1784 Filed 1–30–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0403]

Kline Hawkes California SBIC; Notice of Request for Exemption

On November 15, 1995, Kline Hawkes California SBIC (''KH''), a California limited partnership SBIC (License No. 09/79–0403), filed a request to the SBA pursuant to 13 CFR 107.903 (b)(1), and (e) and 107.1201 of the Regulations governing small business investment companies for an exemption allowing KH to invest in an associate small concern, Elliott-Portwood Productions, Inc. (Elliott) of Petaluma, California. The request for the conflict of interest exemption arises because Mr. Jerome Engel is an officer, director, and owner of the corporate general partner of KH and is also a director and 3.7 percent shareholder of Elliott.

KH along with another investor is proposing to make a material investment in Elliott, a start-up company, for its expansion; and the existing economic interest of Mr. Engel, along with other Elliott shareholders, will be increased as a result of this investment.

The basis of the exemption is the prospect of an expansion of Elliott's early stage business which should result in increased economic activity and employment.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments regarding this exemption to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 24, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–1817 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0349]

Richmond Square Capital Corporation; Notice of Surrender of License

Notice is hereby given that Richmond Square Capital Corporation, One Richmond Square, Providence, Rhode Island 02906 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Richmond Square Capital Corporation was licensed by the Small Business Administration on January 31, 1990.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on January 18, 1996. Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.111, Small Business Investment Companies)

Dated: January 24, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–1856 Filed 1–30–96; 8:45 am]

BILLING CODE 8025–01-P

DEPARTMENT OF STATE

[Public Notice No. 2321]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Bulk Liquids and Gases; Notice of Meeting

The Working Group of Bulk Liquids and Gases (BLG) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Friday, February 23, 1996, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the First Session of the Subcommittee on Bulk Liquids and Gases of the International Maritime Organization (IMO) which is scheduled for March 4–8, 1996, at the IMO Headquarters in London. The BLG Subcommittee was formed from the Subcommittee on Bulk Chemicals (BCH) as a result of the restructuring of IMO Subcommittees.

The agenda items of particular interest:

a. Evaluation of safety and pollution hazards of chemicals.

b. Additional safety measures for tankers.

c. Entry into enclosed spaces.

d. Tanker pump-room safety.

e. Shipboard pollution emergency plans under the International Convention of Pollution from Ships, 1973 and of the Protocol of 1978 (MARPOL 73/78) and the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC).

f. Review of Annexes I and II of MARPOL 73/78.

g. Review of hypothetical oil outflow parameters.

h. Review of existing ships' safety standards.

i. Safety requirements for transportation of cargoes containing toxic substances in oil tankers and product carriers.

j. Combustible gas indicators on oil tankers.

k. Review of reporting requirements in IMO instruments.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K. S. Cook, U.S. Coast Guard (G–MOS–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: January 23, 1996.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–1797 Filed 1–30–96; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–093]

Boundaries of Area Committees in the Coastal Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: This notice (1) lists Area Committees in the coastal zone as they are now; (2) identifies by asterisks which of them have changed their boundaries since the last such notice [58 FR 38156 (15 Jul 93)]; and (3) tells whom to ask for further information within the several districts.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: LCDR Paul Gugg, Plans and Preparedness Branch (G–MRO–2), (202) 267–2277, between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Area Committee for Palau has been deleted. The boundaries of each remaining Area Committee will be maintained as part of the corresponding Area Contingency Plan and Regional Contingency Plans. The boundaries for a particular Area Committee may be obtained from the Marine Safety Division of the appropriate Coast Guard district office as listed here.

Coastal Zone Area Committees

Commander, First Coast Guard District

First District (m)—(617) 223–8447

* Maine and New Hampshire Area (MSO Portland)
Boston Area (MSO Boston)
Providence Area (MSO Providence)
Long Island Sound Area (COTP Long Island)
New York Area (COTP New York)

Commander, Second Coast Guard District

Second District (m)—(314) 539–2655

There will be no separate Area Committees established by the Coast Guard in the Second Coast Guard District. The Environmental Protection Agency (EPA) is the responsible Federal agency for the inland zone, though the Coast Guard intends to actively participate in the inland Area Committees.

Commander, Fifth Coast Guard District

Fifth District (m)—(804) 398–6637

* Baltimore Area (MSO Baltimore)
Philadelphia Area (MSO Philadelphia)
Virginia Coastal Area (MSO Hampton Roads)
Northeast North Carolina Area (MSO Hampton Roads)
Southern Coastal North Carolina Area (MSO Wilmington)

Commander, Seventh Coast Guard District

Seventh District (m)—(305) 536–5651

Savannah Area (MSO Savannah)
Charleston Area (MSO Charleston)
* Puerto Rico and U.S. Virgin Islands Area (MSO San Juan)
Jacksonville Area (MSO Jacksonville)
Tampa Area (MSO Tampa)
South Florida Area (MSO Miami)

Commander, Eighth Coast Guard District

Eighth District (m)—(504) 589–6271

New Orleans Area (MSO New Orleans)
Morgan City Area (MSO Morgan City)
* Southwest Louisiana/Southeast Texas Area (MSO Port Arthur)
* Northwest Florida Area (MSO Mobile)
* Alabama/Mississippi Coastal Area (MSO Mobile)
* South Texas Coastal Area (MSO Corpus Christi)
* Galveston Bay Area (MSO Houston/Galveston)

Commander, Ninth Coast Guard District

Ninth District (m)—(216) 522–3994

* Southeastern Michigan Coastal Area (MSO Detroit)
* Western Lake Superior Coastal Area (MSO Duluth)
* Chicago and Western Michigan Area (MSO Chicago)
Cleveland Area (MSO Cleveland)
Sault Ste. Marie Area (MSO Sault Ste. Marie)
* Eastern Great Lakes Area (MSO Buffalo)
Western Lake Erie Area (MSO Toledo)
* Eastern Wisconsin Area (MSO Milwaukee)

Commander, Eleventh Coast Guard District

Eleventh District (m)—(310) 980–4300

North Coast Area (MSO San Francisco)
San Francisco Bay and Delta Area (MSO San Francisco)
Central Coast Guard Area (MSO San Francisco)
* Northern Sector (Ventura, Santa Barbara, and San Luis Obispo Counties (MSO Los Angeles-Long Beach)
* Southern Sector (Los Angeles and Orange Counties) (MSO Los Angeles-Long Beach)
San Diego Area (MSO San Diego)

Commander, Thirteenth Coast Guard District

Thirteenth District (m)—(206) 553–1711

* Northwest Area (MSO Puget Sound and MSO Portland)

Fourteenth District

Fourteenth District (m)—(808) 541–2114

* Honolulu Area (MSO Honolulu)
Territory of Guam Area (MSO Guam)
Commonwealth of Northern Marianas Islands Area (MSO Guam)

Commander, Seventeenth Coast Guard District

Seventeenth District (m)—(907) 463–2205

* The Alaska Federal/State Unified Preparedness Plan (MSO Valdez, MSO Anchorage, and MSO Juneau)

Sub-Area Committees

Prince William Sound Area
Cook Island Area
Kodiak Island Area
Aleutian Islands Area
Northwest Arctic Area
Western Alaska Area
Bristol Bay Area
Southeast Alaska Area
North Slope Area

Dated: January 26, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–1881 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 14, 1996, at 10 a.m. Arrange for oral presentations by February 2, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on February 14, 1996, at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 10 a.m. The agenda will include:

—A progress report from the Digital Information Working Group
—A briefing on improvements that have been made to the Airworthiness Directives process
—Notable comments on specific issues
—Other business

Copies of the proposed recommendation will be available to interested persons prior to the meeting. A copy may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by February 2, 1996, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the

heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 25, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–1958 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, IL

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 at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 1, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 E. Devon Avenue, Room 260, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert O'Brien, Jr., Director of Aviation of the Springfield Airport Authority at the following address: Springfield Airport Authority, Capital Airport, Springfield, IL 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, P.E., Assistant Manager, Chicago Airports District Office, 2300 E. Devon Ave., Room 260, Des Plaines, IL 60018, (847) 294–7435. 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 at Capital 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 January 18, 1996, the FAA determined that the application to use the revenue a PFC submitted by the Springfield 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 May 1, 1996.

