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Wednesday
March 27, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6873 of March 22, 1996

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1996

By the President of the United States of America

A Proclamation

While Hellenic literature, art, architecture, and philosophy have profoundly influenced western civilization for over 2,000 years, democracy remains the most precious gift to our world from the Greeks of ancient times. This manner of government, placing authority directly into the hands of the people, has long fulfilled the needs and aspirations of freedom-loving nations around the world. Our founders chose to adopt the democratic system when declaring America's liberty, just as the Greek Constitution enshrines democracy as the governing rule of the Hellenic Republic.

It is one of history's great ironies that Greece, the birthplace of democracy, was subject for centuries to foreign domination, culminating in almost four hundred years of political suppression by the Ottoman Empire. The Greeks' age-old love of liberty remained strong, however, and in 1821, Greece began its successful struggle for self-determination.

Today, as we commemorate the one hundred and seventy-fifth anniversary of Greek independence, the citizens of Greece and the United States remember that with democracy come great responsibilities—to seek peaceful solutions to civil differences, to foster freedom and human rights in all nations, and to ensure that our laws continue to build upon our strong democratic foundation.

Standing shoulder to shoulder, Americans and Greeks fought for these principles on the battlefields of World War II and through the dark days of the Cold War. Today, while we celebrate Greek independence, we also remember all those around the world who still endure oppression and are denied economic, social, or political freedom. In recent years we have seen many nations break the bonds of tyranny, and we must continue to support others who seek to embrace democracy's promise. In doing so, we look forward to a day when people everywhere enjoy the rights and liberties that Greeks and Americans are so proud to share.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 1996, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–7598
Filed 3–26–96; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket No. FV93–353]

RIN 0581–AB28

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930 (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising the Regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) to include oil-blanched frozen fruits and vegetables as a commodity covered under the PACA. This rule will grant dealers in frozen oil-blanched products the same rights afforded dealers whose frozen product is water-blanched.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: J.R. Frazier, Assistant Chief, PACA Branch, Room 2095–So., Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et. seq.*), as amended, hereinafter referred to as the ''PACA.'' The Department of Agriculture is issuing this final rule in conformance with Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. This is an action that is brought about at the request of the frozen fruit and vegetable industry and would benefit producers and small businesses that process and supply frozen fruits and vegetables by making available to them new remedies under the PACA.

This rule extends PACA coverage to include frozen fruits and vegetables that are oil-blanched, especially frozen french fried potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanched products were excluded by regulation from PACA coverage. This rule grants dealers in frozen oil-blanched products the same rights afforded dealers whose frozen product is water- blanched.

It is therefore not unduly or disproportionately burdensome on small businesses and in fact, rectifies the previous situation in which processors and suppliers were closed out of remedies with respect to oil-blanched product.

The PACA establishes a code of fair trading by prohibiting certain unfair practices in the marketing of fresh or frozen fruits and vegetables. The law requires that parties fulfill their contractual obligations including prompt pay, and provides a forum wherein persons who suffer damages can recover their losses.

The PACA also impresses a statutory trust for the benefit of unpaid sellers or suppliers on all perishable agricultural commodities received by a commission merchant, dealer or broker and all inventories of food or other products derived from the sale of such commodities or products. Sellers who preserve their eligibility are entitled to payment ahead of other creditors, from trust assets, of money owed on past due accounts.

Information submitted to this Agency by the Frozen Potato Products Institute indicates that frozen potato products represent the largest single frozen commodity shipped in the United States. This information further indicates that potatoes cannot be economically frozen and shipped long distances unless they first undergo oil blanching. As pointed out by the American Frozen Food Institute, oil blanching, like water and steam blanching inactivates enzymes without cooking the product. Water and steam blanched frozen fruits and vegetables are covered under the current regulations, oil-blanched frozen fruits and vegetables are not. To exclude such a substantial portion of the frozen food industry is inconsistent with the intent of the PACA to protect dealers in fresh or frozen fruits and vegetables.

Retailers who buy in interstate or foreign commerce must obtain a PACA license if they buy more than $230,000 of fruits and vegetables during a calendar year. Including oil-blanched product in the calculation of the $230,000 exemption may result in a marginal increase in retailers becoming subject to PACA, requiring them to purchase a PACA license at an annual cost of $400. However, the license fee for retailers is being phased out under the provisions of the Perishable Agricultural Commodities Act Amendments of 1995. By calendar year 1999, retailers will no longer be obligated to pay license fees though they must still be licensed. A marginal increase in the number of retailers subject to the PACA, is not significant compared to the benefits derived in the industry by including these commodities under the PACA.

The proposed rule was published in the Federal Register (59 FR 35487) on July 12, 1994. On September 12, 1994, Notice was given in the Federal Register (59 FR 46772) re-opening the comment period. That notice provided another comment period which ended October 12, 1994. Ten comments were received,

six in favor and four opposed to the proposed rule.

Three commentors representing retailers and wholesale grocers opposed the rule claiming that it would expand the PACA program.

It is true that the rule does expand the PACA program to a product line that is not currently covered, but only because the current regulations restrict the application of the meaning of ''perishable agricultural commodity'' as provided in the Act. Oil-blanched product is well within the definition of a perishable agricultural commodity as defined by the statute and is consistent with the industry view of the scope of the Act and the nature of the product. Including oil-blanched frozen fruits and vegetables does not unduly or disproportionately burden retailers. With this final rule, all sales of potato products, whether to wholesale distributors, or retailers, would be covered by the term ''perishable agricultural commodity.'' Further, retailers would be less likely than other dealers to be affected by the rule because frozen oil-blanched product would be a small portion of their total business. However, continuing to exclude (frozen french fried potatoes) the largest single frozen commodity in the United States poses substantial risk to farmers, shippers, and processors who are extending credit without the trust protection the Act affords to other dealers.

Another commentor representing a major restaurant chain opposed the proposed rule because he thought the change might bring restaurants under the jurisdiction of the PACA, and argued that therefore, the economic impact of the rule has been underestimated. Restaurants traditionally have not been considered subject to the PACA by USDA or Congress unless the buying arm of the restaurant is a separate legal entity, and is buying for and/or reselling the product to another entity. Since restaurants are not subject to the PACA, this change in the regulation will not impact restaurants.

For the reasons stated, we are not making any changes to this final rule based on the above comments.

The commentors in favor of the proposal claimed that frozen potatoes cannot be shipped practically and commercially without being oil-blanched and that extending PACA to cover these products would protect processors and shippers and enhance the protection to farmers. They also pointed out that incorporating oil-blanched products into the regulations was consistent with the current policy of including water-blanched and steam-blanched product and would streamline the administration of PACA because it would no longer be necessary to distinguish oil-blanched from water or steam-blanched products. They also claimed that the proposed rule would improve marketing efficiency, thereby benefitting consumers and the potato industry.

After thoroughly analyzing the comments received and all other available information, the Department has concluded that issuing this rule is appropriate.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 46 of the Code of Federal Regulations is amended as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In section 46.2, paragraph (u) is revised to read as follows:

§ 46.2 Definitions.

* * * * *

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but do not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seeds, pits, stems, calyx, husk, pods, rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents used to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruits or vegetables for packaging in any type of containers; or comparable methods of preparation.

* * * * *

Dated: March 20, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–7437 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 916 and 917

[Docket No. FV95–916–4–IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1996 season shipments. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

DATES: Effective April 1, 1996. Comments which are received by April 26, 1996 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street,

Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR Parts 916 and 917) regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 7, 1995, and unanimously recommended that the handling requirements for California nectarines and peaches be revised, respectively. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. These committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph (a)(4)(iv) of § 916.350 by modifying one size designation for the weight-count standards in Column B of TABLE 1 for early-season and mid-season nectarine varieties and one size designation for the weight-count standards in Column B of TABLE 2. Continuing research conducted by the NAC indicate that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two seasons based on that consideration. Results from the 1995 season suggest that a minor modification of TABLE 1 and TABLE 2 is necessary to provide more accurate weight-count standards for early-season and mid-season nectarines, and late-season nectarines.

The NAC recommended these revised weight-count standards for nectarines after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties, as well as late-season varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 50 in a 16-pound sample of early-season and mid-season fruit is more appropriately 39 rather than 38. Also the maximum number of nectarines of size 50 in a 16-pound sample of late-season fruit is more appropriately 37 rather than 36.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the NAC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples required an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be ''marked'' smaller than its equivalent tray-pack size. When packs are ''marked'' smaller this causes the container to be sold for a lower price.

Revised and refined weight-count standards should provide for more accurate marking of sizes when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of ''tree ripe'' added to section 916.350 paragraph (b) for the 1995 season. According to the NAC, ''tree ripe'' is an optional marking with regard to maturity that is stamped on containers of nectarines. Currently, the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to

ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than ''mature.'' The definition of ''tree ripe'' was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as ''tree ripened.'' It has been recommended by the NAC that the terms ''tree ripe'', and ''tree ripened'', and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of nectarines to be at a minimum California Well Matured in order to be marked ''tree ripe'' or ''tree ripened,'' or other interchangeable terms such as ''ripened on the tree'', or ''ripened on tree'' will clarify the current regulation by specifying when the ''tree ripe'' or some similar marking using the words ''tree'' and ''ripe'', can be used and help to ensure that buyer expectations are met.

The NAC also recommended that a new container, that allows for markings on the lid of the container, be approved for nectarine shipments for the 1996 season only. The NAC will review the impact of the use of this container with shippers prior to the 1997 season.

The marketing order, under § 916.350, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on nectarine containers have to be applied to the outside end of the container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12×20 inch box, that is available for use with nectarines. However, the design of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The NAC believes that allowing for markings to be placed on the container lid will facilitate the use of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraphs (a)(1) and (a)(1)(i), including TABLE 1. For fruit being inspected and certified as meeting the maturity requirements for ''well matured'', maturity determinations are generally in terms of maturity guides (e.g., color chips) specified in TABLE 1.

This rule revises paragraph (a)(1) by exempting yellow nectarine varieties from the requirement that a blush or red color be present on the skin of the nectarines. By their nature, yellow nectarine varieties fail to attain any color other than yellow on the skin of the fruit. The U.S. Standards for Grades of Nectarines requires that a blush or red color be present on the skin of the fruit in order for the fruit to be considered as U.S. No. 1 grade.

This rule also revises TABLE 1 of paragraph (a)(1)(i) of § 916.356 for nectarines to add the maturity guides for four nectarine varieties. Specifically, an addition to the maturity guides was recommended for Grand Diamond, King Jim, and Spring Brite at a maturity guide of L, and Rose Diamond at a maturity guide of J.

The NAC recommended these maturity requirement changes for these nectarine varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for six nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season. This rule also modifies the variety-specific size requirements for two varieties of nectarines by reassigning those varieties.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity and, therefore, the quality of the product, but also the size of the fruit. Increased size results in increases in the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

Paragraph (a)(3) is revised to include the Johnny's Delight and May Jim varieties; paragraph (a)(4) is revised to include the Arctic Rose variety; and paragraph (a)(6) in § 916.356 is revised to include the Flame Glo, Prima Diamond III, Prima Diamond IV, Prima Diamond VIII, and the White Jewels nectarine varieties.

This rule also revises § 916.356 to remove eleven nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1995 season. Paragraph (a)(2) of that section is revised to remove the Royal Delight nectarine variety. Paragraph (a)(4) is revised to remove the Sunfre variety, and paragraph (a)(4) is also revised to delete the May Jim variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the May Jim variety from this paragraph was recommended. Paragraph (a)(6) is revised to remove the Del Rio Rey, Independence, La Pinta, Late Le Grand, Royal Red, Son Red, Sun Grand, 181–119 (Sierra Star), and Nectarine 23 nectarine varieties. Paragraph (a)(6) is also revised to remove the Arctic Rose variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the Arctic Rose variety from this paragraph was recommended.

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight- filled containers, depending on the size of the fruit. The size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying one size designation for the weight-count standards in Column B of TABLE 1 for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two seasons based on that consideration. Results from the 1995 season suggest that a minor modification of TABLE 1 is necessary to provide more accurate weight-count standards for early-season and mid-season peaches.

The PCC recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1996 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 54 in a 16-pound sample of early-season and mid-season fruit is more appropriately 44 rather than 43.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In this instance, these samples needed an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be ''marked'' smaller than its equivalent tray- pack size. When packs are ''marked'' smaller this causes the container to be sold for a lower price. During the 1994 season, new weight-count assignments for early varieties were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of ''tree ripe'' added to section 917.442 paragraph (b) for the 1995 season. According to the PCC, ''tree ripe'' is an optional marking with regard to maturity that is stamped on containers of peaches. Currently the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than ''mature.'' The definition of ''tree ripe'' was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as ''tree ripened.'' It has been recommended by the PCC that the terms ''tree ripe'' and ''tree ripened'' and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of peaches to be at a minimum California Well Matured in order to be marked ''tree ripe'' or ''tree ripened,'' or other interchangeable terms such as ''ripened on the tree,'' or ''ripened on tree'' will clarify the current regulation by specifying when the ''tree ripe'' or some similar marking using the words ''tree'' and ''ripe'' can be used and help to ensure that buyer expectations are met.

The PCC also recommended that a new container, that allows for markings on the lid of the container, be approved for peach shipments for the 1996 season only. The PCC will review the impact of this container with shippers prior to the 1997 season.

The marketing order, under § 917.442, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on peach containers have to be applied to the outside end of the container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12x20 inch box, that is available for use with peaches. However, the design of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The PCC believes that allowing for markings to be placed on the container lid will facilitate the use of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraph (a)(1), including TABLE 1. For fruit being inspected and certified as meeting the maturity requirements for ''well matured'', maturity determinations are generally in terms of maturity guides (e.g., color chips) specified in TABLE 1. This rule revises TABLE 1 of paragraph (a)(1)(ii) of § 917.459 for peaches to change the maturity guide for the Elegant Lady peach variety from a maturity guide M to a maturity guide L. The Early Delight peach variety has been recommended to be added with a maturity guide H and the May Sun variety has been recommended to be added with a maturity guide I.

The PCC recommended these maturity requirement changes for these peach varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule also revises § 917.459 to establish variety-specific size requirements for six peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not

only improves maturity, and, therefore, the quality of the product, but also size of the fruit. Increased size results in increases in the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

In § 917.459 paragraph (a)(5) is revised to include the May Sun peach variety; and paragraph (a)(6) is revised to include the July Sun, Kaweah, Snow Giant, Snow King, and Sugar Giant peach varieties.

This rule also revises § 917.459 to remove eleven peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1995 season. In § 917.459 paragraph (a)(2) of § 917.459 is revised to remove the Flordaprince peach variety; paragraph (a)(5) is revised to remove the First Lady, Merrill Gem, Royal May, Sierra Crest, Summer Crest, and 50–178 peach varieties; and paragraph (a)(6) is revised to remove the Angelus, August Delight, Parade, and Scarlet Lady peach varieties. Peach varieties removed from the variety- specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The removal of the Flordaprince variety from paragraph (a)(2) results in there being no varieties regulated within size 96 for the 1996 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number (a)(2) for future regulation of peaches at size 96.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) California nectarine and peach growers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for yellow-skinned nectarines and size requirements for several nectarine and peach varieties; (3) California nectarine and peach handlers are aware of these revised requirements that are non-controversial, administrative by nature, and similar to other recommendations made by the committees in prior seasons, and they will need no additional time to comply with such requirements; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.350 is amended by revising TABLE 1 and TABLE 2 of paragraph (a)(4)(iv), revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

(a) * * *
(4) * * *
(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108	100
96	90
88	83
84	78
80	75
72	67
70	60
64	55
60	49
56	46
54	40
50	39
48	35
42	31
40	30
36	25
34	23
32	22
30	19

TABLE 2.—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii), and (a)(9)(ii) of § 916.356
108	92
96	87

TABLE 2.—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS—Continued

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii), and (a)(9)(ii) of § 916.356
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	37
48	33
42	28
40	26
36	25
34	23
32	22
30	19

* * * * *

(b) As used in this section, standard pack and fairly uniform in size shall have the same meanings as set forth in U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. No. 12B standard fruit box measures 2⅜ to 7⅛ × 11½ × 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ × 13½ × 16⅛ inches, No. 22E standard lug box measures 8¾ x 13½ × 16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½ × 13¼ × 15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). Individual consumer packages means packages holding 15 pounds or less net weight of nectarines. ''Tree ripe'' means ''tree ripened'' and fruit shipped and marked as ''tree ripe'', ''tree ripened'', or any similar terms using the words ''tree'' and ''ripe'' must meet minimum California Well Matured standards.

(c) Each container of nectarines in plastic, 12×20 inch reusable and recyclable containers shall meet and bear, on the container lid, all applicable marking requirements under the order.

3. Section 916.356 is amended by revising paragraphs (a)(1) introductory text, Table 1, (a)(2) introductory text, (a)(3) introductory text, (a)(4) introductory text, and (a)(6) introductory text to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U. S. No. 1 grade: Provided, that nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: Provided further, that an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: Provided further, that all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency.

* * * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
Ama Lyn	G
Apache	G
April Glo	H
Armking	B
August Glo	L
August Red	J
Aurelio Grand	F
Autumn Delight	M
Autumn Grand	L
Bob Grand	L
Clinton-Strawberry	H
Del Rio Rey	G
Desert Dawn	G
Early Diamond	J
Early May	F
Early May Grand	H
Early Star	G
Early Sungrand	H
Fairlane	M
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Gee Red	H
Gold King	H
Grand Diamond	L
Granderli	J
Grand Stan	F
Hi-Red	J
Independence	H

TABLE 1—Continued

Column A variety	Column B maturity guide
July Red	L
June Glo	H
June Grand	G
Kent Grand	L
King Jim	L
Kism Grand	J
Larry's Grand	M
Late Le Grand	L
Late Tina Red	I
Le Grand	H
Maybelle	F
May Diamond	I
Mayfair	C
May Fire	H
May Glo	H
May Grand	H
May Kist	H
Mayred	B
Mid Glo	L
Mike Grand	H
Moon Grand	M
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	M
Red Delight	I
Red Free	L
Red Glen	J
Red Grand	H
Red Jim	L
Red June	G
Red Lion	J
Red May	J
Regal Grand	L
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sierra Star/181–119	G
Son Red	L
Sparkling June	M
Sparkling May	J
Sparkling Red	L
Spring Brite	L
Spring Diamond	M
Spring Grand	G
Spring Red	H
Springtop	B
Stan's Grand	C
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	M
Summer Fire	L
Summer Grand	L
Summer Lion	M
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G

TABLE 1—Continued

Column A variety	Column B maturity guide
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
Zee Glo	J
61–61	J

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(2) Any package or container of May Glo variety nectarines through May 5 of each year; or April Glo, or Mayfire variety nectarines, unless:

* * * * *

(3) Any package or container of May Glo variety nectarines on or after May 6 of each year, or Earliglo, Early Diamond, Johnny's Delight, May Jim, or May Kist variety nectarines, unless:

* * * * *

(4) Any package or container of Arctic Rose, Early May, Mike Grand, June Brite, June Glo, May Grand, May Diamond, May Lion, Pacific Star, Red Delight, Rose Diamond, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Queen, August Glo, August Red, Autumn Delight, Big Jim, Bob Grand, Early Red Jim, Early Sungrand, Fairlane, Fantasia, Firebrite, Flame Glo, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, How Red, July Red, King Jim, Kay Diamond, Kism Grand, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, Prima Diamond, Prima Diamond III, Prima Diamond IV, Prima Diamond VIII, P–R Red, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Red Lion, Rio Red, Royal Giant, Royal Glo, Ruby Diamond, Ruby Grand, Scarlet Red, September Grand, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Super Star, Tasty Gold, Tom Grand, White Jewels, Zee Glo, 80P–1135, or 424–195 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 917.442 is amended by revising TABLE 1 of paragraph (a)(4)(iv), revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 917.442 California Peach Container and Pack Regulation.

(a) * * *

(4) * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of peaches in a 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(iii), (a)(5)(ii), and (b)(3) of § 917.459
96	96
88	92
84	83
80	76
72	68
70	64
64	56
60	50
56	46
54	44
50	39
48	35
42	31
40	30
36	27
34	25
32	23
30	21

* * * * *

(b) As used in this section, standard pack shall have the same meaning as set forth in U.S. Standards for Grades of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. No. 12B standard fruit box measures 2⅜ to 7⅛ x 11½ × 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ × 13½ × 16⅛ inches, No.22E standard lug box measures 8¾ × 13½ × 16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½ × 13¼ × 15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). Individual consumer packages means packages holding 15 pounds or less net weight of nectarines. ''Tree ripe'' means the same as ''tree ripened'' and fruit shipped and marked as ''tree ripe'', ''tree ripened'', or any similar terms using the words ''tree'' and ''ripe'', must meet minimum California Well Matured standards.

(c) Each container of peaches in plastic, 12×20 inch reusable and recyclable containers shall meet and bear, on the container lid, all applicable marking requirements under the order.

3. Section 917.459 is amended by removing and reserving paragraph (a)(2), and revising Table 1 of paragraph (a)(1)(ii), (a)(5) introductory text, and (a)(6) introductory text to read as follows:

§ 917.459 California Peach Grade and Size Regulation.

(a) * * *

(1) * * *

(ii) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
Armgold	D
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Bella Rosa	G
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Bonjour	F
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Desertgold	B
Diamond Princess	J
Early Coronet	D
Early Delight	H
Early Fairtime	I
Early May Crest	H
Early O'Henry	I
Early Royal May	G
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C

TABLE 1—Continued

Column A variety	Column B maturity guide
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Fortyniner	F
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
Jody Gaye	F
John Henry	J
Judy Elberta	C
July Lady	G
June Crest	G
June Lady	G
June Pride	J
June Sun	H
Kearney	I
Kern Sun	H
Kings Lady	I
Kings Red	I
Lacey	I
Mardigras	G
Mary Ann	G
May Crest	G
May Lady	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
Morning Sun	D
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Preuss Suncrest	F
Prima Fire	H
Prima Lady	J
Prime Crest	H
Queen Crest	G
Ray Crest	G
Red Cal	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rio Oso Gem	I
Royal April	D
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	M
Summerset	I
Suncrest	G
Sun Lady	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Topcrest	H
Toreador	I
Tra Zee	J
Treasure	F
Willie Red	G
Windsor	I
Zee Lady	L
50–178	G

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, Honey Red, June Lady, June Sun, Kern Sun, Kingscrest, Kings Red, May Crest, May Sun, Merrill Gemfree, Queencrest, Ray Crest, Redtop, Regina, Rich May, Snow Brite, Snow Flame, Springcrest, Spring Lady, or Sugar May variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Autumn Rose, Belmont, Berenda Sun, Blum's Beauty, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairmont, Fairtime, Fay Elberta, Fire Red, Flamecrest, John Henry, July Lady, July Sun, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Mary Ann, O'Henry, Prima Gattie, Prima Lady, Red Boy, Red Cal, Redglobe, Rich Lady, Royal Lady, Ryan's Sun, September Snow, September Sun, Sierra Lady, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Summer Lady, Summer Sweet, Suncrest, Tra Zee, White Lady, or Zee Lady variety of peaches unless:

* * * * *

Dated: March 21, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–7438 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 920

[Docket No. FV95–920–4FR]

Kiwifruit Grown in California; Relaxation of Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the container marking requirements for kiwifruit packed under the Federal marketing order for kiwifruit grown in California. This relaxation reduces the number of kiwifruit containers required to be marked with the lot stamp number. This rule reduces handling costs and provides more flexibility in kiwifruit packing operations.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487–5901, Fax # (209) 487–5906; or Charles Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR Part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 65 handlers of California kiwifruit subject to regulation under the order and approximately 500 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of handlers and producers of California kiwifruit may be classified as small entities.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that all containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

The Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, met on November 30, 1995, and recommended, by unanimous vote, to relax the container marking requirements by reducing the number of containers plainly marked with the lot stamp number from all containers to all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet.

The marketing order authorizes under § 920.52(a)(3) the establishment of container marking requirements. Section 920.303(d) of the rules and regulations outlines the lot stamp number container marking requirements for fresh kiwifruit packed under the order.

The committee recommended relaxing the lot stamp number marking requirement because of changes in the produce retail industry. The committee anticipates that the current order language, which requires all containers to be plainly marked with the lot stamp number, will create a problem in the near future due to industry changes in container packaging configurations and pallet sizes. This relaxation allows the industry flexibility for future pallet size and container configurations.

Many products, outside the produce industry, are received by retailers on 48- by 40-inch pallets. The kiwifruit industry almost exclusively used the ''LA Lug'' container which fits on the 35- by 42-inch or 53- by 42-inch pallets until recent years. The ''LA Lug'' configuration does not create a center tier when stacked on these pallets. When kiwifruit shippers use 35- by 42-inch or 53- by 42-inch pallets, receivers must unload the pallets and restack the fruit on metric pallets, causing more damage to the fruit and more labor costs to the receiver. Because of retail buying patterns and the retail demand for operational consistency in pallet usage, the produce industry has been moving away from using the 35- by 42-inch or 53×42 inch pallets and has been moving towards using a standard grocery-industry metric pallet measuring 48- by 40-inches. The committee anticipates that the retail usage of the metric pallet will continue to increase because: (1) Retailer and handler trucking and transportation costs for produce stacked on metric pallets are less than for produce stacked on 35- by 42-inch and 53- by 42-inch pallets, (2) retailer labor and disposal costs are less when metric pallets are utilized, and (3) receiving areas are steadily being remodeled to handle metric pallets. In the 1995/1996 season, approximately one percent of the industry's 9.3 million trays equivalents were packed in ''shoe'' box containers. The ''shoe'' box container (12×20 inches) is one of two new containers which is stacked in eight columns on a 48- by 40-inches metric pallet, and is configured in a manner which leaves one side of each container exposed. The other container that fits on the metric pallet is the ''mum'' box container. The ''mum'' box container (13.3×16 inches) is stacked nine columns on a pallet with the center column inaccessible to lot stamp numbering after the containers are placed on the pallet during block inspection. In block inspection, the inspection occurs after the pallets have been packed, strapped, and been placed in storage. In-line inspection is performed during the packing process, prior to palletization and storage.

The industry's usage of block and in-line inspection methods is fairly evenly split with approximately 50 percent of the handlers using in-line inspection and 50 percent using block inspection. The majority of block inspections are conducted in the northern part of California while in-line inspections are conducted primarily in the southern part of California.

The committee's recommendation to relax the container marking requirement will not significantly lower the number of containers being inspected or bearing the lot stamp number. Of the 81 containers stacked on a metric pallet during block inspection, nine containers (the center tier—approximately 11 percent of the pallet) will not be lot stamp numbered. The center tiers of all pallets will be randomly inspected by the Federal or Federal-State Inspection Service for all marketing order requirements. When the industry utilizes in-line inspection, both the ''shoe'' and ''mum'' containers are accessible to lot stamp number marking and inspection, as they are being stacked on the pallet.

There is unanimous support in the industry to reduce the lot stamp number container marking requirement.

Several other alternatives were suggested during the public meeting. One alternative discussed by the committee was to require all containers to continue to be lot stamp numbered. Maintaining the requirement for lot stamp numbers to be placed on all containers increases handler labor costs, slows handler operations, increases handler restrapping costs, as well as increases inspection costs. It was the consensus of the committee that such a requirement will be cost prohibitive as each block-inspected pallet will have to be manually pulled apart to enable the lot stamp number to be placed on the nine-column center tier containers.

Another alternative suggested was to eliminate the block-inspection method and require all handlers to use the in-line inspection method. During in-line inspection, containers will be stamped with the lot stamp number prior to being stacked on the pallet. This will have a serious financial impact on the industry, especially among small growers and handlers, due to a large increase in inspection costs. This suggestion was unacceptable to the industry as it will be cost prohibitive and could force small growers and handlers out of business.

Another alternative examined was to establish regulations prohibiting the use of any containers that create an inaccessible center when stacked on pallets. This alternative was not acceptable as it will not allow the industry to make necessary container changes to meet changing retailer needs and will be an excessive restriction.

This final rule, which relaxes the lot stamp number requirement, impacts all handlers in the same manner and was viewed by the committee as the least restrictive and best solution. Relaxing the lot stamp number requirement solves the problems caused by changes in pallet sizes and container configurations as well as spares the industry future financial hardship. It allows the industry flexibility for future pallet size and container configurations.

A proposed rule concerning this relaxation was issued on January 24, 1996, and published in the Federal Register on February 1, 1996, (61 FR 3604). That rule provided a 30-day comment period which ended March 4, 1996. No comments were received.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Section 920.303 paragraph (d) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

Dated: March 20, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–7436 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0918]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority to authorize the Board's General Counsel to deny a request for stay of the effective date of a Board order. The Board itself would retain sole discretion to grant a request for stay of the effectiveness of any decision. This amendment corrects an unintentional omission from the Rules Regarding Delegation of Authority.

EFFECTIVE DATE: March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Assistant General Counsel (202/452–3711), or Christopher Greene, Attorney (202/452–2263), Legal Division. For users of Telecommunications Device for the Deaf (TDD) *only,* please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In 1987, the Board, pursuant to its authority under the Bank Holding Company Act and section 11(k) of the Federal Reserve Act, delegated to its General Counsel authority to deny a request for stay of the effective date of a Board order (52 FR 48805, December 28, 1987). The Board reorganized its Rules Regarding Delegation of Authority (12 CFR part 265) in 1991 to make it easier to locate specific delegations (56 FR 25614, June 5, 1991). In taking this action, the General Counsel's authority to deny a request for stay of the effective date of an action taken by the Board was unintentionally omitted from the amended Rules Regarding Delegation of Authority. This final rule corrects this omission.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is technical and procedural in nature and does not constitute a substantive rule subject to the requirements of that section.

Regulatory Flexibility Act

No significant impact on small entities is expected.

Paperwork Reduction Act of 1995

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. In § 265.6, paragraph (a)(1) is revised to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(a) *Procedure*—(1) *Reconsideration of Board action.* Pursuant to § 262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration or whether to deny a request for stay of the effective date of any action taken by the Board with respect to an action as provided in that part.

* * * * *

By order of the Secretary of the Board of Governors of the Federal Reserve System, March 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7424 Filed 3–26–96; 8:45 a.m.]

Billing Code 6210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1274

RIN 2700–AC07

Cooperative Agreements With Commercial Firms

AGENCY: Office of Procurement, Contract Management Division, NASA.

ACTION: Final rule.

SUMMARY: Current NASA regulations at 14 CFR part 1260 describe the use of cooperative agreements with educational institutions and non-profit organizations. This final regulation establishes the requirements for cooperative agreements with commercial firms.

EFFECTIVE DATE: March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

NASA published a proposed rule in the Federal Register on June 27, 1995 (60 FR 33163). Interested parties were invited to submit comments. Almost 100 comments were received. All comments were considered in developing this final revision. The following section presents a summary of the major comments received and a response to each comment. Other changes have been made to improve clarity and readability.

Comment: The draft coverage requires synopsizing cooperative agreements awarded as a result of unsolicited proposals. This is not required by statute and may result in informing competitors of planned R&D and give them an opportunity to submit competing proposals thereby discouraging submission of innovative proposals from industry.

Response: As a general rule, it is important to be as open as possible about the expenditure of public funds and this principal led to requiring synopses of unsolicited proposals. It is recognized, however, that innovative proposals must be protected; therefore the policy allows the same exclusions as FAR 5.202(a)(8) which addresses a waiver to synopses requirements in the case of unique or innovative concepts.

Comment: The coverage requires that FAR cost principles be utilized for cooperative agreements. There is no statutory requirement for this and it will require commercial firms to establish special accounting procedures. Recommend flexible tracking of costs.

Response: Government policy is expressed in OMB Circular A–110 which states in Paragraph 27 that ''The allowability of costs incurred by commercial organizations and those nonprofit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31''.

Comment: Proposed rule appears to incorporate many features of a contract vs an assistance instrument. Proposed rule should be substantially rewritten.

Response: The proposed rule does contain some contractual aspects, but only those that are required by law or to ensure that public funds are appropriately expended. For example, the preaward certification requirements, treatment of property in a cooperative agreement, and much of the intellectual property coverage are required by law. Other aspects of the policy such as milestone payments, technical officer responsibilities, and liability and risk of loss are adaptations of contract language deemed necessary to protect both the recipient and NASA.

Comment: We note that the proposed rule provides for milestone billings. While this is a reasonable approach to managing the flow of funds, we are concerned that some may view these milestones as ''go-no-go'' decision points rather than a measure of progress against a recipient's best efforts. This area of the proposed regulation requires careful crafting so as to avoid inadvertently introducing a level of certainty that is not appropriate to cooperative agreements.

Response: The milestones are, in fact, ''go-no-go'' decision points. If a milestone cannot be met, the recipient should carefully consider revoking the agreement.

Comment: The proposed rule should be further clarified to provide that IR&D can be used for work performed under subcontracts issued pursuant to the cooperative agreement. This clarification is required to eliminate potential IR&D unallowability due to the interpretation that second tier work is required by contract. The definition should also recognize the possibility that the company's contribution may be Manufacturing and Production Engineering (M&PE) costs.

Response: IR&D costs may be recovered under other Government awards as an allowable cost only by the recipient (an individual firm or members of a consortium). While these costs of the recipient may be expended under subcontracts, the subcontractor may not recover any expenditures as IR&D costs.

Costs incurred by a recipient which may be classified as M&PE costs will generally not be permitted to be recovered under other Government awards.

Comment: ''Resource Contribution'' This term includes ''in-kind contributions'' which is not defined elsewhere, even though ''cash contributions'' are defined. The term ''in-kind'' is also used elsewhere in the proposed rule. This is an area where significant misunderstandings can arise and the term should be defined. We suggest that NASA use the definition in the now superseded OMB Circular A–110, Attachment E, Paragraph 2.d. (1976).

Response: The term ''in-kind contribution'' has been removed from the regulation and replaced with ''non-cash'' to avoid misunderstanding.

Comment: ''Revocation'' This definition needs to recognize mutuality as opposed to the proposed version which describes cancellation of NASA sponsorship, inferring one-sided activity.

Response: Agree. The definition has been amended.

Comment: A number of comments were received regarding the treatment of patent rights issues. For the most part, the treatment of patent rights is controlled by legislation and not within the purview of the agency to amend.

Response: NA

Comment: Section 1274.204 Evaluation and Selection. (a) As written, the regulation states that a typical CAN will have only one technical evaluation factor, e.g., technology transfer, enhancing U.S. competitiveness, etc. It then describes any number of more detailed ''subfactors'' which should be used, e.g., ''level of commitment (contribution of private resources to the project)''. In our view the ''single'' evaluation factor described is really not an evaluation factor, but rather the objective of the cooperative agreement. The ''subfactors'' appear to be the real evaluation factors. We recommend the regulation be revised accordingly.

Response: Many of the subfactors stated for evaluation could be consideration for any type of award (contract, grant, or cooperative agreement). It is the single evaluation factor that establishes cooperative agreement nature of the evaluation and ensures that the subfactors are evaluated within the scope and intent of a cooperative agreement structure.

Comment: When the total value of the agreement is less than $5m, the regulation says ''Cost and [sic] pricing data should not normally be required.'' We strongly recommend that the word ''normally'' be deleted. Cost or pricing data should never be required for a

cooperative agreement. Such a requirement is totally inappropriate for this type of financial arrangement.

Response: The cooperative agreement policy is structured to minimize the bureaucratic impact on the recipient during the course of performance. Minimal reporting of any kind is required and no cost reporting is required (except in the event of termination). We still must ensure that Government funds are being expended wisely. This is accomplished through two specific means. The first is a careful analysis of the proposed cost. The second is ensuring that the milestones are accomplished. Other than cost or pricing data may be an integral part of ensuring that the proposed cost is reasonable since no other adequate means may be available. The guidance has been changed to indicate that cost or pricing data (i.e., certified cost and pricing data in accordance with FAR 15.8 following the changes required by FASA) should never be required.

Comment: Section 1274.401 Government Property. The guidance regarding the acquisition of property for use on a cooperative agreement further shows the ''contract'' nature of this proposed rule. This requirement indicates a NASA belief that a recipient will structure the costing for the cooperative agreement in such a way that NASA dollars fund certain work and the recipient's dollars will fund other work. In reality, many recipients will account for the costs of a total agreement, including purchases of equipment, billing only its share of the total. In this scenario, NASA does not fund specific work, but funds a percentage of the total. The proposed Cooperative Agreements language would require separation of tasks that is unnecessary for any other purpose of the recipient and only increases costs of all work.

Response: Statutorily, equipment purchased with Government funds is Government equipment. Since NASA has no interest in acquiring equipment procured under a cooperative agreement, it is in both the recipient's and NASA's best interests that equipment be provided as a non-cash contribution of the recipient.

Comment: Section 1274.701 Suspension or Revocation. We strongly support the language in this section which provides that *either party* may revoke the agreement if acceptable technical progress is not made or there is a shift in technical emphasis. We recommend this same bilateral treatment be provided for suspension. The cooperative agreement should provide like rights to both parties.