The following is a brief overview of the application.

PFC application number: 96–06–U–00–SPI

Level of the PFC: $3.00

Actual charge effective date: June 1, 1992

Estimated charge expiration date: February 1, 2006

Total approved net PFC revenue: $15,146,473

Brief description of proposed project(s): Construct Parallel Taxiway for Runway 31; Install ILS on Runway 31.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi 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 Springfield Airport Authority.

Issued in Des Plaines, Illinois on January 24, 1996.

Benito De Leon,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 96–1959 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Crow Wing County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier II Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Crow Wing County, Minnesota. The Tier II EIS includes special studies into noise, soil and ground water contamination, water body modification, wetland mitigation, endangered species, as well as consideration of final design issues.

FOR FURTHER INFORMATION CONTACT: Alan J. Friesen, Engineering and Operations Engineer, Federal Highway Administration, Suite 490 Metro Square Building, 7th Place and Robert Street, St. Paul. MN 55101, Telephone (612) 290–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a Tier II EIS on a proposal to relocate MN Trunk Highway 371 (TH 371) in Crow Wing County, Minnesota. The proposed improvement would involve the construction of approximately five miles of roadway on new alignment from south of Barrows, Minnesota to the existing intersection of TH 210 and TH 371 in Baxter, Minnesota.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also included in this proposal is a new crossing over the Mississippi River.

The Tier I EIS has been completed, resulting in a preferred alignment. The Tier I EIS was published, reviewed, comments were addressed, and a Record of Decision has been issued. The Tier II EIS will utilize work accomplished under the Tier I by reference and expand into several special studies and detail issues.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: January 16, 1996.

Wallace O. Oien,

Right of Way Officer.

[FR Doc. 96–1796 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–81; Notice 2]

Decision That Nonconforming 1992 and 1993 Mercedes-Benz 320SL Passenger Cars Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1992 and 1993 Mercedes-Benz 320SL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 and 1993 Mercedes-Benz 320SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 and 1993 Mercedes-Benz 320SL), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective January 31, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufactures or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1992 and 1993 Mercedes-Benz 320SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 30, 1995 (60 FR 55298) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–142 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1992 and 1993 Mercedes-Benz 320SL (Model ID 129.063) passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 and 1993 Mercedes-Benz 320SL passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 25, 1996.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 96–1960 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board

[No. MC–F–20783]

Capitol Bus Company; Pooling; Greyhound Lines, Inc.

AGENCY: Surface Transportation Board.[1]

ACTION: Notice of proposed revenue pooling application.

SUMMARY: By application filed November 29, 1995, Capitol Bus Company (Capitol), of Harrisburg, PA, and Greyhound Lines, Inc. (Greyhound), of Dallas, TX, jointly request approval of a revenue pooling arrangement under former 49 U.S.C. 11342(a) with respect to their motor passenger transportation services between Syracuse, NY, and Harrisburg, PA, and between Harrisburg and Washington, DC. Applicants already pool transportation services on these routes, and under the proposal they also seek to pool the earnings from these routes. Their stated objective is to reduce excess bus capacity on the pooled routes and cement the business relationship between them.

DATES: Comments on the proposed agreement may be filed with the Board in the form of verified statements on or before March 1, 1996. Applicants' rebuttal statements are due on or before March 21, 1996.

ADDRESSES: Send verified statements to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, Room 1324, 1201 Constitution Avenue, N.W., Washington, DC 20423 and (2) Applicants' representatives: Dennis N. Barnes, Morgan, Lewis and Bockius, 1800 M Street, N.W. (#600N), Washington, DC 20036–7060; and Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: James Llewellyn Brown, (202) 927–5303 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission previously approved an agreement allowing Capitol and Greyhound to pool their services between Syracuse and Harrisburg and between Harrisburg and Washington, DC. See Capitol Bus Company—Pooling—Greyhound Lines, No. MC–F–19154 (Sub-No. 1) (ICC served Nov. 28, 1988). Under the proposed pooling arrangement, Capitol and Greyhound now seek to pool their revenues over these routes, as well.

Applicants state that, while their service pooling agreement has

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 14302. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, 49 U.S.C. 11342(a).

succeeded in permitting them to reduce redundant services, increase the load factor, and increase revenues, the load factor remains unacceptably low, causing an intolerable drain on their resources. Assertedly, they feel compelled to operate the number of schedules they operate to protect their respective market shares, notwithstanding that the market is being overserved.

Applicants state that revenue pooling will allow them to achieve greater economies of operation, permitting each to manage better its pricing structures and capital improvements. Each carrier would share financially in the vicissitudes of the pooled-route operations of the other, creating an otherwise unattainable degree of financial stability. They assert that the agreement is in the public interest. With the additional measure of financial stability, they maintain that they will be able to improve service to the traveling public.

They argue that there are overwhelming intermodal competitive pressures that are available to protect the public. Ample rail passenger service is available on Amtrak between these points via New York City, NY, or Philadelphia, PA. The major points served by these routes also receive frequent daily air service from United Air Lines and USAir. Several interstate highways connect these points, as well.

Copies of the pooling application may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Surface Transportation Board, Room 1221, during normal business hours. A copy of this notice will be served on the Department of Justice, Antitrust Division. [Assistance for the hearing impaired is available through TDD service on (202) 927–5721.]

Decided: January 11, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Board Member Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1915 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32849]

Camp Lejeune Railroad Company; Lease Exemption; Camp Lejeune Marine Corps Base to Jacksonville, NC

Camp Lejeune Railroad Company (CLRC), a wholly owned subsidiary of Norfolk Southern Railway Company, has filed a notice of exemption to renew a lease from the United States of America, Department of Navy (Government), of a 5.6-mile railroad line between milepost 2.5 at the Marine Corps Base, Camp Lejeune, and milepost 8.1 at Jacksonville, Onslow County, NC.

CLRC has operated and leased the rail line from the Government under a lease originally authorized by the ICC in 1984.[2] The lease expired on August 31, 1994. The parties have agreed to review and extend the lease until August 31, 1999.

Any comments must be filed with the Board and served on: Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510–2191.

This notice was filed under 49 CFR 1180.4(g)(1), and despite CLRC's assertion that the transaction is governed by 49 U.S.C. 10901 and 49 CFR 1150.31(a), CLRC has not demonstrated why the lease renewal differs from the situation in 1989 and hence does not fall within section 11323(a)(2) and 49 CFR 1180.2(d)(4). The notice is thus being published under 49 CFR 1180.2(d)(4). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

As a condition to this exemption, any employees affected by the lease transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Decided: January 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1916 Filed 1–30–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–33 (Sub-No. 70)]

Union Pacific Railroad Company; Abandonment; Wallace Branch, ID

AGENCY: Surface Transportation Board.