Response: Sections 1274.701 and 1274.922 have been amended to state that either party may suspend the cooperative agreement.

Comment: Section 1274.903 Responsibilities. (b) NASA Responsibilities. NASA must not contract with other than the recipient without the recipient reaching a non-disclosure agreement with the proposed NASA contractor prior to the placing of the contract. Notification to the recipient is insufficient to protect recipient's intellectual property.

Response: It is preferred that NASA contractors not perform NASA duties and responsibilities under a cooperative agreement, but at times, that may be unavoidable. Protection of the recipient's trade secrets and other confidential data is covered by § 1274.905(b)(2) and (b)(3). A separate non-disclosure agreement should not be required. Any inventions made by a NASA contractor as a result of doing work for NASA will not be disclosed if doing so would compromise Recipient's trade secrets. However, the contractor has the first option to retain title to inventions made while doing work for NASA that do not compromise Recipient's trade secrets.

Comment: The limitation on disputes to those arising three (3) months prior to the written notification of paragraph (d) is too limiting and should be expanded to six to twelve months to correct this. It is suggested that paragraph (c) be modified to clarify when the three (3) month period begins.

Response: Disagreements between NASA and its contractors and recipients occur on a regular basis, but are resolved at low levels within the respective organizations as they should be. This provision attempts to provide another avenue for disputes in those extremely rare instances where resolution at the lower levels fails. The clause has been rewritten to clarify when the three (3) month period begins.

Comment: We strongly disagree with this paragraph which states that ''all preceding payment milestones must be completed before payment can be made for the next payment milestone''. Activities captured in milestones are not necessarily sequential in nature. Payment milestones are supposed to provide a mechanism for triggering payment of the NASA pre-agreed contribution at the accomplishment of the particular milestone.

Response: In order to ensure that a cooperative agreement is completed and that neither party ''games'' the other, it is critical that payment for milestones be made in the order that the milestones are established. It is important to note that the milestones are primarily established by the recipient and negotiated with NASA, so the recipient is able to establish milestones which represent the work to be accomplished sequentially under the cooperative agreement.

Comment: Section 1274.911(b)(4)(i)—In this paragraph the term ''Administrator'' is used. If it is to mean the same as that in § 1272.102, then the term should be included in the ''Definition'' section of the provision. If another person is intended, the paragraph should be revised.

Response: The definition of ''Administrator'' in § 1274.912(a)(1) has been added to the Definitions in 1274.911.

Comment: Section 1274.911(b)(6)—In line 10 it is unclear who in NASA can approve the waiver. This should be clarified.

Response: The Associate Administrator for Procurement has been substituted for NASA.

Comment: Section 1274.915—Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions. This clause gives NASA the right to, in effect, block the sale of a company to a foreign firm. We strongly recommend this clause be deleted.

Response: The purpose of cooperative agreements is to enhance US competitiveness, create jobs, improve the balance of payments, etc. These objectives may or may not be advanced by sale to a foreign firm but would form the basis of NASA's decision. The clause does not give NASA the right to prevent the sale; it only provides for consultation between the parties to determine how to best protect the Government's interests. If an acceptable solution cannot be reached, the agreement could be terminated.

Regulatory Flexibility Act

NASA certifies that this regulation 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.*).

Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that requirement as follows: information collection has been approved under OMB control number 2700–0092.

List of Subjects in 14 CFR Part 1274

Grant programs, Business and industry.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, part 1274 is added to 14 CFR chapter V to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart A—General

1274.101 Purpose.
1274.102 Definitions.
1274.103 Effect on other issuances.
1274.104 Deviations.
1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

Subpart B—Pre-Award Requirements

1274.201 Purpose.
1274.202 Solicitations and proposals.
1274.203 Intellectual property.
1274.204 Evaluation and selection.
1274.205 Award procedures.
1274.206 Document format and numbering.
1274.207 Distribution of cooperative agreements.

Subpart C—Administration

1274.301 Delegation of administration.
1274.302 Transfers, novations, and change of name agreements.

Subpart D—Government Property

1274.401 Government property.

Subpart E—Procurement Standards

1274.501 Subcontracts.

Subpart F—Reports and Records

1274.601 Retention and access requirements for records.

Subpart G—Suspension or Termination

1274.701 Suspension or termination.

Subpart H—After-the-Award Requirements

1274.801 Purpose.
1274.802 Closeout procedures.
1274.803 Subsequent adjustments and continuing responsibilities.

Subpart I—Other Provisions and Special Conditions

1274.901 Other provisions and special conditions.
1274.902 Purpose.
1274.903 Responsibilities.
1274.904 Resource Sharing Requirements.
1274.905 Rights in Data.
1274.906 Designation of New Technology Representative and Patent Representative.
1274.907 Disputes.
1274.908 Milestone Payments.
1274.909 Term of this Agreement.
1274.910 Authority.
1274.911 Patent Rights.
1274.912 Patent Rights—Retention by the Recipient (Large Business).
1274.913 Patent Rights—Retention by the Recipient (Small Business).
1274.914 Requests for Waiver of Rights—Large Business.
1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.
1274.916 Liability and Risk of Loss.
1274.917 Additional Funds.
1274.918 Incremental Funding.
1274.919 Cost Principles and Accounting Standards.
1274.920 Responsibilities of the NASA Technical Officer.
1274.921 Publications and Reports: Non-Proprietary Research Results.
1274.922 Suspension or Termination.
1274.923 Equipment and Other Property.
1274.924 Civil Rights.
1274.925 Subcontracts.
1274.926 Clean Air-Water Pollution Control Acts.
1274.927 Debarment and Suspension and Drug-Free Workplace.
1274.928 Foreign National Employee Investigative Requirements.
1274.929 Restrictions on Lobbying.
1274.930 Travel and Transportation.
1274.931 Electronic Funds Transfer Payment Methods.
1274.932 Retention and Examination of Records.

Appendix A to Part 1274—Contract Provisions

Appendix B to Part 1274—Reports

Appendix C to Part 1274—Listing of Exhibits

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

Subpart A—General

§ 1274.101 Purpose.

(a) This part establishes uniform administrative requirements for NASA cooperative agreements awarded to commercial firms. Cooperative agreements are ordinarily entered into with commercial firms to—

(1) Support research and development,

(2) Provide technology transfer from the Government to the recipient, or

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(b) An award may not be made to a foreign government. Award to foreign firms is not precluded. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals.

§ 1274.102 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which a NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Commercial item. The definition in 48 CFR 2.101 (FAR) is applicable.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This regulation covers only cooperative agreements with commercial firms. Cooperative agreements with universities and non-profit organizations are covered by 14 CFR part 1260.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government except that the recipient's contribution may be reimbursable under other Government awards as allowable IR&D costs pursuant to 48 CFR 1831.205–18 (NFS).

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a Recipient and equipment procured by the Recipient with Government funds under a cooperative agreement.

Grant Officer. A Government employee who has been delegated the authority to negotiate, award, or administer grants or cooperative agreements. A Contracting Officer may serve as a Grant Officer if authorized by installation procurement regulations.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, a consortium, a partnership, etc.

Resource contribution. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Support contractor means a NASA contractor performing part or all of the NASA responsibilities under a cooperative agreement.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Order 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189 and Executive Order 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235, ''Debarment and Suspension.''

Technical Officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.103 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.104.

§ 1274.104 Deviations.

(a) *Exceptions.* The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this part when exceptions are not prohibited by statute.

(b) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this part, but not prescribed for use verbatim, and the installation substitutes a provision which is inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this part, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) *Request for deviations.* Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum:

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s).

(5) A description of the intended effect of the deviation.

(6) A copy of legal counsel's concurrence or comments.

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by a Headquarters program office or Center procurement personnel to use the CAN process, the cognizant program office or procurement office shall notify the Associate Administrator for Procurement (Code HS) of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed $10 million. All such notifications, as described below, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more members of a ''team'' of recipients) is a commercial firm and the total Government funds are expected to equal or exceed $10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@mercury.hq.nasa.gov. The notification must include the following information, as a minimum:

(1) Identification of the cognizant center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for awards;

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required; and

(7) Tentative schedule for release of CAN and award of cooperative agreements.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer, within 5 working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described;

(2) Whether Code HS will require review and approval of the CAN before its issuance;

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)); and

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or center may proceed with release of the CAN and award of the cooperative agreements as described.

Subpart B—Pre-Award Requirements

§ 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and address other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to publicize the CAN.

(b) *Unsolicited Proposals.* (1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to provide an opportunity for other firms/consortia to express an interest in the agreement

unless the exception in 48 CFR 5.202(a)(8) (FAR) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below $5 million. Center Director approval is required if NASA's total resource contribution is $5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is $5 million or more.

(c) *Cost and payment matters.* (1) The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient shall be governed by the FAR cost principles, 48 CFR part 31. If the Recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(2) A substantial resource contribution on the part of the Recipient is required. The Recipient is expected to contribute at least 50% of the total resources required to accomplish the cooperative agreement. Recipient contributions may be either cash or non-cash or both. In those cases in which a contribution of less than 50% is anticipated from the Recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50% is warranted.

(3) Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with ''Milestone Billings'' which are discussed in paragraph (c)(4) of this section. If the Recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs required by the Recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the Recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the Recipient is a consortium, the Articles of Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the Recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grants Officer as part of the payment process. If the Government's projected cash contribution to a cooperative agreement exceeds $5 million, approval of the Milestone Payment clause, including the milestones and anticipated payments, by the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should contain substantially the same information required by 48 CFR (NFS) 1832.7006.

(5) Cooperative agreements may be incrementally funded subject to the following:

(i) The total value of the NASA cash contribution is $50,000 or more.

(ii) The period of performance overlaps the succeeding fiscal year.

(iii) The funds are not available to fully fund the cooperative agreement at the time of award.

(6) Cost sharing requirements on cooperative agreements with commercial firms are based on section 23 of OMB Circular A–110, November 23, 1993. Only cash or certain non-cash resources are acceptable sources for the Recipient contribution to a cooperative agreement. Acceptable non-cash resources include such items as purchased equipment, equipment, labor, office space, etc. The actual or imputed value of intellectual property such as patent rights, data rights, trade secrets, etc., are not acceptable as sources for the Recipient contribution.

(7) Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the Recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(8) The Recipient's resource share of the cooperative agreement may be allocated as part of its IR&D program in accordance with a class deviation pursuant to 48 CFR 1831.205–18 (NFS).

(9) The CAN must provide a description of the non-cash Government contribution (personnel, equipment, facilities, etc.) as part of the Government's contribution to the cooperative agreement in addition to funding. The offeror may propose that additional non-cash Government resources be provided under two conditions. First, the offeror is responsible for verifying the availability of the resources and their suitability for their intended purpose and, second, those resources are part of the Government contribution (which must be matched by the Recipient) and paid for directly by the awarding organization.

(d) *Consortia as recipients.* (1) The use of consortia as Recipients for cooperative agreements is encouraged. Consortia will tend to bring to a cooperative agreement a broader range of capabilities and resources. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a

partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms which normally compete for commercial or Government business or may be made up of firms which perform complementary functions in a given industry. The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(2) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. It should also address to the extent appropriate: commitments of financial, personnel, facilities and other resources, a detailed milestone chart of consortium activities, accounting requirements, subcontracting procedures, disputes, term of the agreement, insurance and liability issues, internal and external reporting requirements, management structure of the consortium, obligations of organizations withdrawing from the consortia, allocation of data and patent rights among the consortia members, agreements, if any, to share existing technology and data, the firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, employee policy issues, etc.

(3) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process.

(e) *Metric system of measurement.* The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

§ 1274.203 Intellectual property.

(a) A cooperative agreement covers the disposition of rights relating to inventions and patents between NASA and the Recipient. If the Recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) Patent rights clauses are required by statute and regulation. The clauses exist for Recipients of the Agreement whether they are:

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) There are five situations in which inventions may arise under a cooperative agreement: Recipient Inventions, Subcontractor Inventions, NASA Inventions, NASA Support Contractor Inventions, and Joint Inventions with Recipient.

(d)(1) *Recipient inventions.* (i) A Recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term ''invention'' includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business Recipient initially vests with NASA. The Recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the Agreement. Such a request may be made in advance of the Agreement (or 30 days thereafter) for all inventions made under the Agreement. Alternatively, requests may be made on a case by case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) A Recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term ''nonprofit organization'' is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(2) *Subcontractor inventions.* (i) *Large business.* If a Recipient enters a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the Agreement to be done in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business Recipient can (see paragraph (d)(1)(i) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the Recipient, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) *Non-profit organization or small business.* In the event the Recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the Agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding ''Patent Rights in Inventions Made With Federal Assistance,'' apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the Agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(iii) *Work outside the United States.* If the Recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(iv) *Additional rights.* Notwithstanding paragraphs (d)(1) and (d)(2) (i) through (iii) of this section, and in recognition of the Recipient's substantial contribution, the Recipient is authorized, subject to rights of NASA set forth elsewhere in the Agreement, to:

(A) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary, or

(B) If unable to reach agreement pursuant to paragraph (d)(2)(iv)(A) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the

applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the Recipient. This exception does not change that. The exception does authorize the Recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(3) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an Agreement. Upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(4) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under the Agreement since the rights obtained by a NASA support contractor could work against the rights needed by the Recipient. In the event NASA support contractors are tasked to work under the Agreement and inventions are made by support contractor employees, the support contractor will normally obtain rights in such inventions. However, if NASA has the right to acquire or has acquired title to such inventions, upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(5) *Joint inventions.* (i) NASA and the Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e). The grant officer negotiating the Agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(ii) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA Support Contractor Inventions. The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a Recipient employee, the NASA support contractor and Recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(e) *Licenses to recipient(s).* (1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all Recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the Recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each Recipient subject invention, it is only equitable that the Recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) *Notice requirements.* Once a Recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the Recipient, is published in the Federal Register, providing the public opportunity for filing written objections for 60 days.

(f) *Preference for United States manufacture.* Despite any other provision, the Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the Recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(g) *Space Act agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(h) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that ''proprietary'' information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, grant officers for the

Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the Recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (depending on the technology, two to five years after production of the data) may be established after which the data first produced by the Recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas need to be covered.

(4) For data, including software, first produced by the Recipient under the agreement, the Recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled ''Publication and Reports.'' Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the Recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.204 Evaluation and selection.

(a) *General.* A single technical evaluation factor is typically used for CANs. That evaluation factor should be one of the following: providing research and development or technology transfer, enhancing U.S. competitiveness, or developing a capability among U.S. firms. Award to foreign firms is not precluded if the evaluation factor is satisfied. Subfactors could include such things as fostering U.S. leadership, potential to advance technologies anticipated to enhance U.S. competitiveness, timeliness of proposed accomplishments, private sector commitment to commercialization, identification of specific potential commercial markets, appropriateness of business risk, potential for broad impact on the U.S. technology and knowledge base, level of commitment (contribution of private resources to the project), appropriateness of team member participation and relationships, appropriateness of management planning, relevant experience, qualifications and depth of management and technical staff, quality and appropriateness of resources committed to the project, performance bench marks, technical approach, business approach/resource sharing, past performance, the articles of collaboration, etc.

(b) *Technical evaluation.* (1) Competitive technical proposal information shall be protected in accordance with 48 CFR 15.411 (FAR), Receipt of Proposals and quotations. Unsolicited proposals shall be protected in accordance with 48 CFR 15.508 (FAR), Prohibitions, and 48 CFR 15.509 (FAR), Limited use of data.

(2) The technical officer will evaluate proposals in accordance with the criteria in the CAN. Proposals selected for award will be supported by documentation as described in paragraph (c)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(3) The technical evaluation of proposals may include peer reviews. Since the business sense of a cooperative agreement proposal is critical to its success, NASA should reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions. The use of outside evaluators shall be approved in accordance with 48 CFR 1815.413–2(c)(2) (NFS). It is strongly recommended that a numerical scoring system be established to rank proposals. Data provided to outside evaluators should be protected in accordance with 48 CFR 1815.413–2(e) (NFS).

(4) Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Organizations submitting unaccepted proposals will be notified in writing.

(c) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) For a competitively selected proposal, a signed selection statement and technical evaluation based on the evaluation criteria stated in the solicitation.

(2) For an unsolicited proposal, a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(v) Current, open solicitations under which the unsolicited proposal could be evaluated.

(d) *Cost evaluation.* (1) The grant officer and technical team will determine whether the overall proposed cost of the project is reasonable and that the Recipient's contribution is valid, verifiable, and available. Commitments should be obtained and verified to the extent practical from the offeror or

members of the consortia that the proposed contributions can and will be made as specified in the proposal or statement of work.

(i) If the Recipient's verified share on a cooperative agreement equals or exceeds 50% of the total cost of the agreement and the total value of the agreement is less than $5 million, the cost evaluation of the offeror's proposal should focus on the overall reasonableness and timing of the proposer's contribution. Cost or pricing data should not be required and information other than cost or pricing data (defined in 48 CFR 15.801) (FAR) should not normally be required.

(ii) If the Recipient's share is projected to be less than 50% or the total value of the agreement is more than $5 million, a more in-depth analysis of the proposed costs should be undertaken. Only information other than cost or pricing data should be required. An analysis consistent with 48 CFR 15.805–3 through 15.805–5 (FAR) should be performed.

(2) As part of the evaluation of the cost proposal, the source of the recipient's contribution should be determined. Each of the cost elements contributed by the recipient and their amounts should be identified. If the contribution will consist at least in part of IR&D, the extent to which the IR&D may be recoverable from Government awards should be established. This will involve using the estimated Government participation rate of the recipient's General and Administrative indirect cost base for the period of the cooperative agreement. The results of the evaluation are to be documented in the cooperative agreement file.

(e) *Consortium.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(f) *Printing, binding, and duplicating.* Proposals for effort which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101–9, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

§ 1274.205 Award procedures.

(a) *General.* Multiple year cooperative agreements are encouraged, but normally they should not extend beyond two years.

(b) *Award above proposed amount.* Awards of cooperative agreements in response to competitive solicitations will not result in providing more NASA funds or resources than was anticipated in the Recipient's proposal. If additional funds or resources are deemed necessary, they will be provided by the Recipient and the Government cost share percentage will be adjusted downward.

(c) *Changes to cooperative agreements.* Cost growth or in-scope changes shall not increase the amount of NASA's contribution. Additional costs which arise during the performance of the cooperative agreement are the responsibility of the Recipient. Funding for work required beyond the scope of the cooperative agreement must be sought through the submission of a proposal which will be treated as an unsolicited proposal.

(d) *Bilateral award.* All cooperative agreements awarded under this regulation will be awarded on a bilateral basis.

(e) *Certifications and representations.* (1) *General.* Unless prohibited by statute or codified regulation, Recipients will be encouraged to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the Recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure Recipients' compliance with the pertinent requirements.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) *Debarment certification.* NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 and 1265.610.

(4) *Lobbying certification.* A Lobbying Certification in accordance with 14 CFR part 1271 will be obtained prior to award.

(f) *Indemnification.* Indemnification under Public Law 85–804, as amended (50 U.S.C. 1431 *et seq.*) is not authorized for cooperative agreements.

§ 1274.206 Document format and numbering.

(a) *Formats.* Grant officers are authorized to use the format in Exhibit A of Appendix C of this part for the award of all cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed.

(b) *Cooperative agreement numbering.* The identification numbering system for all cooperative agreements shall conform to 48 CFR 1804.7102–3 (NFS), except that a NCC prefix will be used in lieu of the NAS prefix.

§ 1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

Subpart C—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one Recipient to another.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the Recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

Subpart D—Government Property

§ 1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of

equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR part 45 (FAR) at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the Recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the Recipient and included as a non-cash contribution of the Recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the Recipient may be before or during the performance of the cooperative agreement.

Subpart E—Procurement Standards

§ 1274.501 Subcontracts.

Recipients are not authorized to issue grants or cooperative agreements to subrecipients. All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart F—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to Recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from Recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for Recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) This paragraph (g) applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation*. If the Recipient submits to NASA or the subrecipient submits to the Recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation*. If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the Recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart G—Suspension or Termination

§ 1274.701 Suspension or termination.

A cooperative agreement provides both NASA and the Recipient the ability to terminate the agreement if it is in their best interests to do so. For example, NASA may terminate the agreement if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program. Similarly, the Recipient may terminate the agreement if, for example, technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA or the Recipient may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be terminated.

Subpart H—After-the-Award Requirements

§ 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the Recipient.

(b) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with subpart D of this part.

§ 1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.933.

(b) Property management requirements in subpart D of this part.

(c) Records retention as required in § 1274.601.

Subpart I—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§ 1274.902 through 1274.909 are to be incorporated in full text substantially as stated in this part. The provisions at §§ 1274.910 through 1274.933 will be by reference incorporated in an enclosure to each cooperative agreement (see Exhibit A of Appendix C of this part). For inclusion of provisions in subcontracts, see Subpart E—Procurement Standards of this part.

§ 1274.902 Purpose.

Purpose (FEB 1996)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

[End of provision]

§ 1274.903 Responsibilities.

Responsibilities (FEB 1996)

(a) This cooperative agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) *NASA responsibilities.* Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement. The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility *Start* *End*

(c) *Recipient responsibilities.* The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.). The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility *Start* *End*

[End of provision]

§ 1274.904 Resource Sharing Requirements.

Resource Sharing Requirements (FEB 1996)

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a ____ (NASA) - ____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by section 23, ''Cost Sharing or Matching,'' of OMB Circular A–110. The ''applicable federal cost principles'' cited in OMB Circular A–110 shall be determined in accordance with § 1274.919.

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to 48 CFR 1831.205–18 (NFS).

§ 1274.905 Rights in Data.

Rights in Data (FEB 1996)

(a) *Definitions.*

Data, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) *Data categories—(1) General.* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided in paragraphs (b)(2) through (6) of this provision.

(2) *Background data.* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient.* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert ''two'' to ''five''] years after development of the data and be disclosed and used by [''NASA'' or ''the Government,'' as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of [''NASA'' or ''the Government'' as appropriate] during that period. In order that [''NASA'' or the ''Government'', as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA.* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to (—) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires.

(5) *Copyright.* (i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this provisiion, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein),

identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability.* Notwithstanding paragraphs (6)(2) through (6) of this provision, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this provision; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this provision, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

[End of provision]

§ 1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative (FEB 1996)

(a) For purposes of administration of the clause of this cooperative agreement entitled ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' or ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' the following named representatives are hereby designated by the Grant Officer to administer such clause:

Title	*Office Code*	*Address*
New Technology		
Representative		
Patent		
Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' clause or ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 48 CFR 1827.375–3 (NFS).

[End of provision]

§ 1274.907 Disputes.

Disputes (FEB 1996)

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the _____ [Suggest this be the Center Director], who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

[End of provision]

§ 1274.908 Milestone Payments.

Milestone Payments (FEB 1996)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date Payment Milestone Amount

(c) Upon submission by the Recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the grant officer shall authorize payment.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this provision. However, payment shall not be made prior to that date without the written consent of the Grant Officer.

(e) The Recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) All preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) Invoices hereunder shall be submitted in the original and five copies to the Grant Officer for certification.

[End of provision]

§ 1274.909 Term of this Agreement.

Term of this Agreement (FEB 1996)

The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of provision]

§ 1274.910 Authority.

Authority (FEB 1996)

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451 *et seq.* (the Space Act).

[End of provision]

§ 1274.911 Patent Rights.

Patent Rights (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(3) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process

or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Recipient* means: (i) The signatory Recipient party or parties; or (ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* (1) *Recipient inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)'' provision applies. For Small Business Firm and Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)'' provision applies.

(2) *NASA inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA contractor inventions.* In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and recipient inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this provision.

(ii) For small business firms and nonprofit organizations, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraph (b)(2), (b)(3), or (b)(4) of this provision will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this provision, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered ''by or for the United States'' and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of provision]

§ 1274.912 Patent Rights—Retention by the Recipient (Large Business).

Patent Rights—Retention by the Recipient (Large Business) (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made,* as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Reportable item* means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under title 35 of the United States Code, conceived

or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention means* any reportable item which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq*).

(b) Allocation of principal rights—(1) *Presumption of title*—(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grants Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this provision. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this provision is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights*—(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the contract or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this provision or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Recipient.* (1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this provision. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Grants Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Grants Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Grants Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grants Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such

inventions) and that the procedures required by paragraph (e)(1) of this provision have been followed.

(ii) A final report, within three months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Grants Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR 27.302(j) (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Grants Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this provision; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grants Officer learns of an unreported Recipient invention that the Grants Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

[End of provision]

§ 1274.913 Patent Rights—Retention by the Recipient (Small Business).

Patent Rights—Retention by the Recipient (Small Business) (FEB 1996)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal

Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) *Subject invention* means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Recipient.* (1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this provision may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Recipient will convey to NASA, upon written request, title to any subject invention—

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this provision, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this provision; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this provision, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Recipient and protection of the Recipient right to file.* (1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this provision. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and 14 CFR part 1245, subpart 2, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Recipient action to protect the Government's interest.* (1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this provision and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this provision, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this provision. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not

less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, ''This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention.''

(5) The Recipient shall provide the Grants Officer the following:

(i) A listing every 12 months (or such longer period as the Grants Officer may specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization.

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this provision. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that——

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Recipient is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided,* that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees

of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a ''subject invention'' for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the Grants Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the Recipient has applied for patents.

[End of provision]

§ 1274.914 Requests for Waiver of Rights—Large Business.

Requests For Waiver of Rights—Large Business (FEB 1996)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Grants Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Grants Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Grants Officer of the Administrator's determination. The Grants Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Grants Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in 14 CFR 1245.112(b).

[End of provision]

§ 1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (FEB 1996)

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers do not include:

(1) Sales of products or components;

(2) Licenses of software or documentation related to sales of products or components; or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Grants Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

[End of provision]

§ 1274.916 Liability and Risk of Loss.

Liability and Risk of Loss (FEB 1996)

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

[End of provision]

§ 1274.917 Additional Funds.

Additional Funds (FEB 1996)

Pursuant to this agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

[End of provision]

§ 1274.918 Incremental Funding.

Incremental Funding (FEB 1996)

(a) Of the award amount indicated on the cover page of this agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA anticipates making additional allotments of funds as required,

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

[End of provision]

§ 1274.919 Cost Principles and Accounting Standards.

Cost Principles and Accounting Standards (FEB 1996)

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled ''Resource Sharing Requirements'') shall be governed by the FAR cost principles, 48 CFR part 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'') Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

[End of provision]

§ 1274.920 Responsibilities of the NASA Technical Officer.

Responsibilities of the NASA Technical Officer (FEB 1996)

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement.

[End of provision]

§ 1274.921 Publications and Reports: Non-Proprietary Research Results.

Publications and Reports: Non-Proprietary Research Results (FEB 1996)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement, shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A performance report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research, which is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Performance reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.

(2) Type of report.

(3) Period covered by the report.

(4) Name and address of the Recipient's organization.

(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—Grant Officer.

(2) Copy—Technical Officer.

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

[End of provision]

§ 1274.922 Suspension or Termination.

Suspension or Termination (FEB 1996)

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

[End of provision]

§ 1274.923 Equipment and Other Property. Equipment and Other Property (FEB 1996)

(a) NASA cooperative agreements permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the cooperative agreement, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the property to indirect costs.

(c) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR 45.301 (FAR)), or to procure passenger carrying vehicles.

(d) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR 45.603 (FAR). The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to 14 CFR 1260.408(d) prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in 14 CFR 1260.507.

(g) Annually by October 31, the Recipient shall submit 2 copies of an inventory report which lists all Government furnished equipment and equipment acquired with Government funds in their custody as of September 30. The Recipient shall submit 2 copies of a final inventory report by 60 days after the expiration date of the cooperative agreement. The final inventory report shall contain a list of all Recipient acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in 14 CFR 1260.507(a)(1) (i), (ii), (iii), (v) through (viii) and beginning and ending dollar value totals for the reporting period and be submitted to the grant officer. When Government furnished equipment is no longer needed, the Recipient shall notify the Grants Officer, who will provide disposition instructions.

[End of provision]

§ 1274.924 Civil Rights.

Civil Rights (FEB 1996)

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

[End of provision]

§ 1274.925 Subcontracts.

Subcontracts (FEB 1996)

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Grant Officer consent is required for subcontracts over $100,000, if not accepted by NASA in the original proposal. The Recipient shall provide the following information to the Grant Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(c) The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

[End of provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (FEB 1996)

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Grant Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA ''List of Violating Facilities'' published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient:

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA ''List of Violating Facilities'' as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this provision in every subcontract hereunder in excess of $100,000, and to take such action as the Grant Officer may direct to enforce such criteria and requirements.

[End of provision]

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace (FEB 1996)

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

[End of provision]

§ 1274.928 Foreign National Employee Investigative Requirements.

Foreign National Employee Investigative Requirements (FEB 1996)

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.

[End of provision]

§ 1274.929 Restrictions on Lobbying.

Restrictions on Lobbying (FEB 1996)

This award is subject to the provisions of 14 CFR part 1271 ''New Restrictions on Lobbying.''

[End of provision]

§ 1274.930 Travel and Transportation.

Travel and Transportation (FEB 1996)

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

[End of provision]

§ 1274.931 Electronic Funds Transfer Payment Methods.

Electronic Funds Transfer Payment Methods (FEB 1996)

Payments under this cooperative agreement will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Recipient is a new enrollee to the ACH system, a ''Payment Information Form,'' SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

[End of Provision]

§ 1274.932 Retention and Examination of Records.

Retention and Examination of Records (FEB 1996)

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All requirements of this provision shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of provisions]

Appendix A to Part 1274—Contract Provisions

All contracts awarded by a Recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with Executive Order 11246, 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339, Executive Order 11375, 32 FR 14199, 3 CFR, 1966–1970 Comp., p. 684, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of $50,000 for construction or repair awarded by Recipients and subRecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each Recipient or subRecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by Recipients in excess of $2,000 for construction contracts and in excess of $50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each Recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

5. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*) Contracts, other than contracts for commercial items, of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (Executive Orders 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Appendix B to Part 1274—Reports

1. Individual procurement action report (NASA Form 507). The grant officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. Inventory listings of equipment. As provided in paragraph (g) of the provision in § 1274.923, an annual inventory listing of Government furnished equipment will be submitted by October 31 of each year. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy to the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 60 days after the end of the cooperative agreement, in accordance with the provision in 31274.923. Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

3. Disclosure of lobbying activities (SF LLL). (a) Grant officers shall provide one copy

of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

Appendix C to Part 1274—Listing of Exhibits

Exhibit A—Format for cooperative agreement

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
COOPERATIVE AGREEMENT

1. TO:

2. COOPERATIVE AGREEMENT NO.:
3. SUPPLEMENT NO.:
4. EFFECTIVE DATE:
5. EXPIRATION DATE:

6. FOR RESEARCH ENTITLED:

7. AWARD HISTORY
PREVIOUS AMOUNT:
THIS ACTION:
TOTAL TO DATE:

FUNDING HISTORY
PREVIOUS OBLIGATION:
THIS ACTION:
TOTAL TO DATE:

8. NASA PROCUREMENT REQUEST NO.:
PPC CODE.: APPROPRIATION:

9. POINTS OF CONTACT:

TECHNICAL OFFICER:

GRANT ADMINISTRATOR:

PAYMENT:

10. This cooperative agreement is awarded under the authority of 42 U.S.C. 2473(c)(5), and is subject to all applicable laws and regulations of the United States in effect on the date this cooperative agreement is awarded, including but not limited to 14 CFR Part 1274 (Cooperative Agreements with Commercial Firms).

UNITED STATES OF AMERICA

_____
XXXX XXXXXXXXXX
GRANTS OFFICER

DATE: _____

Recipient

_____
XXXXXXXXXXX XXXXXXXXXXXX
AUTHORIZED REPRESENTATIVE

DATE: _____

Enclosures
(As Required)

[FR Doc. 96–6535 Filed 3–26–96; 8:45 am]
BILLING CODE 7510–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 153, 157, 201, 375 and 382

[Docket No. RM96–9–000]

Editorial Changes to Various Regulations To Conform References to Revised Part 154; Order No. 586; Final Rule

Issued March 21, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending various regulations under the Natural Gas Act to conform to revisions to part 154 of the Commission's regulations under the Natural Gas Act which reorganized the filing requirements for interstate natural gas pipelines.

EFFECTIVE DATE: This final rule is effective April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 208–0491.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800 856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 2–A, 888 First Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending parts 2, 153, 157, 201, and 382 of its regulations to conform to changes in part 154 promulgated by the final rule issued September 28, 1995, in Docket No. RM95–3–000 (60 FR 52960, October 11, 1995). The changes to the Commission regulations are to be effective April 26, 1996.

II. The Revised Regulations

The final rule in Docket No. RM95–3–000 completely reorganized the regulations governing the filing requirements for interstate natural gas pipelines. Therefore, other regulations that reference part 154 must be conformed to reference the appropriate section of the revised regulations. Accordingly, the Commission is adopting these conforming changes to its regulations.

Section 2.55 contains a reference to former § 154.91 which contained the definition of ''independent producer.'' Since former § 154.91 has been removed, the definition will be incorporated into paragraph (d) of revised § 2.55. This modification does not represent a change in Commission policy.

Section 2.64 concerns producer certificates. Producers no longer have to file for certificates with the Commission. The entire section has been removed.

Section 153.8 references former §§ 154.31 through 154.41. This section is modified to refer to revised §§ 154.101 through 154.111, and 154.301 through 154.403.

Section 157.103(d)(8) refers to former § 154.63. This section is modified to refer to subpart D of part 154.

Section 157.301(d) concerns waiver of requirements formerly required by §§ 154.92 through 154.94. These sections have been removed from the Commission's regulations by Order No. 567.[1] Accordingly, § 157.301(d) is removed.

Part 201, General Instruction 16, refers to former §§ 2.66 and 154.42. Section 2.66 was removed by Order No. 542[2] and § 154.42 was removed by Order No 567.[3] These sections were removed because the Natural Gas Wellhead Decontrol Act of 1989[4] made all ''first sales'' of natural gas no longer subject to Federal regulation. Because General Instruction 16 is predicated on the requirements of former §§ 2.66 and 154.42, General Instruction No. 16 is being removed.

Part 201, Gas Plant Instruction, 3.(17)(b) refers to former § 154.63. This reference will be changed to subpart D of revised part 154.

In part 375, the title of § 375.307 must be changed to reflect the renaming of the Office of Pipeline and Producer Regulation to the Office of Pipeline Regulation. The reference to §§ 154.303(e) and 154.63(a)(2) is changed to reference subpart D of part 154 in § 375.307(b)(1). In paragraph (b)(5), the reference to § 154.91 has been removed. Paragraph (f)(3), concerns applications for waiver of various fees. However, the fees are no longer required. Therefore, the references to §§ 381.201–206, 381.208, 381.209, 381.401, and 381.404 have been removed. Paragraph (f)(5) has been changed to refer to § 154.403.

The reference in § 382.103(c) to former § 154.67(c)(2)(iii) is modified to reflect that the subject of this section, interest calculations, is now found in revised § 154.501(d).

III. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the rule will not be affected.

Interested persons may send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

IV. Regulatory Flexibility Act Certification

[1] 68 FERC ¶ 61,135 (1994). Order No. 567 deleted certain regulations related to natural gas producer rate regulation that were either obsolete or nonessential in light of the deregulation of wellhead gas prices under the Natural Gas Wellhead Decontrol Act of 1989. Pub. L. No. 101–60; 103 Stat. 157 (1989).

[2] Deletion of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction over Natural Gas, III FERC Stats. & Regs. ¶ 30,945 (1992).

[3] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, III FERC Stats. & Regs. ¶ 30,999 (1994).

[4] Pub. L. 101–60; 103 Stat. 157 (1989).

The Regulatory Flexibility Act (RFA)[5] requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a ''significant economic impact on a substantial number of small entities.'' The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission believes that this rule will not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[6] Further, this rule merely changes the section number referenced within an existing regulation. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Statement

The Commission has excluded certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[7] No environmental consideration is raised by the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[8] The instant rule is purely procedural. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[9] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The following existing data collections are affected by this final rule but with no change in industry reporting burden: FERC–541, Gas Pipeline Certificates: Curtailment Plan (1902–0066); FERC–542, Gas Pipeline Rates: Initial Rates, Rate Change & Tracking Filing (1902–0070): FERC–544, Gas Pipeline Rates: Rate Change (formal) (1902–0153); FERC–545, Gas Pipeline Rates: Rate Change (NonFormal) (1902–0154); FERC–577, Environmental Impact Statement (1902–0128); FERC Form 2, Annual Report of Major Natural Gas Companies (1902–0028); and, FERC Form 2A, Annual Report of Nonmajor Natural Gas Companies (1902–0030); and, FERC–582, Oil, Gas and Electric Annual Charges (1902–0132).