ACTION: Extension of Comment Filing Period.

SUMMARY: The Rails to Trails Conservancy seeks the immediate issuance of a certificate of interim trail use under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), for a 71.5-mile rail line of Union Pacific Railroad Company between milepost 16.5, near Plummer, and milepost 7.6, near Mullan, via milepost 80.4/0.0 near Wallace, in Benewah, Kootenai, and Shoshone Counties, ID. The ICC issued a notice on December 29, 1995 (60 FR 67364) to request comments from all interested parties, agencies, and members of the public as to whether there is any impediment to the issuance of Trails Act authority in the unusual circumstances of this case. Comments were due on January 29, 1996.

The Environmental Enforcement Division of the United States Department of Justice, on behalf of the Departments of Interior and Agriculture, requests a 60-day extension of the comment period to March 29, 1996, to allow comment on behalf of all Federal environmental concerns. The Board will extend the comment period for 45 days.

DATES: Comments are due by March 14, 1996.

ADDRESSES: An original and 10 copies of all comments, referring to Docket No. AB–33 (Sub-No. 70), should be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] *See Camp Lejeune Railroad Company—Lease Exemption,* Finance Docket No. 30553 (ICC served Sept. 17, 1984), and *Camp Lejeune Railroad Company—Renewal of Lease Exemption a Rail Line in North Carolina,* Finance Docket No. 30553 (Sub-No. 1) (ICC served Oct. 6, 1989).

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

copy of all comments must be served on all parties of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [Assistance for the hearing impaired is available through TDD at (202) 927–5721.]

Decided: January 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1903 Filed 1–30–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, 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, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Savings and Loan Holding Company Registration Statement, OTS Form H–(b)10.

DATES: Written comments should be received on or before April 1, 1996 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0020. These submissions may be hand delivered to 1700 G Street, NW. From 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

Copies of the OTS Form H–(b)10 with instructions are available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Savings and Loan Holding Company Registration Statement.

OMB Number: 1550–0020.

Form Number: OTS Form H–(b)10.

Abstract: This information is collected to determine if a savings and loan holding company's adherence to the statutes, regulations and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings institution.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension.

Affected Public: Business or for Profit.

Estimated Number of Respondents: 138.

Estimated Time per Respondent: 8 Hours.

Estimated Total Annual Burden Hours: 1100.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize 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 request.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–1860 Filed 1–30–96; 8:45 am]

BILLING CODE 6720–01–P

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, 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, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Savings and Loan Holding Company Applications.

DATES: Written comments should be received on or before April 1, 1996 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0015. These submissions may be hand delivered to 1700 G Street, NW. From 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

Copies of the OTS Forms H–(e)____, OTS Form 1393 and OTS Application Certification with instructions are available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Savings and Loan Holding Company Applications.

OMB Number: 1550–0015.

Form Number: OTS Form H-(e)____, OTS Form 1393, Application Certification.

Abstract: This information is necessary to determine whether a company meets the statutory standards to become a savings and loan holding company.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension.

Affected Public: Business or for Profit.

Estimated Number of Respondents: 1487.

Estimated Time per Respondent: 72.4 Hours.

Estimated Total Annual Burden Hours: 107,710.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize 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 request.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–1861 Filed 1–30–96; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will hold a symposium on ''America's Interests Abroad and Budget Realities'', Wednesday, January 31 at 10 a.m.–12 noon at the Grand Hyatt Hotel, 1000 H Street, N.W., (Independence Level).

Participants will be: Chairman Lewis Manilow, Moderator; Mr. Robert Earle, Minister Counselor for Public Affairs, U.S. Embassy Bonn; Mr. David Good, Counselor of Embassy for Public Affairs, U.S. Embassy Tel Aviv; Mr. Robert LaGamma, Counselor of Embassy for Public Affairs, U.S. Embassy Pretoria; Mr. William Maurer, Minister Counselor for Public Affairs, U.S. Embassy Seoul.

The President, Congress, and the American people are asking America's foreign affairs agencies to rethink what they do and how they do it. This symposium brings together senior diplomats from countries important to U.S. interests abroad. Panelists will discuss foreign perceptions of the United States, and look at how information age opportunities and budget realities are changing the way America understands, informs, and influences foreign publics.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting.

Dated: January 25, 1996.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 96–1779 Filed 1–30–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendments to a System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendments to system of records.

SUMMARY: The Department of Veterans Affairs is amending a system of records entitled, ''VA Supervised Fiduciary and Beneficiary Records—VA 37VA27'' which was completely revised in 47 FR 29132 dated July 6, 1982. The system of records has been altered to update U.S. Code citations, add an additional category of individuals to be covered by the system and five new categories of records; identify two existing paper file groups within the system that may contain record information, and name an automated record system that takes the place of the ADIS (Automated Diary and Index System). Two new routine uses are being added and two existing routine uses are being deleted.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records to the Director, Office of Regulations management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before march 1, 1996, will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 I Street, NW., Washington, DC 20001, from 8 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by VA, the routine use statements included herein are effective March 1, 1996, and all other provisions included herein are effective March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bishop, Program Analyst, Outreach and Customer Services Staff (274), Veterans Benefits Administration, 810 Vermont, NW., Washington, DC 20420, telephone (202) 273–6740.

SUPPLEMENTARY INFORMATION: The name of the system is to be changed from ''VA Supervised Fiduciary and Beneficiary Records—VA'' (37VA27) to ''VA Supervised Fiduciary/Beneficiary and General Investigative Records—VA'' (37VA27). The title change more accurately reflects the type of records maintained in this system.

The new category of individuals will include veterans or other beneficiaries for whom investigations of other than fiduciary program matters are conducted. These investigations are called nonfiduciary program (nonprogram) field examinations or investigations. The change to this system will also incorporate additions to the types of records maintained: (1) Copies of nonfiduciary program investigative reports, (2) photographs of people (incompetent beneficiaries and other persons who are the subject of a VA investigation), places, and things, (3) finger print records, (4) incompetent beneficiary record information in the Fiduciary Beneficiary System (FBS), and (5) Social Security Administration (SSA) information and records pertaining to incompetent beneficiaries who are also in receipt of VA benefits.

Identifying nonfiduciary program investigative reports within the system of records will allow VA to file copies of records of completed nonfiduciary program investigations by a name or some other identifier. These investigations may be conducted for the purpose of developing evidence to enable a VA organizational element to make administrative decisions on benefits eligibility and other issues. Nonprogram field examinations or investigations are also used to develop evidence for further investigation of potential criminal issues. Currently there is no authority to file and maintain copies of nonfiduciary program investigative reports by name or other identifier. Original reports are sent to the VA element that requested the investigation where disclosures of information are covered under other system of records routine uses. VA field station personnel may place copies of these reports in chronological order in files called veterans files and correspondence files making it difficult to retrieve a report in medium to large stations where the number of nonfiduciary program investigations tends to be large. Follow-up requests for information about the reports often are made by name or numerical identifier and do not contain the approximate dates of either the report or the request for the investigation.

Adding to the category of records photographs of people (incompetent

beneficiaries and other persons who are the subject of a VA investigation), places, and things provides a more accurate description of the type of record material that may be found in a principal guardianship folder (PGF), veterans file, or a correspondence file. The accumulation and retention of this type of material will assist VA field examiners in making positive identification of certain incompetent beneficiaries (to include missing persons) and other persons under investigation, provide graphic evidence in support of narrative reports, and verification of claimed purchases by fiduciaries. Acquisition and retention of this type of material will lessen the potential for fraud and reduce the number of manhours needed to accomplish the more complex investigations. Finger print records are sometimes acquired during missing veteran and other types of investigations where a positive identification of a person is required in order to settle a question on benefits eligibility.