The Commission is issuing this final rule to change the section references in existing regulations to conform to the revised part 154. The Commission uses the information to carry out its regulatory responsibilities pursuant to the Natural Gas Act. The Commission's Office of Pipeline Regulation uses the information to review rate filings by natural gas pipelines for the transportation of gas.

The Commission is submitting to the Office of Management and Budget a notification of these collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission) FAX: (202) 395–5167.

VII. Administrative Findings and Effective Date

The Administrative Procedure Act (APA) exempts certain rules from notice and comment requirements.[10] Specifically, the APA exempts ''rules of agency organization, procedure, or practice'' from the requirements for notice and comment.[11] This change to referenced sections of part 154 to conform to changes in part 154 qualifies for exemption as a procedural rule because it does not affect the substantive rights of a party.

This order is effective April 26, 1996.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 153

Exports, Imports, Natural Gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 382

Administrative practice and procedure, Electric utilities Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission is amending parts 2, 153, 157, 201, 375 and 382, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Section 2.55 is amended by revising paragraph (d) to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(d) Taps. Taps on existing transmission pipelines which are installed solely for the purpose of enabling a purchaser or transporter to take delivery of gas from an independent producer. An independent producer means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who sells natural gas in interstate commerce for resale, but who is not engaged in the transportation of natural gas (other than gathering) by pipeline in interstate commerce.

§ 2.64 [Removed]

3. Section 2.64 is removed.

PART 153—APPLICATION FOR AUTHORIZATION TO EXPORT OR IMPORT NATURAL GAS

4. The authority citation for part 153 is revised to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136.

5. Section 153.8 is revised to read as follows:

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[7] 18 CFR 380.4.

[8] 18 CFR 380.4(a)(2)(ii).

[9] 5 CFR 1320.12.

[10] 5 U.S.C. 553(b)(3).

[11] 5 U.S.C. 553(b)(3)(A).

§ 153.8 Filing of contracts, rate schedules, etc.

Persons authorized to export natural gas from the United States to a foreign country or to import natural gas from a foreign country must file two full and complete copies of every contract and the amendments thereto, presently or hereafter effective, for such export or import, together with all rate schedules, agreements, leases or other writings, tariffs, classifications, rules and regulations relative to such export or import in the manner specified in part 154 of this chapter, except that the requirements of § 154.101 through § 154.111 and § 154.301 through 154.403 shall not be applicable.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

6. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

7. Section 157.103 is amended by revising paragraph (d)(8) to read as follows:

§ 157.103 Terms and conditions; other requirements.

* * * * *

(d) * * *

(8) Prohibitions against cost shifting. No costs originally allocated to a new service may subsequently be allocated to any other services without a filing under Subpart D of Part 154 and a determination by the Commission that the costs sought to be reallocated are in fact being incurred for the benefit of the other services.

* * * * *

§ 157.301 [Removed]

8. Section 157.301 is removed.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

9. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

10. In Part 201, General Instructions, paragraph 16 is removed and reserved.

11. In Part 201, Gas Plant Instructions, paragraph 3(17)(b) remove the words ''§ 154.63'' and add, in their place, the words ''subpart D of part 154''.

PART 375—THE COMMISSION

12. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

13. In section 375.307, the section heading and paragraphs (b)(1), (b)(5), (f)(3) and (f)(5) are revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline Regulation.

* * * * *

(b) * * *

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under section 4(e) of the Natural Gas Act and under subpart D of part 154, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of such waiver;

* * * * *

(5) Accept statements of eligibility filed under § 2.56(p) of this chapter by producers of natural gas, as defined in § 157.40 of this chapter.

* * * * *

(f) * * *

(3) Fees prescribed in §§ 381.207, 381.402, and 381.403 of this chapter in accordance with § 381.106(b) of this chapter;

* * * * *

(5) Section 154.403 of this chapter, as necessary, in order to rule on out-of-cycle purchased gas adjustment filings.

* * * * *

PART 382—ANNUAL CHARGES

14. The authority citation for part 382 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 382.103 [Amended]

15. In § 382.103(c), the words ''§ 154.67(c)(2)(iii)'' are removed and the words ''§ 154.501(d)'' are added in their place.

[FR Doc. 96–7430 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1000 and 1002

[Docket No. 82N–0273]

RIN 0910–AA15

Records and Reports Regulations for Radiation Emitting Electronic Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of September 19, 1995 (60 FR 48374). The document amended FDA regulations regarding the requirements for recordkeeping and reporting of adverse experiences and other information relating to radiation emitting electronic products. The document was published with inadvertent typographical errors. This document corrects those errors.

EFFECTIVE DATE: October 19, 1995.

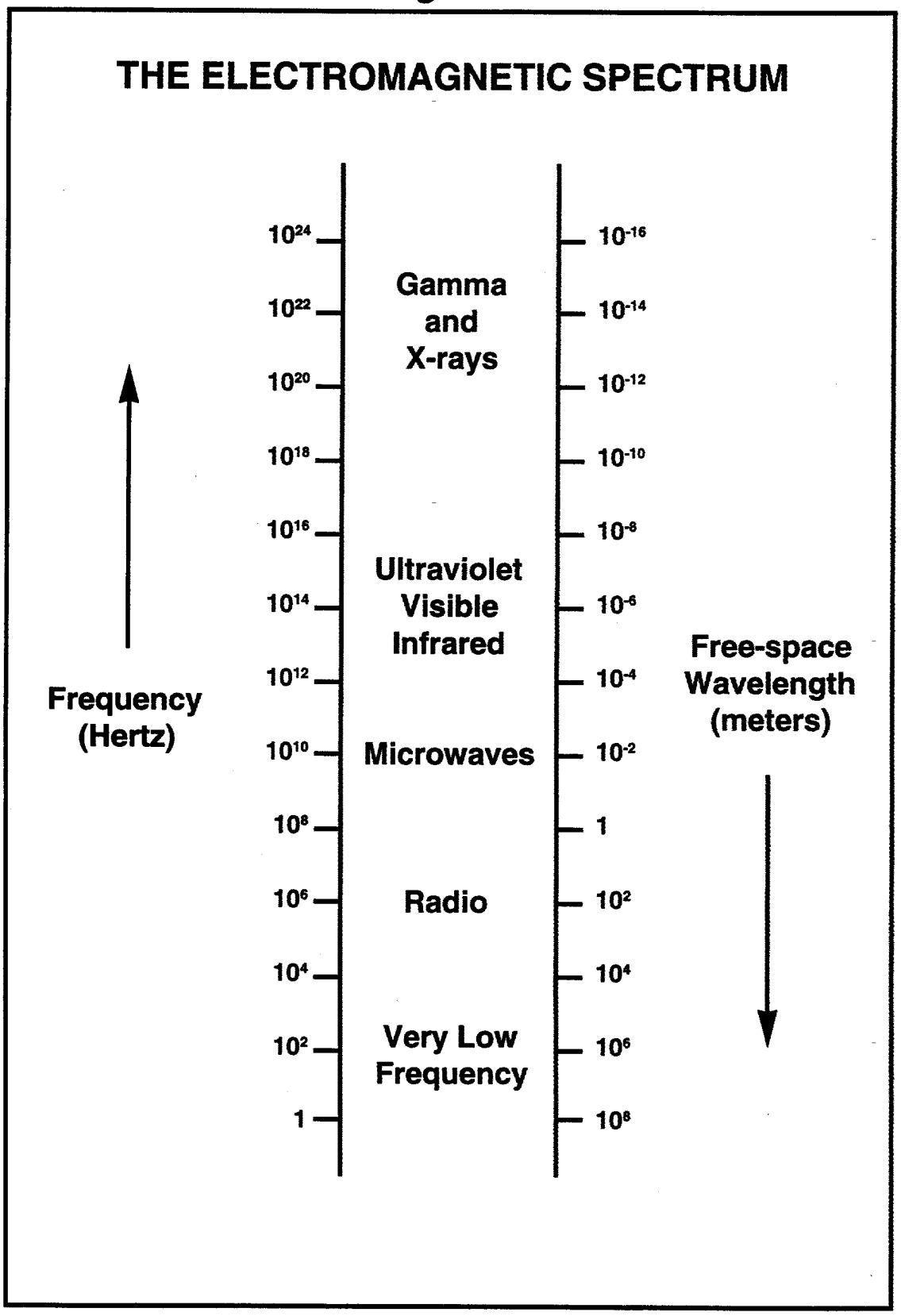
FOR FURTHER INFORMATION CONTACT: Joanne Barron, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4654.

In FR Doc. 95–23130, appearing on page 48374 in the Federal Register of Tuesday, September 19, 1995, the following corrections are made:

1. On page 48381, ''Figure 1'' is republished to correct some inadvertent errors, as follows:

BILLING CODE 4160–01–F

Figure 1



BILLING CODE 4160–01–C

2. Beginning on page 48383, in table 1, is being republished to correct some inadvertent typographical errors, as follows:

TABLE 1.—Record and Reporting Requirements By Product

Products	Manufacturer						Dealer & Distributor
	Product reports § 1002.10	Supplemental reports § 1002.11	Abbreviated reports § 1002.12	Annual reports § 1002.13	Test records § 1002.30(a)[1]	Distribution records § 1002.30(b)[2]	Distribution records §§ 1002.40 and 1002.41
DIAGNOSTIC X-RAY[3] (1020.30, 1020.31, 1020.32, 1020.33)							
Computed tomography	X	X		X	X	X	X
X-ray system[4]	X	X		X	X	X	X
Tube housing assembly	X	X		X	X	X	
X-ray control	X	X		X	X	X	X
X-ray high voltage generator	X	X		X	X	X	X
X-ray table or cradle			X		X	X	X
X-ray film changer			X		X	X	
Vertical cassette holders mounted in a fixed location and cassette holders with front panels			X		X	X	X
Beam-limiting devices	X	X		X	X	X	X
Spot-film devices and image intensifiers manufactured after April 26, 1977	X	X		X	X	X	X
Cephalometric devices manufactured after February 25, 1978			X		X	X	
Image receptor support devices for mammographic X-ray systems manufactured after September 5, 1978			X		X	X	X
CABINET X RAY (§ 1020.40)							
Baggage inspection	X	X		X	X	X	X
Other	X	X		X	X	X	
PRODUCTS INTENDED TO PRODUCE PARTICULATE RADIATION OR X-RAYS OTHER THAN DIAGNOSTIC OR CABINET DIAGNOSTIC X-RAY							
Medical			X	X	X	X	
Analytical			X	X	X	X	
Industrial			X	X	X	X	
TELEVISION PRODUCTS (§ 1020.10)							
<25 kilovolt (kV) and <0.1 milliroentgen per hour (mR/hr IRLC[5,6]			X	X[6]			
≥25kV and <0.1mR/hr IRLC[5]	X	X		X			
≥0.1mR/hr IRLC[5]	X	X		X	X	X	
MICROWAVE/RF							
MW ovens (§ 1030.10)	X	X		X	X	X	
MW diathermy			X				
MW heating, drying, security systems			X				
RF sealers, electromagnetic induction and heating equipment, dielectric heaters (2–500 megahertz)			X				
OPTICAL							
Phototherapy products	X	X					
Laser products (§§ 1040.10, 1040.11)							
Class I lasers and products containing such lasers[7]	X			X	X		
Class I laser products containing class IIa, II, IIIa, lasers[7]	X			X	X	X	
Class IIa, II, IIIa lasers and products other than class I products containing such lasers[7]	X	X		X	X	X	X
Class IIIb and IV lasers and products containing such lasers[7]	X	X		X	X	X	X
Sunlamp products (§ 1040.20)							
Lamps only	X						
Sunlamp products	X	X		X	X	X	X
Mercury vapor lamps (§ 1040.30)							
T lamps	X	X		X			
R lamps			X				
ACOUSTIC							
Ultrasonic therapy (1050.10)	X	X		X	X	X	X

TABLE 1.—Record and Reporting Requirements By Product—Continued

Products	Manufacturer						Dealer & Distributor
	Product reports § 1002.10	Supplemental reports § 1002.11	Abbreviated reports § 1002.12	Annual reports § 1002.13	Test records § 1002.30(a)[1]	Distribution records § 1002.30(b)[2]	Distribution records §§ 1002.40 and 1002.41
Diagnostic ultrasound			X				
Medical ultrasound other than therapy or diagnostic	X	X					
Nonmedical ultrasound			X				

[1]However, authority to inspect all appropriate documents supporting the adequacy of a manufacturer's compliance testing program is retained.
[2]The requirement includes §§ 1002.31 and 1002.42, if applicable.
[3]Report of Assembly (Form FDA 2579) is required for diagnostic x-ray components; see 21 CFR 1020.30(d)(1) through (d)(3).
[4]Systems records and reports are required if a manufacturer exercises the option and certifies the system as permitted in 21 CFR 1020.30(c).
[5]Determined using the isoexposure rate limit curve (IRLC) under phase III test conditions (1020.10(c)(3)(iii)).
[6]Annual report is for production status information only.
[7]Determination of the applicable reporting category for a laser product shall be based on the worst-case hazard present within the laser product.

§ 1002.3 [Corrected]

3. On page 48385, in the first column, in § 1002.3, in line 6, the comma is removed after the word ''product'' and in line 7, a comma is added after the word ''purchaser''.

Dated: March 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–7313 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH48

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim rule that amended the Department of Veterans Affairs (VA) adjudication regulations concerning compensation and pension claims filed by veterans, surviving spouses, or parents. With respect to language for authorizing VA examinations, this final rule provides that a VA examination will be authorized where there is a well-grounded claim for disability compensation or pension but the medical evidence accompanying the claim is not adequate for rating purposes. This final rule reflects statutory language and caselaw requirements concerning such VA examinations.

EFFECTIVE DATE: This final rule is effective March 27, 1996. (The interim rule was effective October 11, 1995.)

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On October 11, 1995, VA published in the Federal Register (60 FR 52863) an interim final rule intended to clarify the circumstances under which a VA examination will be authorized. Interested parties were invited to submit written comments on or before December 11, 1995. We received no comments.

Based on the rationale set forth in the interim final rule, the provisions of the interim final rule are adopted as a final rule without change.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: March 18, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 96–7326 Filed 3–26–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F4509/R2221; FRL–5357–9]

Meat Meal and Red Pepper; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the active ingredients meat meal and red pepper in or on all raw agricultural commodities when applied as animal repellants in accordance with good agricultural practices. This exemption was requested by Lakeshore Enterprises.

EFFECTIVE DATE: The regulation becomes effective on March 27, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 5F4509/R2221], 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 docket 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 a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded: 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-mai l) 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 5F4509/R2221] . 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: Julie Fry, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs (7501W), U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor CS1, 2800 Crystal Drive, Arlington, VA 22202, Telephone 703–308–8673, e-mail: fry.julie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 7, 1996, EPA issued a notice that Lakeshore Enterprises had submitted pesticide petition 5F4509 to EPA, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) to exempt from the requirement of a tolerance the residues of the biochemicals meat meal and red pepper (synonyms include capsicum, cayenne pepper, chile pepper) in or on all raw agricultural commodities when applied as animal repellants in accordance with good agricultural practices. The Agency received one comment opposing tolerance levels proposed for the pesticides described primarily based on possible roles of pesticides in neurotoxicity. The commentor also supported the promotion of ''safe/safer'' alternatives to toxic chemicals. The Agency believes that the subject active ingredients, meat meal and red pepper, don't pose a risk including risk of neurotoxicity based on their extended use without any reported adverse effects. Furthermore, both meat meal and red pepper fall in the category of ''safe/safer'' pesticides, as supported by the response of the commentor.

Product Chemistry

Meat Meal

Meat meal is a sterilized, animal food by-product produced at livestock rendering plants from clean, fresh animal proteins. It is composed of greater than or equal to 85% crude protein, greater than or equal to 8% crude fiber, less than or equal to 3% fat, and less than or equal to water. This composition may vary from the batch-to-batch, depending on the by-products rendered (traces of hair, stomach belchings and urine might occur unavoidably in good manufacturing processes.) The moisture is removed from the crude product and the dried meat meal is sterilized at a temperature ranging from 210 °F to 250 °F for at least 1 1/2 hours. No chemicals are added to the meat meal. The resulting product is an unconsolidated fibrous powder.

Red Pepper

Red pepper is natural, processed vegetable matter that has been part of the human diet for many years. Red pepper is made by dehydrating fresh red chili pepper pods (*Capsicum spp.*), processing the dried pods through a mill and sifter, then blending the varieties of pepper powder into a final product. Known constituents of red pepper include capsaicin oil (0.1 - 1%), the source of red pepper's pungent effect and capsanthin, a carotenoid pigment.

Human Health Risk Assessment

EPA waived the data requirements for residue chemistry and toxicology data pursuant to 40 CFR 177.110(b) because it was unnecessary. As discussed below, EPA already has adequate information to determine that meat meal and red pepper do not pose a human health hazard without the waived data.

Meat Meal

Meat meal is available from livestock rendering plants nationwide; it is widely distributed in commerce and available to the general public. It is used as an animal food/feed supplement and as organic fertilizer. No significant adverse effects from exposure to meat meal have been reported. The expected uses of meat as an olfactory animal repellant will include meat meal packaged in bags and applied in powder form around the base of plants. Meat meal will not be applied directly to the plant. Negligible human exposure is anticipated.

Meat meal is composed mainly of sterilized animal proteins and fats. These natural components do not persist in the environment because they biodegrade rapidly. Furthermore, meat meal has been identified by EPA as a List 4A-Minimum Risk Inert. This list, published in the Federal Register, September 28, 1994 (59 FR 49400), identifies substances ''considered to be of minimal risk in pesticide products to human health when used as inert ingredients.'' These substances are also exempt from the requirement of tolerance when used as an inert ingredient. EPA believes that the risk from the use of meat meal on food is comparable whether it is used as an active or as an inert ingredient.

Red Pepper

Lack of toxicity of red pepper is supported by its long history of use by humans as a food additive/component without any indication of deleterious effects. Red peppers are ubiquitous in the cooking of many African countries and most of India, Ceylon and S.E. Asia. (*Capsicum spp*). Pepper exports amount to 176,000 tons annually (Ref. 1) (Rehm, S. and G. Espig. 1991. The Cultivated Plants of the Tropics and Subtropics - Cultivation, Economic Value, Utilization. Verlag Josef Margraf Scientific Books. Berlin, Germany. Pages 279–280). Red pepper is listed by the Food and Drug Administration as Generally Regarded as Safe (GRAS) in 21 CFR part 182. Furthermore, red pepper, a common food additive/component, also falls within the scope of the policy announced in the Federal Register, September 28, 1994 (59 FR 49400) which states ''... EPA is announcing that substances commonly consumed as food will also be considered minimal risk, List 4A, even if they have previously not been used in pesticide products and are therefore not currently on the list. Substances commonly consumed as foods will be considered acceptable for use in all pesticide products, both food and nonfood use, and will not require a specific exemption from tolerance.'' EPA believes the risk from the use of red pepper on food is comparable whether it is used as an active or as an inert ingredient.

Conclusion

Based on the low toxicity of meat meal, a sterilized food by-product and

red pepper, a common additive/component of the human diet, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is 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 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 a genuine and substantial issue of fact; there is 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 5F4509/R2221] (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 #2, 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.

References Cited

The following reference is cited in this tolerance rule:

(1) Rehm, S. and G. Espig. (1991). The Cultivated Plants of the Tropics and Subtropics - Cultivation, Economic Value, Utilization. Verlag Josef Margraf Scientific Books. Berlin, Germany. pp. 279-280.

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 entitlements, 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).

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, EPA has determined that this regulation does not impose a Federal mandate upon State, local, or tribal governments or the private sector and does not contain any regulatory requirements that might significantly or uniquely affect small governments because the regulation does not impose any enforceable duties upon those entities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 1996.

Daniel M. Barolo,

Director, 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 subpart D, by adding § 180.1164, to read as follows:

§ 180.1164 Food and food by-products; exemption from the requirement of a tolerance.

(a) Meat meal, a sterilized food by-product, is exempt from the requirement of a tolerance on all raw agricultural commodities when used as an olfactory animal repellent.

(b) Red pepper (*Capsicum spp.*) is exempt from the requirement of a tolerance on all raw agricultural commodities when used as a gustatory animal repellent.

[FR Doc. 96–7444 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4375/R2219; FRL–5357–6]

RIN 2070–AB78

Pesticide Tolerance for Benzoic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide benzoic acid (3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide), in or on the raw agricultural commodity apples. The regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the Rohm and Haas Co.

EFFECTIVE DATE: This regulation becomes effective March 27, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 4E4375/R2219], 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 docket 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 #2, 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 4E4375/R2219] . 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: Richard P. Keigwin, Jr., Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6788; e-mail: keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice (FRL–4948–2), published in the Federal Register of April 5, 1995 (60 FR 17357), which announced that Rohm and Haas Co. had submitted pesticide petition (PP) 4E4375 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the insecticide benzoic acid (3,5-dimethyl-1,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide), in or on the raw agricultural commodity apples at 1.0 parts per million (ppm). As of February 29, 1996 there are no U.S. registrations for apples.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 1–year dog feeding study with a lowest-observable-effect level(LOEL) of 250 ppm (8.7 mg/kg/day for male and 8.9 mg/kg/day for female dogs) based on growth retardation in the male and in both sexes decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulites, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver weight and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no-observable-effect level (NOEL) for systemic toxicity is 50 ppm (1.8mg/kg/day for males and 1.9 mg/kg/day for females).

2. An 18–mounth mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm (males 155 mg/kg/day; females 186 mg/kg/day).

3. A 2–year rat carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

4. A 2–generation rat reproduction study with a NOEL of 150 ppm (12.1 mg/kg/day) for reproductive effects compared to a systemic NOEL of 10 ppm (0.85 mg/kg/day).

5. A rat developmental study with a NOEL of 1,000 mg/kg/day for developmental toxicity and a NOEL of 250 mg/kg/day for maternal toxicity.

6. A rabbit developmental study with a NOEL of 1,000 mg/kg/day for developmental toxicity.

7. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, an *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

The reference dose (RFD), for chronic toxicity as defined in a 1–year chronic dog study is 0.018 mg/kg/day based upon a NOEL of 1.8 mg/kg/day in male dogs and applying an uncertainty factor of 100. Granting this use of benzoic acid (3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) on apples raises the theoretical maximum residue contribution (TMRC) for the overall U.S. population from 0.000001 mg/kg/day to 0.000792 mg/kg/day and represents 4.4% of the RFD. The TMRC for the highest exposed subgroup, non-nursing infants is raised from 0.000001 mg/kg/day to 0.008051 mg/kg/day and represents 44.7% of the RFD for that subgroup.

The metabolism of benzoic acid, (3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hyrazide), is adequately understood.

An adequate analytical method, HPLC separation with UV detection, is available for enforcement purposes.

There are presently no actions pending against the continued registration of this chemical.

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. The pesticide is considered useful for the purposes for which the tolerance is sought. Therefore, the tolerance is 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).

A record has been established for this rulemaking under the docket number [PP 4E4375/R2219] (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 #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 Virginia 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 entitlements, 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. 9–354, 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: March 15, 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 § 180.482, by adding alphabetically to the table, an entry for the raw agricultural commodity ''apples'', to read as follows:

§ 180.482 Benzoic acid; tolerances for residues.

* * * * *

Commodities	Parts per million
Apples	1.0
* * * *	*

[FR Doc. 96–7450 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E3060/R2218; FRL–5357–2]

RIN 2070–AC78

Pesticide Tolerance for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is extending the tolerance for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodity soybeans. The Agency has not completed the regulatory assessment of its science findings; therefore, the Agency is extending this tolerance for 3 years.

EFFECTIVE DATE: This extension is effective March 27, 1996. The tolerance expires on December 31, 1998.

ADDRESSES: Written objection and hearing requests, identified by the docket number, [PP 4E3060/R2218], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the docket 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 a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII

file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4E3060/R2218]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–6224, e-mail address: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 7, 1996 (61 FR 4623), EPA issued a proposed rule that gave notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), the Agency proposed to extend until December 31, 1998, a tolerance for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodity (RAC) soybeans at 0.1 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to this proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections 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 the hearing is requested, the requestor's contentions on each such issue, 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 a 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 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).

A record has been established for this rulemaking under docket number [PP 4E3060/R2218] (including 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.

Written objections and hearing requests, identified by the docket number [PP 4E3060/R2218] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St. SW., Washington, DC 20460. A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk 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 objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official 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 obligation of recipients 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 the 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 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: March 13, 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 § 180.142 by revising paragraph (k), to read as follows,

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 31, 1998, is established for

residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 96–7449 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 417 and 434

Office of Inspector General

42 CFR Part 1003

[OMC–010–FC]

RIN 0938–AF74

Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS. Office of Inspector General (OIG), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule amends the regulations governing Federally-qualified health maintenance organizations and competitive medical plans contracting with the Medicare program, and certain health maintenance organizations and health insuring organizations contracting with the Medicaid program. It implements requirements in sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 that concern physician incentive plans.

The provisions of this final rule will also have an effect on certain entities subject to the physician referral rules in section 1877 of the Social Security Act (the Act) as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Section 1877 provides that, if a physician (or an immediate family member of the physician) has a financial relationship with certain entities (that is, has an ownership or investment interest in the entity or a compensation arrangement with the entity), the physician may not make a referral to the entity for the furnishing of certain health services for which payment otherwise may be made under the Medicare program. Additionally, effective December 31, 1994, section 1903(s) of the Act provides for denial of Federal financial participation payment under the Medicaid program to a State for expenditures for certain health services furnished to an individual on the basis of a physician referral that would result in denial of payment under the Medicare program if Medicare covered the services in the same manner as they are covered under the State plan.

Among other amendments, section 13562 of OBRA '93 sets forth an exception to the physician referral prohibition that, in effect, incorporates the provisions of this final rule. That is, it provides that, under certain circumstances, compensation received under a personal services arrangement that meets the physician incentive plan requirements established by the Secretary does not trigger the ban on referrals. Thus, the provisions of this final rule have implications for entities that would not have been affected at the time we published the proposed rule (December 14, 1992). (The proposed rule applied to only prepaid health plans that contract with Medicare or Medicaid under section 1876 or 1903(m) of the Act, respectively.) OBRA '93 applies the requirements to any prepaid health care organization that bills Medicare or Medicaid. The additional organizations that may be affected include preferred provider organizations, health maintenance organizations that do not contract with Medicare or Medicaid and are not Federally qualified, prepaid health plans that contract with Medicaid, and some States that contract with managed care organizations under the Medicaid program (including those that operate under a section 1115 waiver).

DATES: *Effective dates.* These regulations are effective on April 26, 1996.

Comment dates. To be considered, comments must be mailed or delivered to the appropriate address, as provided below and must be received by 5 p.m. on May 28, 1996.

Compliance dates. Affected organizations with contracts or agreements on March 27, 1996 must comply with (1) the applicable disclosure requirements at § 417.479(h)(1)(i) through (h)(1)(v) or with § 434.70(a)(3) of this rule by May 28, 1996 or by the renewal date of the contract or agreement, whichever is later, and (2) the survey requirement at § 417.479(g)(1)(iv) and the disclosure requirement at § 417.479(h)(1)(vi) by March 27, 1997. Affected organizations must comply with all other requirements by May 28, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–010–FC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC–010–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Medicare: Tony Hausner, (410) 786–1093. Medicaid: Beth Sullivan, (410) 786–4596. Office of Inspector General: Joel Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Prepaid health care organizations, such as health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs), are entities that provide enrollees with comprehensive, coordinated health care in a cost-efficient manner. The goal of prepaid health care delivery is to control health care costs through preventive care and case management and provide enrollees with affordable, coordinated, quality health care services. Titles XVIII and XIX of the Social Security Act (the Act) authorize contracts with prepaid health care organizations (hereinafter referred to as ''organizations'' or ''prepaid plans'') for the provision of covered health services to Medicare beneficiaries and Medicaid recipients, respectively. Such organizations may contract under either a risk-based or cost-reimbursed contract.

B. Medicare

Section 1876 of the Act authorizes the Secretary to enter into contracts with eligible organizations (HMOs that have been Federally qualified under section 1310(d) of the Public Health Service Act and CMPs that meet the requirements of section 1876(b)(2) of the Act) to provide Medicare-covered services to beneficiaries and specifies the requirements the organizations must meet. Section 1876 of the Act also provides for Medicare payment at predetermined rates to eligible organizations that have entered into risk-based contracts under Medicare or for Medicare payment of reasonable costs to eligible organizations that have entered into cost-reimbursed contracts under Medicare. Implementing Federal regulations for the organization and operation of Medicare prepaid health care organizations, contract requirements, and conditions for payment are located at 42 CFR 417.400 through 417.694.

Risk-based organizations are paid a prospectively-determined per capita monthly payment for each Medicare beneficiary enrolled in the organization. This capitated payment is the projected actuarial equivalence of 95 percent of what Medicare would have paid if the beneficiaries had received services from fee-for-service providers or suppliers. Organizations paid on a risk basis are liable for any difference between the Medicare prepaid amounts and the actual costs they incur in furnishing services, and they are therefore ''at risk.''

Cost-reimbursed organizations are paid monthly interim per capita payments that are based on a budget. Later, a retrospective cost settlement occurs to reflect the reasonable costs actually incurred by the organization for the covered services it furnished to its Medicare enrollees.

C. Medicaid

Section 1903(m) of the Act specifies requirements that must be met for States to receive Federal financial participation (FFP) for their contracts with organizations (HMOs or HIOs) to furnish, either directly or through arrangements, specific arrays of services on a risk basis. Federal implementing regulations for these contract requirements and conditions for payment are located at 42 CFR part 434.

States determine the per capita monthly rates that are to be paid to risk-based organizations. FFP is available for these payments at the matching rate applicable in the State as long as HCFA determines that: (1) The HMO or HIO rates are actuarially sound; (2) the rates do not exceed the cost of providing the same scope of services, to an actuarially equivalent nonenrolled population group, on a fee-for-service basis; and (3) the contract meets the additional requirements at 42 CFR part 434 (''Contracts'') and 45 CFR part 74 (''Administration of Grants'').

II. Legislative History

Section 9313(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, prohibited, effective April 1, 1989, hospitals and prepaid health care organizations with Medicare or Medicaid risk contracts from knowingly making incentive payments to a physician as an inducement to reduce or limit services to Medicare beneficiaries or Medicaid recipients. Under the OBRA '86 provisions, parties who knowingly made or accepted these payments would have been subject to specified civil money penalties. Additionally, the provisions required that the Secretary report on incentive arrangements in HMOs and CMPs. Section 4016 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, extended the original implementation date for the OBRA '86 physician incentive provisions to April 1, 1991. Subsequently, sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, repealed, effective November 5, 1990, the prohibition of physician incentive plans in prepaid health care organizations and enacted requirements, effective January 1, 1992, for regulating these plans.

Specifically, section 4204(a)(1) of OBRA '90 added paragraph (8) to section 1876(i) of the Act to specify that each Medicare contract with a prepaid health care organization must stipulate that the organization must meet the following requirements if it operates a physician incentive plan:

- That it not operate a physician incentive plan that directly or indirectly makes specific payments to a physician or physician group as an inducement to limit or reduce medically necessary services to a specific individual enrolled with the organization.
- That it disclose to us its physician incentive plan arrangements in detail that is sufficient to allow us to determine whether the arrangements comply with Departmental regulations.
- That, if a physician incentive plan places a physician or physician group at ''substantial financial risk'' (as defined by the Secretary) for services not provided directly, the prepaid health care organization: (1) Provide the physician or physician group with adequate and appropriate stop-loss protections (under standards determined by the Secretary) and (2) conduct surveys of currently and previously enrolled members to assess the degree of access to services and the satisfaction with the quality of services.

Section 4204(a)(2) of OBRA '90 amended section 1876(i)(6)(A)(vi) of the Act to add violations of the above requirements to the list of violations that could subject a prepaid health care organization to intermediate sanctions and civil money penalties.

Section 4731 of OBRA '90 enacted similar provisions for the Medicaid program by amending sections 1903(m)(2)(A) and 1903(m)(5)(A) of the Act.

As noted earlier (in the ''Summary'' section), subsequent to the December 1992 publication of the proposed rule, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, was enacted. Section 13562 of OBRA '93 amended section 1877 of the Act, which prohibits physician referrals to entities with which the physician (or an immediate family member) has a financial relationship (which can consist of either (1) an ownership or investment interest or (2) a compensation arrangement). OBRA '93 provides an exception to the section 1877 physician referral prohibition that incorporates the physician incentive plan rules implemented in this final rule. Under this exception, compliance with these physician incentive rules is one of several conditions that must be satisfied if a personal services compensation arrangement involves compensation that varies based on the volume or value of referrals.

This exception affects managed care organizations that were not specified in the December 1992 proposed rule on physician incentive plans. The proposed rule applied to only prepaid plans that contract with Medicare or Medicaid under section 1876 or 1903(m) of the Act, respectively. The OBRA '93 physician referral provisions, however, apply to any entity with an incentive plan that bills Medicare or Medicaid. The additional organizations that may be affected include preferred provider organizations, HMOs that do not contract with Medicare or Medicaid and are not Federally qualified, and prepaid health plans'' (PHPs) that contract with Medicaid. (PHPs are organizations that are exempt from section 1903(m) of the Act.) Some States that contract with managed care organizations under the Medicaid program (including those that operate under a section 1115 waiver)

may also be affected. We believe that most prepaid health care organizations will not be affected by these provisions since they apply only if (1) the physician incentive plan includes services not furnished by the physician group, and (2) there is a compensation arrangement between the physician group and the entity furnishing the services.

III. Opportunity for Public Comment

Because there may be entities that were not affected by the proposed rule at the time it was published but are now affected, we are publishing this rule as a final rule with a 60-day comment period so that these newly-affected entities have an opportunity to comment. Note also, we will incorporate the OBRA '93 amendments to section 1877 of the Act into a final rule with comment covering the physician referral prohibition as it relates to referrals for clinical laboratory services. We will also publish a proposed rule to interpret or clarify these OBRA '93 amendments as they relate to referrals for all of the health services designated in section 1877 of the Act, including clinical laboratory services. Once these rules are published, entities will have had several opportunities to comment on the interaction between the physician referral prohibition in section 1877 and the physician incentive rules.

We are also providing the 60-day comment period because we are interested in receiving comments on the changes from the proposed rule. For example, we are particularly interested in receiving comments on the thresholds we have set for determining substantial financial risk and for determining per-patient stop loss limits.

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. We will, however, consider all comments that we receive by the date specified in the **DATES** section of this preamble and, if we publish a subsequent document, we will respond to the comments in that document.

IV. Discussion of Physician Incentive Plans

Effective utilization control that identifies both underutilization and overutilization is essential for the efficient operation of prepaid health care organizations. A prepaid health care organization needs to minimize overutilization of services not only to prevent unnecessary spending, but also to reduce the risk of unnecessary and intrusive procedures. Nonetheless, a prepaid health care organization also needs to ensure that all medically necessary services are furnished both to protect patient health and to avoid the need for more costly care later. Medicare and Medicaid require both cost-reimbursed and risk organizations to have internal quality assurance programs, external quality review or medical audits, and other mechanisms to ensure proper delivery of health care services. Medicare and Medicaid contracts also are subject to periodic monitoring for compliance. In addition, sections 1876(i)(6) and 1903(m)(5) of the Act provide for intermediate sanctions and civil money penalties that may be imposed if an HMO or CMP fails substantially to provide medically necessary services. (Regulations implementing this authority were published on July 15, 1994 (59 FR 36072).

One mechanism many prepaid health care organizations use to encourage proper utilization is a financial incentive as part of a physician incentive plan. OBRA '90 defines a physician incentive plan as any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services furnished with respect to individuals enrolled in the organization.

A review and analysis of physician incentive plans in a sample of HMOs was conducted and presented in the Department's 1990 report to the Congress, ''Incentive Arrangements Offered by Health Maintenance Organizations and Competitive Medical Plans to Physicians.'' The results showed a wide variety of incentive plans. There were differences in the types of incentive payments, the distribution of incentives, the basis for determining the incentive payments, and the parties or entities the incentives affected.

Physicians in prepaid health care organizations generally receive fee-for-service payments, salary, or capitation payments (a set dollar amount per patient) for the services they furnish. Financial incentives may be used with the various types of physician payments to encourage appropriate levels of referral services. Referral services are any specialty, inpatient, outpatient, or laboratory services that a physician arranges for but does not provide directly. Prepaid health care organizations may hold physicians or physician groups at risk for all or a portion of the cost of referral services so that they have a financial incentive to arrange for the furnishing of only medically necessary services. If the physician or physician group successfully controls the levels of referral services, the physician or group may receive additional compensation (an incentive payment) from the prepaid health care organization. The incentive payment may take the form of unused capitation, a returned withhold, or a bonus payment. Each of these methods is described below.