The principal guardianship folder (PGF) is the primary repository for information within this records system. Two other files called veterans files and correspondence files are used to hold copies of fiduciary program and nonfiduciary program reports as well as attachments, exhibits, and other material such as copies of the records cited above. Documents placed in these two files are kept on a temporary basis for control and follow-up purposes since the original reports and other documents are returned to the requesting element.

The Fiduciary-Beneficiary System (FBS) is an automated master record, diary and management information system that was developed to replace the Automated Diary and Index System (ADIS). The system provides current, readily available beneficiary/fiduciary information and management support to all 58 regional offices for work controls, statistical work counts and evaluation purposes. The system includes an enhanced diary program to provide improved, more efficient service to incompetent beneficiaries.

Many VA beneficiaries who are incompetent or under a legal disability receive benefits from Social Security Administration (SSA) concurrently with VA benefits. By agreement with SSA, VA will become the lead agency for supervision of cases of incompetent beneficiaries of common interest. Therefore, a sharing of information such as accountings and payment/payee status will take place. The information provided by Social Security Administration may be retained in the VA system of records in its various formats and disclosed according to VA record system routine uses.

Routine uses have been amended to accommodate disclosures to third parties who might have information on an issue under VA investigation or information about an incompetent beneficiary or other person under investigation. Also included in the amended routine uses will be disclosures to the Social Security Administration regarding incompetency cases of common interest.

VA received two adverse decisions, *Doe* versus *DiGenova*, 779 F.2d 74 (D.C. Cir. 1985) and *DOE* versus *Stephens*, 851 F. 2d 1457 (D.C. Cir. 1988), involving disclosure of veteran records subject to 38 U.S.C. 5701, and 5 U.S.C. 552a, the Privacy Act of 1974. As a result of these decisions and their potential impact on VA operations, including those of the District Counsel, VA sought guidance from the Office of Legal Counsel in the Department of Justice (DOJ). VA has modified its practice in disclosing Privacy Act records in response to a request from a law enforcement entity conducting an investigation, and has, in most instances, stopped disclosing Privacy Act records pursuant to the receipt of a subpoena for records. Therefore, the routine use providing for disclosure of information in response to subpoenas is being deleted.

Dated: January 17, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

37VA27

SYSTEM NAME:

VA Supervised Fiduciary/Beneficiary and General Investigative Records—VA37VA27.

SYSTEM LOCATION:

Records are maintained at VA regional offices, VA medical and regional office centers, VA regional office and insurance centers, and at the Austin Data Processing Center. These records are generally maintained by the regional office activity having jurisdiction over the geographical area in which the VA beneficiary resides. Addresses of VA field stations and the Data Processing Center are listed in VA Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: (1) A VA beneficiary (i.e., a veteran or a non-veteran adult who receives VA monetary benefits, lacks the mental capacity to manage his or her own financial affairs regarding disbursement of funds without limitation, and is either rated incompetent by VA or adjudged to be under legal disability by a court of competent jurisdiction; or a child who has not reached majority under State law and receives VA monetary benefits); (2) a VA supervised fiduciary (i.e., a VA Federal fiduciary to include legal custodians, spouse payees, superintendents of Indian reservations and custodians-in-fact appointed by VA to serve as payee of VA monetary benefits for an incompetent VA beneficiary; or a person or legal entity appointed by a State or foreign court to supervise the person and/or estate of a VA beneficiary adjudged to be under a legal disability. The statutory title of a court-appointed fiduciary may vary from State to State); (3) a chief officer of a hospital treatment, domiciliary, institutional or nursing home care facility wherein a veteran, rated incompetent by VA, is receiving care and who has contracted to use the veteran's VA funds in a specific manner; (4) a SDP (supervised direct payment) beneficiary (i.e, an incompetent adult who receives VA monetary benefits, or other individual for whom an investigation of other than a fiduciary or guardianship matter is conducted for the purpose of developing evidence to enable a VA organizational element to make administrative decisions on benefits eligibility and other issues; or, to develop evidence for further investigations of potential criminal issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the Principal Guardianship Folder (PGF) are the primary records in this system. SSA derived records, as needed, are also contained in this system. These records as well as secondary files called veterans files and correspondence files may contain the following types of information: (1) Field examination reports (i.e., VA Form 27–4716a or 27–3190, Field Examination Request and Report, which contains a VA beneficiary's name, address, social security number, VA file number, an assessment of the VA beneficiary's ability to handle VA and non-BA funds, description of family relationships, economic and social adjustment data, information regarding activities, and name, address, and assessment of the performance of a VA-supervised fiduciary); (2) correspondence from and to a VA beneficiary, a VA-supervised fiduciary, and other interested third parties; (3) medical records (i.e., medical and social work service reports

generated in VA, State, local, and private medical treatment facilities and private physicians' offices indicating the medical history of the VA beneficiary including diagnosis, treatment and nature of physical or mental disability); (4) financial records (e.g., accountings of a fiduciary's management of a VA beneficiary's income and estate, amount of monthly benefits received, amounts claimed for commissions by the VA-supervised fiduciary, certificates of balance on accounts from financial institutions, and withdrawal agreements between VA, financial institutions, and VA-supervised fiduciary); (5) court documents (e.g., petitions, court orders, letters of fiduciaryship, inventories of assets, and depositions); (6) contractual agreements to serve as a VA Federal Fiduciary; (7) photographs of people (incompetent beneficiaries, fiduciaries, and other persons who are the subject of a VA investigation), places, and things; (8) fingerprint records; and (9) Social Security Administration records containing information about the type and amount of SSA benefits paid to beneficiaries who are eligible to receive benefits under both VA and SSA eligibility criteria, records containing information developed by SSA about SSA beneficiaries who are in need of representative payees, accountings to SSA, and records containing information about SSA representative payees. Also contained in this system are copies of nonfiduciary program investigation records. These records are reports of field examinations or investigations performed at the request of any organizational element of VA about any subject under the jurisdiction of VA other than a fiduciary issue. In addition to copies of the reports, records may include copies of exhibits or attachments such as photographs of people places and things; sworn statements; legal documents involving loan guaranty transactions; bankruptcy; and debts owned to VA; accident reports; birth, death, and divorce records; certification of search for vital statistics documents; and beneficiary's financial statements and tax records; immigration information; and newspaper clippings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 3, section 501(a), (b); title 38, United States Code, Chapter 55.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, at the initiative of VA.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request, when that information is for law enforcement investigation purposes, and such request is in writing and otherwise complies with subsection (b)(7) of the Privacy Act.

4. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address by provided for a purpose authorized by law, and, if the information is sought for law enforcement investigation purposes, and the request otherwise complies with subsection (b)(7) of the Privacy Act.

5. The name and address of a veteran may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 (such disclosures include computerized lists of names and addresses).

6. Any information in this system, including name, address, social security number, VA file number, medical records, financial records and field examination reports of a VA beneficiary, and the name, address and information regarding the activities of a VA-supervised fiduciary or beneficiary may be disclosed at the request of a VA beneficiary or fiduciary to a Federal, State, or local agency in order for VA to obtain information relevant to a VA decision concerning the payment and usage of funds payable by VA on behalf of a beneficiary, or to enable VA to assist a beneficiary or VA-supervised fiduciary in obtaining the maximum amount of benefits for a VA beneficiary from a Federal, State, or local agency.