A capitation payment is a set dollar amount per patient per month that a prepaid health care organization pays to a physician or a physician group to cover a specified set of services, without regard to the actual number of services furnished to each person. The capitation may cover the physician's own services, referral services, or all medical services and/or administrative costs. If patient costs exceed the capitation amount, the physician or physician group must absorb these additional costs. If costs are below the capitation, the physician or physician group may keep the additional money.

Withholds are percentages of payments or set dollar amounts that a prepaid health care organization deducts from each physician's or physician group's payment (salary, fees, or capitation). The amount withheld is set aside in pools to pay for specialty referral services and inpatient hospital services. If referral costs exceed a prepaid health care organization's budget, part or all of the withhold may be forfeited depending on the terms of the physician's contract. If referral costs do not exceed the ceiling, part or all of the withhold may be returned to a physician or a physician group. Some plans limit the amount of the risk to the withhold; others hold the physician or physician group liable for amounts beyond the amount withheld.

Bonuses are payments prepaid health care organizations make to a physician or a physician group beyond the physician's set salary, fee-for-service payments, or capitation. Bonuses may be based on a physician's or physician group's level of referral services or may be based on the overall performance of the organization.

If the physician or physician group has excessive referrals (as defined by the prepaid health care organization), it may not receive any incentive funds. In addition, the prepaid health care organization may hold the physician or physician group liable for referral costs that exceed a specified threshold. The prepaid health care organization may also increase the physician's or physician group's withhold or make other changes in its incentive arrangements.

Many physician incentive plans incorporate stop-loss protection to limit the liability of the physician or physician group. Most often, the stop-loss protection limits a physician's maximum liability per patient to a specific dollar amount.

Other variables may affect the amount of risk or the effect of financial incentives on physicians; for example, whether incentive payments are calculated according to each individual physician's performance or according to a physician group's performance; the size of the physician group; the length of time over which performance is evaluated; the number of enrollees; and the amount of total income at risk. In addition, the relative health status of the patients involved affects the level of risk. If because of their health status the patients served require more services than the average enrollee, the risk increases. Conversely, if they are healthier than the average enrollee, the risk may be lower.

V. Provisions of the Proposed Regulations

On December 14, 1992, we published a proposed rule (57 FR 59024) that set forth our proposal for implementing the requirements of sections 1876(i) and 1903(m) of the Act as amended, respectively, by sections 4204(a) and 4731 of OBRA '90. Sections 1876(i)(8) and 1903(m)(2)(A)(x) of the Act require that physician incentive plans be regulated, and sections 1876(i)(6)(A) and 1903(m)(5)(A) provide penalties for violation of the regulation. To implement these provisions for Medicare, we proposed to impose new contract requirements pertaining to physician incentive plans. For Medicaid, we proposed new requirements for the granting of FFP for State Medicaid agency contracts with HMOs and HIOs. The requirements address—

- The scope of the regulation;
- Disclosure requirements;
- Criteria for the determination of substantial financial risk;
- Requirements for physician incentive plans that place physicians at substantial financial risk;
- Prohibition on certain physician payments; and
- Enforcement.

Each proposed requirement is summarized individually below. Readers who desire more specifics are referred to the proposed rule.

A. Scope

Because sections 4204(a)(2) and 4731 of OBRA '90 amended sections that govern Medicare and Medicaid contracts, but did not amend title XIII of the Public Health Service Act, which governs all Federally-qualified HMOs, we proposed to apply these requirements to only physician incentive plans that base incentive payments (in whole or in part) on services provided to Medicare beneficiaries or Medicaid recipients. Nonetheless, because relevant statutory language uses the term ''individuals enrolled with the organization,'' which could be interpreted as all of an organization's enrollees, not just Medicare or Medicaid enrollees, we specifically sought comments regarding the proposed scope of the regulations.

B. Disclosure

We proposed that an HMO, CMP, or HIO disclose to HCFA (for Medicare) or to the State Medicaid agency (for Medicaid) information on physician incentive plans that affect Medicare beneficiaries or Medicaid recipients that is sufficient for us or the States to determine whether the organization is in compliance with our requirements. We also proposed when submittal of the information would be required.

C. Substantial Financial Risk

We proposed that a physician or physician group is considered to be at substantial financial risk if more than a specified percentage (the risk threshold) of the prepaid health care organization's total potential payments to the physician or physician group is at risk and the risk is based on the costs of services the physician or physician group does not provide (for example, referrals to specialists or the cost of inpatient care).

For purposes of determining substantial financial risk, we proposed to define payments as any amounts the organization pays physicians or physician groups for services they provide, plus amounts paid for administration and controlling levels or costs of referral services. We proposed that payments do not include bonuses or other forms of compensation that are not based on referral levels (such as bonuses based solely on the quality of care provided, patient satisfaction, and participation on committees).

Under our proposal, the risk threshold that determines substantial financial risk would depend on the frequency with which the health plan assesses or distributes incentive payments. We proposed that, for prepaid health care organizations that assess or distribute incentive payments no more often than annually, the risk threshold is 25 percent. The risk threshold we proposed for prepaid health care organizations that assess or distribute incentive payments more often than annually was 15 percent.

Often, prepaid health care organizations use more than one type of compensation arrangement. If more than one type of arrangement is used, we proposed to consider all the different risk arrangements placed on physicians or physician groups to determine whether they collectively exceeded either of the thresholds.

D. Requirements for Physician Incentive Plans That Place Physicians at Substantial Financial Risk

1. Enrollee Surveys

We proposed that HMOs, CMPs, and HIOs that place their physicians or physician groups at substantial financial risk must conduct enrollee surveys at least annually. We proposed that the surveys must—

- Either survey all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (due to other than loss of eligibility in Medicaid) in the past 12 months, or survey a statistically valid sample of these same enrollees and disenrollees;
- Be designed, conducted, and results analyzed in accordance with commonly accepted principles of survey design and statistical analysis; and
- Address enrollees'/disenrollees' satisfaction with the quality of the services furnished and their degree of access to the services.

2. Stop-loss Protection

We proposed two levels of stop-loss protection depending on the incentive plan's risk threshold. If the risk threshold is 25 percent, the stop-loss protection must protect physicians and physician groups from losses greater than 30 percent of the payments for services they furnish, plus payments for administrative costs and controlling levels of referral services. If the risk threshold is 15 percent, the stop-loss protection must protect physicians and physician groups from losses greater than 20 percent of payments.

We proposed that the organization may provide the stop-loss protection directly or purchase it, or the physician or physician group may purchase it.

E. Prohibited Physician Payments

We proposed language reflecting section 1876(i)(8)(A)(i) of the Act, which provides that physician incentive plans may operate only if no specific payment is made directly or indirectly under the plan as an inducement to reduce or limit medically necessary services furnished to a specific enrollee. We

proposed that indirect payments include offerings of monetary value (such as stock options or waivers of debt) measured in the present or future.

F. Enforcement

We proposed that noncompliance with the proposed requirements discussed above could result in civil money penalties, intermediate sanctions, and/or contract termination (for Medicare) or withholding of FFP (for Medicaid). The civil money penalties would be limited to $25,000 for each determination of noncompliance. Under the intermediate sanctions provision, HCFA could (for Medicare) suspend the enrollment of individuals into noncompliant plans and HCFA (for Medicare) or the State (for Medicaid) could suspend payment for new enrollees until it is satisfied that the basis for the determination is not likely to recur. The process for applying civil money penalties and intermediate sanctions would be the same process as that proposed in the July 22, 1991, proposed rule on civil money penalties and intermediate sanctions (56 FR 33404).

VI. Analysis of and Responses to Public Comments

We received 41 timely comments on the December 1992 proposed rule. (Comments related to the provisions that were proposed in the July 1991 proposed rule on civil money penalties and intermediate sanctions and that were merely republished in the December 1992 proposed rule were not considered timely.) Commenters included prepaid plans, State agencies, national and local associations of managed care providers, physician associations, consumer advocacy groups, and an insurance industry trade association. This section of the preamble contains a summary of the comments and our responses.

Note: This final rule changes the CFR designation of a number of the proposed provisions. To aid the reader, we have provided in section VI. of this preamble, a crosswalk between the proposed provisions and the provisions of this final rule.

Scope of Regulation

Comment: Many commenters agreed with our position that the proposed rule should apply to only Medicare and Medicaid risk contracts. In contrast, one commenter believed protection should be extended to plans governed by title XIII of the Public Health Service Act but conceded that the scope of the authorizing legislation is not clear on this point. This commenter recommended that we seek congressional clarification of the intent of the statute.

Response: As indicated in the preamble to the proposed regulation (hereinafter referred to as the ''proposed preamble''), the original legislation amended only titles XVIII and XIX of the Act. Subsequent legislation, however, applies to all physicians that furnish services under the Medicare or Medicaid program.

Comment: One commenter suggested that we apply the proposed requirements only if there is a greater risk for Medicare and Medicaid contracts than for commercial contracts.

Response: The legislation requires us to develop these regulations for Medicare and Medicaid prepaid plans but not for commercial plans. It does not provide us with flexibility to make this determination. Thus, we will examine only incentive plans between a prepaid plan and a physician or physician group that apply to Medicare and Medicaid enrollees. We will not examine the incentive plans as they relate to commercial enrollees, even if the commercial enrollees are in addition to Medicare and Medicaid enrollees. The only exception to this is if the plan uses the pooling methods described later in this preamble.

Comment: One commenter suggested that the Department of Health and Human Services should evaluate the feasibility of applying these regulations to accountable health plans or other health care delivery systems that may be created under health care reform.

Response: This suggestion does not fall within the scope of this rulemaking, which implements enacted legislation in regulations.

Comment: Some commenters stated that there are no published studies that link quality problems to physician incentive plans. They suggest, therefore, that the regulation be dropped. In addition, some commenters suggested that we are only responding to pressures from press reports. Furthermore, some commenters believed this rule would not improve quality of care and that it would only add to the cost of care.

One commenter believed that the proposed rule is too restrictive. The commenter stated that it would make far more sense to monitor the health outcomes of enrollees to ensure that they are receiving quality health care services than to micromanage the administrative arrangements within these health organizations.

Response: We reject these recommendations for the following reasons:

- OBRA '90 requires us to issue these regulations.
- While we acknowledged in the proposed preamble that no link between quality problems and incentive plans has been established, the issue has not been sufficiently examined. In the report to the Congress entitled ''Incentive Arrangements Offered by Health Maintenance Organizations and Competitive Medical Plans to Physicians'' (hereinafter referred to as the ''Report''), no study is cited that directly tests the link. Instead the Report cites studies that show no differences in quality between prepaid plans and fee-for-service arrangements. From this evidence, the Report infers that incentive plans do not affect quality. It should be noted that studies to date have used limited outcome measures.

Furthermore, the OBRA '90 provisions that require these regulations were enacted after the submission of the Report, confirming legislative intent subsequent to the Report.

- HCFA is sponsoring quality assurance reform initiatives in both Medicare and Medicaid that will begin to develop outcome measures for HMOs. HCFA's first efforts contain some outcome measures. Future projects will develop even more of these measures. The state of the art in outcome measures is still in the early stages and, thus, at this time, they cannot serve as a reliable measure of potential underutilization.

While there is no guarantee that these requirements will result in improvements in the quality of care, the Congress was concerned with ensuring that underuse of necessary services does not occur. We are all concerned with ensuring adequate protection of beneficiaries and recipients so that they have access to all necessary and appropriate care. As indicated in both the proposed preamble and later in this document, we anticipate most prepaid plans will not incur significant additional costs because most of them already meet the requirements that are specified in this regulation.

Comment: A major organization suggested that we examine incentive plans only if quality problems are detected.

Response: We rejected this recommendation for the following reasons:

- The legislation does not provide for an exception if there is an absence of quality problems.
- As indicated in the Report, there are limitations in the quality studies and methodologies used to detect quality problems.

Prohibited Arrangements

Comment: One commenter recommended that we revise proposed

§ 417.479(c) (''Prohibited physician payments'') to clarify that medically necessary services means medically necessary *covered* services.

Response: In this final rule, we have revised proposed § 417.479(c) (now designated as § 417.479(d)) to include all medically necessary services covered by the prepaid plan contract. We have included all services covered in the contract since some plans contain services in their Medicare and Medicaid contracts that are in addition to those covered under the regular Medicare or Medicaid program. Furthermore, as established under title XIX of the Act, if a plan contracts to provide early and periodic screening and diagnosis and treatment services, the plan is responsible for any medically necessary Medicaid covered services, regardless of whether these services are covered under the State plan.

Disclosure

Comment: Several commenters, including major organizations, requested that we require disclosure of the incentive plans to all enrollees at the time of enrollment. They believed that disclosure is necessary to protect patients and physicians.

In contrast, several commenters, also including major organizations, stated that incentive plans are proprietary information and, as such, should be exempt from disclosure under the Freedom of Information Act (FOIA).

Response: We agree that disclosure of the incentive plans to patients can aid them in ensuring that they receive needed services. This information in the hands of Medicare beneficiaries and Medicaid recipients will also help physicians to counter pressure from the prepaid plans to reduce services. At the same time, we want to protect the proprietary aspects of the information. To effectively balance these conflicting goals, this final rule adds new §§ 417.479(h)(3) and 434.70(a)(4) to require that prepaid plans provide a summary of three items of information to Medicare beneficiaries and Medicaid recipients, respectively, when they request it. The three items are identified in the next response. As the prepaid plans' experience with physician incentive plans and disclosure increases, we encourage them to voluntarily share summaries of the incentive plans with all enrollees. We have not asked that more information be provided for the following reasons:

- We do not want to put an undue burden on the prepaid plans.
- We do not require fee-for-service physicians to provide a notice that they have incentives to provide excessive services.
- Certain information in the incentive plans is proprietary information and is exempt from disclosure under the FOIA.

Comment: One commenter recommends we clarify what constitutes ''sufficient information'' for disclosure purposes.

Response: This final rule revises proposed §§ 417.479(h) and 434.70(a) to provide for two types of disclosure. Disclosure to HCFA and the States requires that prepaid plans submit information that describes (1) whether services not furnished by the physician or physician group are covered by the incentive arrangement (if only the services furnished by the physician or physician group are covered by the incentive plan, there is no need for disclosure of other aspects of the plan); (2) the type of incentive arrangement, for example, withhold, bonus, capitation; (3) the percent of the withhold or bonus, if any; (4) the amount and type of stop-loss protection; (5) the panel size and, if enrollees are pooled according to the principles discussed later, the method of pooling used; (6) in the case of capitated physicians or physician groups, capitation payments paid to primary care physicians for the most recent year broken down by percent for primary care services, referral services to specialists, hospital services, and other types of provider (for example, nursing homes and home health agencies) services; and (7) in the case of those prepaid plans that are required to conduct beneficiary surveys, the survey results. We are requesting the information described in item 6 so that we can determine whether additional standards are necessary in the future.

Disclosure to Medicare beneficiaries and Medicaid recipients requires that only a summary of the above information be made available if requested by the beneficiary. This information will indicate, 1) whether the prepaid plan uses a physician incentive plan that affects the use of referral services, 2) the type of incentive arrangement, 3) and whether stop-loss protection is provided. In addition, those prepaid plans that must conduct enrollee surveys must provide a summary of the survey results to those beneficiaries and recipients who request it.

Comment: One commenter stated that disclosure should not be needed *each* time there is any change in the incentive plan. A second commenter stated that we should require disclosure only initially and when changes occur relative to rules.

Response: We agree with these recommendations. Therefore, we have revised proposed § 417.479(h)(3) and proposed § 434.70(a)(2)(ii) to specify that an organization must provide information concerning any of the following changes in its incentive plan: A change as to the type of incentive plan; a change in the amounts of risk or stop-loss protection; or expansion of the risk formula to cover services not provided by the physician group which the formula had not included previously. We also specify that this information must be provided to HCFA at least 45 days (rather than the proposed 30 days) before the change takes effect. This latter change is made to make this rule consistent with existing § 417.428, which requires that HMOs and CMPs submit to HCFA all marketing information 45 days in advance of distribution. (Proposed § 417.479(h)(3) is now § 417.479(h)(2)(C)(ii).)

Comment: One commenter recommended that the due date for submission of the required information by organizations that have a contract with us be extended from 30 days after publication of the final rule to 60 days after publication. The commenter stated that 30 days is not sufficient for organizations to become aware of the rule, study its details, analyze their incentive plans, and formulate disclosures that meet the rule's requirements.

One commenter believed there should be a phase-in period for organizations to comply with the regulations. The commenter suggested that the phase-in period be the remainder of the term of the organization's existing provider contract.

Response: We agree that organizations should be given more than 30 days to comply with the provisions of this rule. Since 60 days for compliance is a standard time period used in many of our regulations, particularly in the Medicaid program, we have extended the time period in which organizations must comply with this rule to at least 60 days from the date of publication. Further, we now require that organizations with existing contracts with us comply with most of the disclosure requirements by the date of the contract renewal or at least 60 days from the date of publication of this final rule, whichever is later. We now require compliance with the disclosure requirement related to capitation data within 1 year from the date of publication of this rule. (See **DATES** section of this rule.)

Comment: One commenter believed that subcontracting poses an

impediment to an HMO's ability to comply with the disclosure requirement. The commenter stated that subcontracting will result in numerous contracts being subject to disclosure, particularly in the case of larger HMOs. This commenter also pointed out that the proposed rule does not address the extent to which subcontractors will be compelled to disclose information concerning incentive arrangements. The commenter stated that HMOs need to know the extent of the disclosure obligation of the HMO where subcontracting has resulted in incentive arrangements currently unknown to the HMO.

This same commenter believed that our estimate of 4 hours per organization to meet disclosure requirements is a serious underestimation given the complexity of current industry contracting practices. The commenter did not offer an alternate estimate.

Response: Under this final rule, if the prepaid plan contracts with a physician group that puts its individual physician members at substantial financial risk for services not provided, the prepaid plan must disclose to us (or in the case of Medicaid, to the State agency) any physician incentive plans between the physician group and its individual physicians that base compensation on the use or cost of services furnished to beneficiaries or recipients.

Additionally, if a prepaid plan contracts with an ''intermediate entity'' that, in turn, subcontracts with individual physicians or a physician group, the prepaid plan, under all circumstances, must disclose to us (or the State agency) any physician incentive plans between the intermediate entity and the individual physician or physician group that base compensation on the use or cost of services furnished to beneficiaries. This information is necessary to ensure that physicians are not placed at substantial financial risk for services not provided.

For purposes of this requirement, we define intermediate entities as organizations or individuals who contract with the prepaid plan and, in turn, subcontract with one or more physician groups. Thus, for example, an individual practice association (IPA) is an intermediate entity if it subcontracts with one or more physician groups. (It is simply a physician group when it is composed of a set of individual physicians and has no subcontracts with physician groups.) A physician hospital organization is also an example of an intermediate entity.