7. Any information in this system, including name, address, social security number, VA file number, medical records, financial records and field examination reports of a VA beneficiary who is in receipt of VA and Social Security Administration (SSA) benefits concurrently, and the name, address and information regarding the activities of a VA-supervised fiduciary may be disclosed to a representative of the Social Security Administration to the extent necessary for the operation of a VA program, or to the extent needed as indicated by such representative.

8. The name and address of a VA beneficiary, VA rating of incompetency, and the field examination report may be disclosed to a Federal agency, upon its official request, in order for that agency to make decisions on such matters as competency and dependency in connection with eligibility for that agency's benefits. This information may also be disclosed to a State or local agency, upon its official request in order for that agency to make decisions on such matters as competency and dependency in connection with eligibility for that agency's benefits, if the information pertains to a VA beneficiary who is not a veteran, or if the name and address of the veteran is provided beforehand.

9. Any information in this system, including medical records, financial records, field examination reports, correspondence and court documents may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal in matters of guardianship, inquests and commitments, and to probation and parole officers in connection with court required duties.

10. Only so much information, including information in VA records obtained from Social Security Administration, and the name and address of a VA beneficiary, fiduciary,

or other person under investigation, as is necessary to obtain a coherent and informed response may be released to a third party who may have information bearing on an issue under VA investigation.

11. Any information in this system may be disclosed to a VA or court-appointed fiduciary in order for that fiduciary to perform his or her duties, provided this information will only be released when the disclosure is for the benefit of the beneficiary. Any information in this system may also be disclosed to a proposed fiduciary in order for the fiduciary to make an informed decision with regard to accepting fiduciary responsibility for a VA beneficiary.

12. Any information in this system, including medical records, correspondence records, financial records, field examination reports and court documents may be disclosed to an attorney employed by the beneficiary, or to a spouse, relative, next friend or to a guardian ad litem representing the interests of the beneficiary, provided the name and address of the beneficiary is given beforehand and the disclosure is for the benefit of the beneficiary, and the release is authorized by 38 U.S.C. 7332, if applicable. Records subject to 38 U.S.C. 7332 contain information on medical treatment for drug abuse, alcoholism, sickle cell anemia, and HIV.

13. Any information in this system may be disclosed to the Department of Justice and to U.S. Attorneys in defense of prosecution of litigation involving the United States and to Federal agencies upon their official request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, as well as other claims.

14. Any information in this system including available identifying information regarding the debtor, such as the name of the debtor, last known address of the debtor, name of debtor's spouse, social security account number, VA insurance number, VA file number, place of birth and date of birth of debtor, name and address of debtor's employer or firm and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers license bureaus, State automobile title and license bureaus and the General Accounting Office in order to obtain current address, locator and credit report assistance in the collection of unpaid financial obligations owed the United States. The purpose is consistent with the Federal Claims Collection Act of 1966 and 38 U.S.C. 5701(b)(6).

15. Any information in this system relating to the adjudication of incompetency of a VA beneficiary either by the court of competent jurisdiction or by VA may be disclosed to a lender or prospective lender participating in the VA Loan Guaranty Program who is extending credit or proposing to extend credit on behalf of a veteran in order for VA to protect incompetent veterans from entering into unsound financial transactions which might deplete the resources of the veteran and to protect the interest of the Government giving credit assistance to a veteran.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Fiduciary Program beneficiary and fiduciary information contained in the PGF, veterans' files, and correspondence files are maintained on paper documents in case folders and/or in the Fiduciary Beneficiary System (e.g., magnetic tapes, magnetic disks, and computer lists) and are stored at the regional offices (includes record information stored in the Fiduciary Beneficiary System), VA Central Office, and VA Data Processing Center at Austin, Texas. Copies of nonfiduciary program investigations and related information contained in veteran's files and correspondence files are maintained on paper documents and are stored at the regional offices and at VA Central Office.

RETRIEVABILITY:

Paper documents and automated storage media are indexed by name and file number of VA beneficiary or other individual.

SAFEGUARDS:

1. The individual case folder and computer lists are generally kept in steel cabinets when not in use. The cabinets are located in areas which are locked after work hours. Access to these records is restricted to authorized VA personnel on a ''need to know'' basis. Magnetic tapes and disks, when not in use, are maintained under lock and key in areas accessed by authorized VA personnel on a ''need to know'' basis.

2. Access to the computer rooms within the regional office is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Fiduciary Beneficiary System may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes and the employees are limited to only the information in the file which is needed in the performance of their official duties.

3. Access to the VA data processing center is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to the computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

4. Access to records in VA Central Office is only authorized to VA personnel on a ''need to know'' basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel.

RETENTION AND DISPOSAL:

Paper documents and computer lists are destroyed anywhere from 60 days after receipt to 2 years after VA supervision has ceased, depending on the type of record or document. Correspondence files are destroyed after 1 year, veteran files after 2 years, PGFs 2 years after the case becomes inactive. Investigations data and information obtained from SSA is destroyed according to the time standards established in the two preceding sentences. Information contained in the Fiduciary Beneficiary System is automatically purged two years after the case becomes inactive. A record is determined inactive when it comes under the provision of the Veterans Services Division General Operations Manual, M27–1, part 3, section 1, chapter 8, paragraphs 8.23–8.42.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Veterans Assistance Service (27), VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the content of such records should submit a written request or apply in person to the nearest VA regional office or center. Addresses for VA regional offices and centers may be found in VA Appendix 1. All inquiries must reasonably identify the type of records involved, e.g., guardianship file. Inquiries should include the individual's full name, VA file number and return address. If a VA file number

is not available, then as much of the following information as possible should be forwarded: full name, branch of service, dates of service, service numbers, social security number, and date of birth.

RECORDS ACCESS PROCEDURES:

Individuals seeking information regarding access to or contesting VA records in this system may write, call or visit the nearest VA regional office or center.

CONTESTING RECORD PROCEDURES:

(See records access procedures above.)

RECORD SOURCE CATEGORIES:

VA beneficiary, VA beneficiary's dependents, VA-supervised fiduciaries, field examiners, estate analysts, third parties, other Federal, State, and local agencies, and VA records.

FR Doc. 96–1812 Filed 1–30–96; 8:45 am]

BILLING CODE 8320–01

Sunshine Act Meetings

Federal Register
Vol. 61, No. 21
Wednesday, January 31, 1996

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 5, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst 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: January 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–2041 Filed 1–29–96; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Wednesday
January 31, 1996

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 639
Capital Leases; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 639

[Docket No. FTA–96–1031]

RIN 2132–AA55

Capital Leases

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend ''Capital Leases'' to treat maintenance costs under a commercial lease of a capital asset as an eligible capital expense. ''Capital Leases'' implements section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, which allows capital grants under the Federal transit laws to be used for leasing facilities or equipment if a lease is more cost effective than purchase or construction of such items. FTA believes that this proposal is consistent with industry practice and with recent Federal initiatives to streamline federally assisted procurement practices and to ensure that Federal investment in the nation's transportation infrastructure is properly protected.

DATES: Comments must be submitted by April 1, 1996.

ADDRESSES: United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, Office of Chief Counsel, (202) 366–1936, or Douglas Kerr, Office of Program Guidance and Support, (202) 366–1656.

SUPPLEMENTARY INFORMATION:

A. Background

Under 49 U.S.C. 5307, Federal funds are provided to urbanized areas on the basis of a statutory formula. These funds are available for the acquisition or construction of mass transportation facilities and equipment (''capital assistance grants''), as well as for payment of a portion of the net operating cost of mass transportation facilities and equipment (''operating assistance grants'').

Historically, Federal Transit Administration (FTA) recipients have had the discretion to acquire capital assets by long-term or short-term lease, but few have done so, since the significant portion of the lease cost (as much as forty percent) representing imputed interest was ineligible for reimbursement under Office of Management and Budget (OMB) cost principles (OMB Circular A–87, ''Cost Principles for Grants to State and Local Governments'').

In 1987, section 308 of the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100–17 (STURAA), expressly authorized the use of section 5307 capital assistance funds to acquire facilities and equipment by lease where leasing is more cost effective than purchase or construction. As explained in the accompanying Senate Report, section 308

> Permits grantees to use [section 5307] grant funds to lease major capital cost items such as computers, maintenance of way and other heavy equipment, maintenance of effort rail equipment, radio equipment, bus garages, property or structures for park and ride, and other buildings or facilities used for mass transit purposes. The Committee recognizes that it is often more cost effective for grantees to lease rather than purchase major capital items. Leasing arrangements can also provide transit authorities with flexibility that is needed, for example, to maintain technological advance in their communications and computing equipment or to adapt buildings and other facilities to changing needs. By including this section, the Committee intends to help grantees better manage their operations and conduct long-term and short-term planning. *S. Rep. No. 3, 100th Cong., 1st Sess. 6 (1987).*

On October 15, 1991, FTA issued 49 CFR Part 639 (56 F.R. 51786), which implements section 308. The rule provides that capital grants under section 5307 may be used for leasing facilities or equipment if leasing is more cost effective than purchase or construction of such items. Section 639.27 lists maintenance costs among the factors that a recipient may consider in making its cost-effectiveness determination. Section 639.17, provides that ''only costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance'' and cites as examples finance charges and ancillary costs such as delivery and installation charges.

B. Proposed Amendment

In reviewing the subject of capital leases, particularly vehicle leases, FTA has noted that maintenance and repair costs are often an integral component of standard commercial lease agreements and that use of capital assistance for such costs is expressly permitted under section 5307. Many commercial vehicle leases, for instance, state that the lessor will provide all maintenance, repairs, and replacement parts needed to keep the capital asset in good operating condition. These services are included in the overall lease cost, rather than being itemized as a separate charge. In such cases, it is not feasible for lessees to separate maintenance charges from the overall lease cost. Requiring grantees to do so imposes an accounting burden that is inconsistent with Congress' recognition that leasing is often more cost effective and with its intention in section 308 to facilitate grantee operations.

Moreover, since regular maintenance is necessary to ensure the availability and adequate functioning of a capital asset, FTA believes that it is an essential and inseparable element of the lease agreement. Congress has expressly recognized this relationship in allowing capital assistance to be used to acquire ''associated capital maintenance items'' under section 5307(b)(1), where such items would otherwise have to be funded under the operating assistance program. FTA therefore proposes to recognize maintenance charges as eligible capital costs under a commercial lease directly attributable to the lessee's use of the asset within the definition of section 639.17.

This proposal is consistent with several recent initiatives, including the President's National Performance Review, Executive Order 12931 (Federal Procurement Reform), and the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 108 Stat. 3243 (October 13, 1994)), which direct Federal agencies to remove administrative burdens in procurement processes. They encourage and facilitate the procurement of commercially available items by exempting agencies from unnecessarily burdensome government-unique certifications and accounting requirements that add costs and discourage companies from doing business with them. Section 8203 of FASA, for instance, requires that agencies use uniform, simplified contracts for the procurement of commercial items and that they revise all procurement procedures not required by law to eliminate impediments to use of such contracts. FTA believes that requiring its recipients to account separately for maintenance costs under a commercial lease is unnecessarily burdensome and makes such leases more costly and cumbersome to administer. Recognizing these costs explicitly in section 639.17 should facilitate recipients' acquisition and maintenance of capital assets by allowing them to enter into standard commercial lease agreements more easily and at less cost.

Moreover, this proposal is consistent with FTA's recently issued Circular 4220.1C (''Third Party Contracting Requirements,'' October 1, 1995), which

reduces FTA requirements; provides grantees increased flexibility in soliciting, awarding, and administering contracts; reduces FTA's role in third party procurement activity; and allows recipients to use their own procurement practices that reflect State or local laws, provided that they conform to applicable Federal law. FTA notes that neither section 308 of the STURAA nor the accompanying Senate Report indicates that maintenance costs should not be treated as eligible capital expenses.

Accordingly, consistent with common industry practice and Federal procurement streamlining measures, FTA proposes to amend 49 CFR 639.17 to recognize maintenance costs as ''costs directly attributable to making a capital asset available to the lessee.''

C. Request for Comments

FTA seeks comment on its proposal to recognize maintenance costs as eligible capital expenses under leasing agreements.

Regulatory Impacts

A. Executive Order 12866

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Since this final rule makes only a technical amendment to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Executive Order 12612

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—Transportation, Mass transportation.

Accordingly, for the reasons described in the preamble of this document, FTA is proposing to amend title 49, Code of Federal Regulations, part 639 as follows:

PART 639—[AMENDED]

1. The authority citation on Part 639 is revised to read as follows:

Authority: 49 U.S.C. 5307; 49 CFR 1.51.

2. Section 639.17 is revised to read as follows:

§ 639.17 Eligible lease costs.

(a) All costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance, including, but not limited to—

(1) Finance charges, including interest;

(2) Ancillary costs such as delivery and installation charges; and

(3) Maintenance costs.

(b) The cost of materials, supplies and services provided under the terms of the lease may not be eligible for capital assistance, if they would not be eligible for capital assistance under a traditional purchase or construction grant.

Issued on: January 26, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–1830 Filed 1–30–96; 8:45 am]

BILLING CODE 4910–57–U

Federal Register

Wednesday
January 31, 1996

Part III

Department of Housing and Urban Development

Office of the Secretary

Redelegation of Authority; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4010–D–01]

Redelegation of Authority for President's Crime Prevention Council's Ounce of Prevention Grant Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The authority to administer the Ounce of Prevention Grant Program was delegated from the Ounce of Prevention Council to the Secretary via Inter-Agency Agreement effective October 3, 1995. The Secretary is redelegating the authority to administer the program to the Assistant Secretary for Community Planning and Development.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Roy Priest, Director, Empowerment Zone/Enterprise Community Task Force, Department of Housing and Urban Development, 451 7th Street SW., Room 7136, Washington, DC 20410, (202) 708–2290. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The President's Crime Prevention Council, statutorily authorized as the Ounce of Prevention Council, was established by Section 30101(a) of Title III, Subtitle A of the violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 42 U.S.C. 13741. Section 30102 of the Act, 42 U.S.C. 13742, authorizes the Ounce of Prevention Grant Program. Under this program, the Council may make grants to assist youth crime and violence prevention programs. Up to $1,500,000 was appropriated for this purpose in Fiscal Year 1995, pursuant to Section 30104 of the Act, 42 U.S.C. 13744.

In accordance with Section 30101(a)(1)(A) of the Act, 42 U.S.C. 13741, the Secretary of Housing and Urban Development (''Secretary'') is a member of the Council. Section 30101(a)(3) of the Act, 42 U.S.C. 13741, authorizes the Council to delegate any of its functions or powers to a member or members of the Council. By Inter-Agency Agreement effective October 3, 1995, the Council has delegated to the Secretary its authority to make final decisions regarding the selection of grantees, the awarding of grants, and the monitoring of grants, pursuant to Section 30102 of the Act, 42 U.S.C. 13742. HUD will award the grants competitively in Federally-designated Empowerment Zone and Enterprise Community areas, including Supplemental Empowerment Zones, to support local, community-based efforts to coordinate and, to the extent possible, integrate youth crime and violence prevention programs or services.

Accordingly, the Secretary redelegates authority as follows:

Section A. Authority Redelegated

The Secretary of the Department of Housing and Urban Development redelegates to the Assistant Secretary for Community Planning and Development all power and authority delegated to the Secretary by the Ounce of Prevention Council with respect to the Ounce of Prevention Grant Program, Section 30102 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 13742, except as provided in Section B of this redelegation of authority.

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 24, 1996.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 96–1791 Filed 1–30–96; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4010–D–02]

Redelegation of Authority for President's Crime Prevention Council's Ounce of Prevention Grant Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The authority to administer the Ounce of Prevention Grant Program was delegated from the Ounce of Prevention Council to the Secretary via Inter-Agency Agreement effective October 3, 1995. The Secretary has redelegated the authority to administer the program to the Assistant Secretary for Community Planning and Development, via a redelegation published elsewhere in today's Federal Register. The Assistant Secretary for CPD is further redelegating the authority to administer the Ounce of Prevention Program to the Director of the Empowerment Zone/Enterprise Community Task Force, which is a division within CPD.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Roy Priest, Director, Empowerment Zone/Enterprise Community Task Force, Department of Housing and Urban Development, 451 7th Street, SW., Room 7136, Washington, DC 20410, (202) 708–2290. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Ounce of Prevention Council was established by section 30101(a) of title III, subtitle A of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 42 U.S.C. 13741. Section 30102 of the Act, 42 U.S.C. 13742, authorizes the Ounce of Prevention Grant Program. Under this program, the Council may make grants to assist youth crime and violence prevention programs. Up to $1,500,000 was appropriated for this purpose in fiscal year 1995, pursuant to section 30104 of the Act, 42 U.S.C. 13744.

In accordance with section 30101(a)(1)(A) of the Act, 42 U.S.C. 13741, the Secretary of Housing and Urban Development (''Secretary'') is a member of the Council. Section 30101(a)(3) of the Act, 42 U.S.C. 13741, authorizes the Council to delegate any of its functions or powers to a member or members of the Council. By Inter-Agency Agreement effective October 3, 1995, the Council has delegated to the Secretary its authority to make final decisions regarding the selection of grantees, the awarding of grants, and the monitoring of grants, pursuant to section 30102 of the Act, 42 U.S.C. 13742. HUD will award the grants competitively in Federally-designated Empowerment Zone and Enterprise Community areas, including Supplemental Empowerment Zones, to support local, community-based efforts to coordinate and, to the extent possible, integrate youth crime and violence prevention programs or services.

Consistent with the Inter-Agency Agreement delegating to the Secretary the Council's authority to make grants pursuant to section 30102 of the Act, 42 U.S.C. 13742, the Secretary has elsewhere in today's Federal Register redelegated to the Assistant Secretary for CPD the authority to administer the Ounce of Prevention Program. That redelegation authorizes the Assistant Secretary to further redelegate such authority.

Accordingly, the Assistant Secretary for CPD redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for Community Planing and Development redelegates to the Director of the Empowerment Zone/Enterprise Community Task Force all power and authority delegated to the Secretary by the Ounce of Prevention Council with respect to the Ounce of Prevention Grant Program, section 30102 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 13742.

Section B. Authority Excepted

The authority redelegated under section A does not include the power to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 24, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–1792 Filed 1–30–96; 8:45 am]

BILLING CODE 4210–32–M

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Federal Register

Vol. 61, No. 21

Wednesday, January 31, 1996

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The United States Government Manual **523–5227**

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

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.

20.....3334
26.....27, 1528
30.....295
31.....295
32.....295
40.....295
61.....633
70.....295
150.....1857
170.....2948
171.....2948

12 CFR

3.....1273
211.....2899
207.....2667
220.....2667
221.....2667
224.....2667
226.....3177
231.....1273
268.....251
506.....575
510.....575
512.....575
516.....575
543.....575
544.....575
545.....575
550.....575
552.....575
556.....575
563.....575
563b.....575
563c.....575
563d.....575
565.....575
566.....575
567.....575
571.....575
574.....575
575.....575
583.....575
584.....575
615.....1274
620.....1274
707.....114
1805.....1699
1806.....1699

Proposed Rules:

226.....2968
545.....1162
556.....1162
560.....1162
563.....1162
571.....1162

13 CFR

101.....2394
102.....2671
103.....2679
105.....2398
107.....3177
108.....3226
112.....2682
113.....2682
114.....2401
115.....3266
116.....3226
120.....3226
121.....3280
122.....3226
123.....3304
124.....2682
125.....3310
131.....3226
132.....2682
133.....2394
134.....2682
135.....2394
136.....2682
137.....2671
142.....2691

14 CFR

1.....2080
23.....1, 252
35.....114, 254
39.....116, 511, 613, 617, 622, 623, 625, 627, 691, 1274, 1276, 1278, 1280, 1703, 2095, 2403, 2407, 2409, 2410, 2697, 2699, 2701, 2703, 2705, 2706, 2708
71...3, 120, 121, 232, 255, 513, 514, 693, 694, 695, 696, 1149, 1705, 1706, 2711, 2712, 2713, 2714, 2715, 2902
73.....4
91.....629
95.....697
97...699, 700, 701, 2715, 2903, 2904, 2906
119.....2608
121.....2608
135.....2608

Proposed Rules:

Ch. II.....1309
1.....1260
25.....1260
36.....1260
39.....131, 133, 134, 634, 636, 637, 640, 1015, 1017, 1289, 1291, 1294, 1295, 1298, 1300, 1301, 1303, 1306, 1528, 1532, 1534, 1722, 2139, 2142, 2144, 2147, 2151, 2154, 2157, 2160, 2163, 2166, 2169, 2172, 2172, 2178, 2180, 2183, 2186, 2189, 2730, 3338, 3340, 3341, 3343
71.....513, 548, 549, 550, 551, 1724, 1860, 1861, 1862, 1863, 1864, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 2731, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357
97.....1260

15 CFR

770.....2099
771.....2099
772.....2099
773.....2099
774.....2099
775.....2099
776.....2099
785.....2099
786.....2099
787.....2099
799.....2099
990.....440

Proposed Rules:

981.....2969

16 CFR

1000.....1707
1615.....1115
1616.....1116

Proposed Rules:

1.....1538

17 CFR

11.....1708
30.....1709, 2717
33.....2719
140.....1708

Proposed Rules:

210.....578
228.....578
229.....578
230.....1312
239.....578, 1312
240.....578, 1545
249.....578
270.....1312, 1313

18 CFR

1301.....2111

Proposed Rules:

Ch. I.....705
35.....705, 2733

19 CFR

4.....2412
10.....1829, 2908
12.....1829
24.....1829
113.....2908
123.....1829
134.....1829
141.....2908
144.....2908
162.....258, 1829
174.....1829
177.....1829
178.....1829
181.....1829, 2908
191.....1829

Proposed Rules:

118.....1877

20 CFR

416.....1711

Proposed Rules:

200.....1252
404.....2654

21 CFR

5.....2414
172.....3118
173.....385, 631
175.....2111
178.....1712, 1829, 1830, 2113
510.....258, 259, 514
520.....2914
522.....260
558.....514, 1831, 24140
573.....5
601.....2971
862.....1117
866.....1117
868.....1117
870.....1117
872.....1117
874.....1117
876.....1117
878.....1117
880.....1117
882.....1117
884.....1117
886.....1117
888.....1117
890.....1117
892.....1117

Proposed Rules:

1.....2192
2.....2192
10.....2192
50.....2192
101.....296
201.....2971
208.....2971
314.....2739, 2971
601.....2971
600.....2733, 2739, 2748, 2749
601.....2733, 2739, 2748, 2749

22 CFR

31.....2915
40.....1832, 1834
41.....1521, 1832, 1834, 1837
42.....1523, 1834
43.....1834
44.....1834
45.....1834
47.....1834

Proposed Rules:

89.....2973

23 CFR

Proposed Rules:

630.....2973
635.....2973
771.....2973

24 CFR

25.....684
92.....1824
202.....2650
203.....2650

Proposed Rules:

203.....2644
221.....2644

25 CFR

Proposed Rules:

Ch. V.....2038
900.....2038

26 CFR

1.....6, 260, 262, 515, 517, 552
20.....515
23.....515
24.....515
25.....515
27.....515
33.....515
38.....515
301.....260, 515, 1035
602.....6, 260, 262, 515, 517

Proposed Rules:

1.....28, 338, 552, 1545
31.....2194, 2214
301.....338

27 CFR

4.....522

Proposed Rules:

4.....1545
5.....1545, 2459
7.....1545
9.....706
13.....1545
19.....1545, 2459
24.....2459
25.....2459

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Stratospheric ozone protection--
  - Used class I controlled substances import; reporting requirement partial stay and reconsideration; published 1-31-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; published 1-31-96

Superfund program:
- National oil and hazardous substances contingency plan--
  - National priorities list update; published 1-31-96

NATIONAL LABOR RELATIONS BOARD

Administrative law judges; role modifications; published 1-19-96

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; published 1-31-96

SMALL BUSINESS ADMINISTRATION

Federal regulatory review:
- Small business investment companies; published 1-31-96

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
- Commandant, United States Coast Guard; published 1-31-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airport security:
- Unescorted access privileges; employment investigations and criminal history record checks
  - Correction; published 11-2-95

Airworthiness directives:
- Beech; published 1-19-96

Airworthiness standards:
- Rotorcraft; normal and transport category--
  - Turbine engine rotor burst protection; published 11-2-95

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Melons grown in Texas; comments due by 2-5-96; published 1-4-96

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase purchase programs:
- Foreign markets for agricultural commodities; development agreements; comments due by 2-9-96; published 1-10-96

AGRICULTURE DEPARTMENT

Food and Consumer Service

Food distribution program:
- Donation of foods for use in U.S., territories, and possessions, and areas under jurisdiction--
  - Disaster and distress situations; food assistance; comments due by 2-6-96; published 12-8-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Pacific Coast groundfish; comments due by 2-5-96; published 1-4-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Federal Power Act:
- Real-time information networks and standards of conduct; comments due by 2-5-96; published 12-21-95

Practice and procedure:
- Hydroelectric projects; relicensing procedures; rulemaking petition; comments due by 2-5-96; published 1-10-96

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Maleic hydrazide, etc.; comments due by 2-5-96; published 12-6-95

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Missouri; comments due by 2-5-96; published 12-20-95

Television broadcasting:
- Cable television services; definitions for purposes of cable television must-carry rules; comments due by 2-5-96; published 1-24-96

FEDERAL RESERVE SYSTEM

International banking operations (Regulation K):
- Foreign banks home state selection under Interstate Act; comments due by 2-5-96; published 12-28-95

Truth in lending (Regulation Z):
- Consumer credit; finance charges; comments due by 2-9-96; published 12-21-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Additional supplier standards; comments due by 2-9-96; published 12-11-95
- Physician fee schedule (1996 CY); payment policies and relative value unit adjustments; comments due by 2-6-96; published 12-8-95
- Skilled nursing facilities and home health agencies; uniform electronic cost reporting requirements; comments due by 2-5-96; published 12-5-95

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:
- Federal leases; natural gas valuation regulations; amendments Meeting; comments due by 2-5-96; published 12-13-95

INTERIOR DEPARTMENT

National Park Service

National Park System:
- Alaska; protection of wildlife and other values and purposes on all navigable waters within park boundaries, regardless of ownership of submerged lands; comments due by 2-5-96; published 12-5-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:
- Underground coal mines--
  - Flame-resistant conveyor belts; requirements for approval; comments due by 2-5-96; published 12-20-95

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:
- Plan assets; participant contributions; comments due by 2-5-96; published 12-20-95

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright claims; group registration of photographs; comments due by 2-9-96; published 1-26-96

NATIONAL LABOR RELATIONS BOARD

Requested single location bargaining units in representation cases; appropriateness; comments due by 2-8-96; published 1-22-96

PERSONNEL MANAGEMENT OFFICE

Employment:
- Federal employment information; agency funding; comments due by 2-7-96; published 1-8-96

SOCIAL SECURITY ADMINISTRATION

Social security benefits:
- Elementary or secondary school students, full-time; revisions; comments due by 2-5-96; published 12-7-95
- Living in the same household (LISH) and lump-sum death payment (LSDP) rules; revision; comments due by 2-5-96; published 12-6-95

Supplemental security income:

Aged, blind, and disabled--

Income exclusions; comments due by 2-5-96; published 12-6-95

TRANSPORTATION DEPARTMENT

Coast Guard

Navigation aids:

Lights on artificial islands and fixed structures and other facilities; conformance to IALA standards; comments due by 2-9-96; published 1-10-96

Regattas and marine parades:

Permit application procedures; comments due by 2-9-96; published 12-26-95

TRANSPORTATION DEPARTMENT

Military personnel:

Coast Guard Military Records Correction Board; final decisions reconsideration; comments due by 2-9-96; published 12-11-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 2-5-96; published 12-5-95

British Aerospace; comments due by 2-7-96; published 1-3-96

Jetstream; comments due by 2-9-96; published 11-28-95

Sensenich Propeller Manufacturing Co., Inc.; comments due by 2-5-96; published 12-7-95

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Public lands highways funds; elimination; CFR part removed; comments due by 2-5-96; published 12-6-95

Motor carrier safety standards:

Driver qualifications--

Vision and diabetes; limited exemptions; comments due by 2-7-96; published 1-8-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Manufacturers' obligations to provide notification and remedy without charge to owners of vehicles or items not complying with safety standards; comments due by 2-5-96; published 1-4-96

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous liquid transportation--

Open head fiber drum packaging; extension of authority for shipping; comments due by 2-5-96; published 1-9-96

TREASURY DEPARTMENT

Comptroller of the Currency

National banks; extension of credit to insiders and transactions with affiliates; comments due by 2-9-96; published 12-11-95

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Payments under Judgments and Private Relief Acts; claims procedures; comments due by 2-7-96; published 1-8-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.** A cumulative list of Public Laws for the First Session of the 104th Congress will be published in Part II of the **Federal Register** on February 1, 1996.

Last List January 30, 1996