The information to be disclosed for each of the situations described above includes the following:

- Whether services not furnished by the physician or physician group are covered by the incentive plan. If only the services furnished by the physician or physician group are covered by the incentive plan, disclosure of other aspects of the plan need not be made.
- The type of incentive arrangement; for example, withhold, bonus, capitation.
- If the incentive plan involves a withhold or bonus, the percent of the withhold or bonus.
- The amount and type of stop-loss protection.
- The panel size and, if patients are pooled according to one of the permitted methods, which method is used.
- In the case of capitated physicians or physician group, capitation payments paid to primary care physicians for the most recent year broken down by percent for primary care services, referral services to specialists, and hospital and other types of provider services.
- In the case of those prepaid plans that are required to conduct beneficiary surveys, the survey results.

In subcontracting relations, if, under any circumstances, a physician group and/or individual physicians are put at substantial financial risk, the prepaid plan must conduct the beneficiary survey required by this rule and provide adequate stop-loss protection to the physician group and/or individual physicians. We have taken this position because recent investigations by HCFA of HMOs in a number of States has led us to conclude that, in subcontracting situations, some physicians have been put at substantial financial risk without adequate examination of the effect this has on the quality of care furnished to the enrollees.

We have set forth the above requirements in this final rule by adding a new paragraph (i) to § 417.479 (for Medicare) and revising proposed § 434.70(a) (for Medicaid). We have also revised the proposed definition of ''physician group'' at § 417.479(b) to clarify that an IPA is a physician group only if it is composed of individual physicians and has no subcontracts with physician groups.

We believe these additional requirements will increase the burden on prepaid health plans by an additional 4 hours, resulting in a total of 8 hours per organization to meet the disclosure requirements. The organization can either submit copies of its incentive plans or submit information that addresses the required items listed in § 417.479(h)(1).

We would welcome comments on our estimate of the burden imposed by the above requirements. We are particularly interested in receiving empirical data supporting any estimates the commenter may offer.

Comment: One commenter believed the disclosure requirements are excessively burdensome. This commenter noted that, as stated in the preamble of the proposed rule, the justification for these disclosure requirements is that, if the information is only disclosed during site visits, an organization could change its physician incentive plan shortly after the site visit, and we would not know of the new arrangement for 2 years. The commenter pointed out that there are many items of information that we review at site visits that could be changed shortly thereafter without our knowledge; for example, HMO marketing material, provider contracts, and quality assurance plans. The commenter pointed out that these are reviewed during site visits and not re-reviewed during the 2-year cycle. The commenter stated that the proposed rule offered no explanation for different treatment for incentive plans, and, therefore, the requirements are not based on an acceptable justification.

Response: Section 1876(i)(8)(A)(iii) of the Act requires that we obtain sufficient information to determine if substantial financial risk occurs, adequate stop-loss protection is provided, etc. As indicated in an earlier response, we have limited the amount of information prepaid plans are required to submit to HCFA and the States to information on just a few key items. As prescribed by legislation, marketing materials are submitted to us every year. Further, as a change from the proposed rule, we are requiring that we be notified of only significant changes in the incentive plan, rather than each change, thereby reducing the burden of this requirement.

Comment: One commenter suggested that HCFA use a simple disclosure form that can quickly be completed by HMO personnel and reviewed promptly by HCFA.

Response: HCFA will consider the feasibility of a form and, if it decides to adopt the recommendation, in accordance with the Paperwork Reduction Act of 1995, will publish a document in the Federal Register soliciting public comments on a proposed form.

Comment: One commenter recommended that disclosure not be required if the HMO essentially admits substantial financial risk by agreeing to comply with enrollee survey and stop-loss requirements.

Response: The statute requires that organizations disclose their incentive plan arrangements.

Comment: One commenter asked what timeframes an organization may anticipate for HCFA's review of its incentive arrangements.

Response: Timeframes for the review of incentive plans will be addressed in a forthcoming manual issuance. At this time, we anticipate that the average review time will be 60 days.

Implementation

Comment: One commenter recommended that the final rules provide an explicit mechanism for dealing with disputes arising from and during the determination of whether physicians are at substantial financial risk.

Response: We agree with the commenter that there should be procedures for these disputes. Details on the dispute procedures will be addressed in a forthcoming manual issuance.

Referral service

Comment: We proposed to define ''referral services'' as any specialty, inpatient, outpatient, or laboratory services that a physician or physician group orders or arranges, but does not provide directly. One commenter believed that this definition is ambiguous. The commenter questioned whether we intended to distinguish between the services provided by the prepaid plan's physician employees and services provided by independent contract physicians. The commenter believed that absent knowing our position on this issue, the terms ''provide directly'' in the definition is ambiguous. The commenter believed we should clarify that services provided by specialist physicians through a contract with the physician group would not constitute referral services. In addition, the commenter believed that ''referral services'' should be limited to services that a physician is not licensed to provide, such as hospital services.

Response: We disagree that the definition is ambiguous. We believe the problem the commenter had with this definition is related to the understanding of another term used in the definition, that is, the meaning of ''physician group.'' We assume that what the commenter is really asking is ''If a physician group contracts for services of a specialist, is the contract physician considered a member of the physician group?'' We see this as the real issue because, if the contract physician is a member of the physician group, then services furnished by that physician would be services furnished directly by the group. Thus, the services would not be referral services.

We proposed to define ''physician group'' as a partnership, association, corporation, individual practice association, or other group that distributes income from the practice among members according to a prearranged plan unrelated to the members' referral levels. (For reasons that will be discussed later in this preamble, this final rule adopts a revised version of that definition. That is, we have deleted from the definition the phrase ''according to a prearranged plan unrelated to the members' referral levels''. We also no longer include an individual practice association in the definition.) According to this definition, a contract physician is not a member of the physician group.

We disagree with the comment that referral services should be limited to services that a physician is not licensed to provide. The legislation requires the Secretary to determine if the plan places the physicians at substantial financial risk for services not provided by the physician group. Thus, referrals to specialists who are not part of the group practice are considered referral services in the determinations of risk. It is these services that the legislation intended to address. Prepaid plans generally use primary care physicians as gatekeepers. These models encourage the primary care physician gatekeeper to not use specialist services if he or she can perform the services. We support these models. The legislation, however, is designed to prevent restrictions on necessary specialist care.

Substantial Financial Risk

Comment: Several commenters believed the definition of ''substantial financial risk'' is overly restrictive. They believed it fails to fulfill the goal of only identifying outliers because it fails to address the variables that affect risk. One commenter suggested that it be redrafted or, if HCFA is unwilling to redraft the definition, that organizations be given the choice of either complying with the regulation as written or demonstrating to HCFA that their incentive plan does not put physicians at substantial financial risk.

A number of commenters recommended, more specifically, that HCFA include the size of patient and physician pools (panels) in the risk formula threshold as, in their view, required by the legislation. On the other hand, one commenter stated that attempting to incorporate patient panel size as a risk factor would prove unduly complex and less workable than the approach contained in the proposed rule.

Response: We have reconsidered this issue and, in this final rule, we take panel size into account in determining adequate stop-loss requirements (See § 417.479(g)(2)(ii).) Analyses by Rossiter and Adamache (1990) (Health Care Financing Review, vol. 12, pp. 19–30) show that there is no significant variation in costs from year to year for counties with populations greater than 25,000. Based on these analyses, we have determined that physician groups with more than 25,000 patients are able to adequately spread risk and, therefore, are not at substantial financial risk, even if 100 percent of the physician group's income is at risk for referral services. This does not apply to panels of more than 25,000 patients as a result of pooling. (See § 417.479(f).) Pooling of patients is discussed later in this preamble.

As stated, our decision to set the threshold at 25,000 was based on the analyses done by Rossiter and Adamache. We would welcome information as to whether there are data that would support another threshold.

With regard to the suggestion that we allow organizations the choice of either complying with the regulation as written or demonstrating that their incentive plan does not put physicians at substantial financial risk, we would be interested in receiving comments on how we might implement such an exception process.

The remainder of this response applies to panels of less than 25,000 patients. As stated in the proposed preamble, the size of the patient or physician pool can have several theoretical effects on substantial financial risk. Furthermore, there is no empirical evidence that could guide us on the effects of these and other factors. We requested information in this regard in the proposed preamble. Nonetheless, while commenters suggested that size is a factor, none of the commenters provided information on the exact relationship between size and risk. Therefore, we have no basis for specifying this relationship. Finally, the legislation discusses panel size only in regard to stop-loss protection and not in regard to substantial financial risk.

Comment: One major organization stated that, under the proposed rule, prepaid plans that assess and/or distribute incentive payments more often than annually are subject to lower risk thresholds. It maintains that there are problems with this requirement as follows:

First, it contends that the term ''assess'' as used in this regard is not

clear. It might, the organization suggests, be interpreted to bar plans from communication with physicians as to their progress in meeting annual goals. The organization stated that it disagrees with any interpretation of this requirement that might prevent plans that distribute incentive payments annually from working with their physicians on their mutual cost containment goals on a more frequent basis.

Second, the proposed regulation does not achieve its goal of using an outlier approach in this area. Many organizations that use withhold and distribute, or assess, incentive payments more often than once a year exceed the 15 percent risk threshold. These organizations, however, fall within the 25 percent threshold set for plans distributing or assessing payments annually or less often.

Another commenter stated that the frequency of the assessment or distribution should not affect the level or risk necessary to qualify as substantial financial risk.

Response: The term ''assess'' is meant to refer to imposing a charge. It is not used in the meaning of an evaluation or appraisal of progress toward a goal.

We agree that a 15 percent threshold is not an outlier, since the median withhold is between 10 and 20 percent. Also, there is no evidence that making assessments or distributions more often than annually affects the amount of risk placed on physicians. While our rationale in the proposed rule was based upon reasonable assumptions as to the impact of more frequent assessments or distributions, we now agree that the 15 percent threshold is inconsistent with our intent to use an outlier approach. Therefore, we have eliminated making a distinction on the basis of the frequency of the assessment or distribution. We establish the 25 percent threshold in all cases. The 25 percent threshold is an outlier since it exceeds the median withhold of 10 to 20 percent. Proposed § 417.479 has been revised to reflect the elimination of the distinction.

Comment: One commenter stated that the proposed threshold for combination of withholds and bonuses does not identify only outliers. The commenter also stated that, in practice, physician performance will be either in the bonus area *or* in the withhold area; therefore, to limit the amount of financial risk that a physician will ultimately accept, it is not necessary to limit the combination. The commenter also pointed out that there is no evidence that upward variations on physician payments (bonuses) have the same potential to cause underutilization as downward variations (withholds).

Response: If organizations do not use a combination of withholds and bonuses, there is no problem with setting the same limit for the combinations as for withholds and bonuses individually. Since it is possible for plans to use combinations of withholds and bonuses, it is necessary to set a limit on the combination. As indicated in the proposed preamble, to avoid putting physicians at substantial financial risk, we determined it necessary to use the same threshold for the combination.

With regard to the last comment, we are not aware of any data on the effect of bonuses as opposed to withholds on physician behavior. We would, therefore, appreciate receiving any information in this regard.

Comment: Several commenters recommended that we lower the threshold.

Response: The proposed preamble had an extensive discussion of this issue. As we stated, because of the limited information available on this issue, the only logical approach is to use an outlier formula. Given this decision, the threshold of 25 percent that we proposed is consistent with the data that showed that the median withhold was between 10 to 20 percent. It is also consistent with the concept of substantial financial risk, which implies a greater than average risk. As indicated, the threshold is based on withhold data. Averaging in the organizations with capitation arrangements, which are the majority of organizations, and treating them as equal to 100 percent withhold would raise the threshold rather than lower it. We decided not to raise the threshold because that would not make a difference to the capitation arrangements. This would be so because, if capitation were considered equal to 100 percent withhold, all plans using capitation would be placing their physicians at substantial financial risk (unless the threshold were set at 100 percent). Furthermore, as indicated in the proposed preamble, the 25 percent withhold figure is within the range of discounts that physician groups frequently provide to various insurers. Physicians also lose similar amounts to bad debts.

Comment: One commenter suggested that we include the risk arrangements between the physician groups and their individual physicians, because the prepaid plan may use this strategy to circumvent the process. The commenter maintained that the statute does not specifically exclude these arrangements from scrutiny. The commenter pointed out that the statute defines an incentive plan as ''any compensation arrangement between an eligible organization and a physician that may directly *or indirectly* have the effect of reducing * * *'' [Emphasis added.] The commenter believed that the use of the words ''or indirectly'' indicates that the types of compensation arrangements should be looked at broadly.

Response: As stated in an earlier response, we are requiring a prepaid health plan that contracts with an intermediate entity to disclose information about the physician incentive plans that the entity has with physician groups or physicians. This will prevent a prepaid plan from creating intermediate entities merely to evade the requirements of this rule.

Furthermore, if the physician group subcontract with its physicians places the latter at substantial financial risk, the prepaid health plan must disclose the incentive arrangements. In order to minimize the burden on prepaid plans, we are not requiring disclosure of every incentive arrangement between physician groups and individual physicians, only of those under which the physicians are placed at significant financial risk.

In regard to the phrase ''indirectly have the effect of reducing or limiting services,'' this phrase applies only to the arrangement between the plan and physician group. It does not apply to the relationship between the physician group and its individual physicians. ''Indirect'' as used in the statute refers to methods of compensation to the physician groups that are not strictly monetary, but can be considered the equivalent. Examples would include providing stocks, waivers of debt, or equipment.

The commenter has raised the issue of physician groups that have incentive arrangements with their individual physicians. As we examined this issue, we noted that the definition of ''physician group'' in proposed § 417.479(b) technically would exclude such a physician group, since it would *not* be a group that ''distributes income from practice among members according to a * * * plan *unrelated to the members' referral levels*.'' (Emphasis added.) It was not intended that any physician group fall outside the scope of our definition, and thus technically outside the scope of these regulations. We, accordingly, are deleting ''according to a prearranged plan unrelated to the member's referral levels'' from the definition of ''physician group.'' It is also for this reason that we did not adopt any existing definitions of a physician group

or group practice that may similarly have contained provisions that would exclude a group Congress intended to reach in this rule (for example, the existing definition of ''medical group'' at 42 CFR 417.1 or ''group practice'' in section 1877 of the Act.

We are also taking this opportunity to point out that, although we define a ''physician incentive plan'' as ''any compensation arrangement between an *organization* and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services furnished to Medicare beneficiaries or Medicaid recipients enrolled in the organization'' [emphasis added], this definition also encompasses a compensation arrangement between an *entity* with which the organization contracts and physicians/physician groups and a compensation arrangement between a *physician group* and its individual physicians. This is because, although not a direct relationship, a linkage between the organization and the physician group or individual physicians has been established through the entity or physician group with which the organization contracts.

Comment: One commenter suggested that we not apply substantial financial risk to individual practice association (IPA) and direct contracting models. The commenter stated that there would be no loss if a few providers drop out.

Response: While the organization may not feel a loss, the enrollees may be concerned about the loss. Furthermore, this may be an indication that the incentive plans are having an undesired effect. The legislation requires us to apply these regulations to all prepaid plans. There is no justification for treating IPA and direct contracting models differently. If anything, since these models frequently involve contracts with individual physicians, these physicians are less in a position to spread risk and may be at even greater risk than other models.

Comment: Several commenters, including a major organization, raised the concern that they do not know the total payments and patient loads until the end of the year. They suggested that we substitute total potential payments, based on the most recent year's utilization and experience, in the substantial financial risk and stop-loss formulas.

Response: We agree that this option is acceptable, unless the organization has information that suggests a significantly different situation; for example, the addition of a major new contract. Appropriate revisions have been made to proposed § 417.479 to clarify this.

Comment: A major organization suggested that we substitute an actuarially derived threshold instead of an outlier approach.

Response: We reviewed this recommendation with several actuaries, including staff from HCFA's Office of the Actuary. We concluded that it is not feasible to make such an analysis. Actuaries can perform analyses for certain kinds of losses, such as loss of life or loss of income. However, the determination of what is a substantial loss of income to a physician or physician group is more of a subjective or policy decision than a measurable amount.

The actuaries also indicated that they could not perform such an analysis because there are no empirical data to indicate how physicians respond to different levels of financial risk.

Actuaries have supplied us with recommendations as to stop-loss protection, discussed later in this preamble. The recommendations result in different stop-loss requirements for different panel sizes. Also, as discussed earlier, we have determined that physicians or physician groups serving panels of over 25,000 patients are not at substantial financial risk. We are, however, interested in receiving current data on how physicians respond to different levels of financial risk.

Comment: One commenter raised a concern that the Internal Revenue Service (IRS) is developing policy on withholds that defines them as discounts that would not be tax-exempt.

Response: We have held discussions with the IRS to coordinate consistent policies and will continue to work with them.

Comment: One organization commented that the threshold should only apply to the aggregate group of physicians and not to individual physicians. It stated that its incentive plan is within the specified limits for physician groups, but will exceed the limits for individual physicians whose behavior exceeds certain norms.

Response: The legislation is concerned with whether a plan puts physicians or physician groups at substantial financial risk. Thus, the threshold policy applies to contracts between an organization and individual physicians, but only if the contract is specifically between the organization and an individual physician. As indicated earlier, we have not interpreted the legislation to apply to subcontracts between the physician group and its individual physicians.

Comment: A major organization asked if a contract for primary care services outside the service area equals referral services.

Response: Primary care services outside the service area are not ''referral services.'' The prepaid plan, however, must ensure that all necessary services are available and accessible within the service area.

Comment: A major organization commented that the proposed regulation poses a problem for staff model HMOs in medically underserved areas (MUAs). The commenter stated that, because the salaries of many physicians in community health centers (CHCs) are low (because they are often working under a Federal student loan repayment program), the formula we use to determine the risk threshold results in a threshold that is artificially low for these HMO programs. The commenter added that, to impose additional administrative obligations on these community programs, because of their bonus payment arrangements for salaried physicians, would divert time, energy, and resources away from their mission of providing health services in MUAs.

Response: We share the concerns raised by this commenter. The low salaries do create an artificially lower threshold, and the centers have much more limited administrative resources. Nevertheless, these circumstances result in even greater pressures on these physicians to contain costs. With lower salaries, the physicians are more sensitive to factors that can affect their income. Therefore, it is even more appropriate to have the policies in this regulation apply to these centers. Unfortunately, we have not been able to develop a different policy for these centers. Note, however, that if an HMO contracts with a CHC, then, as indicated in an earlier response, these regulations would not apply to contracts between the centers and their physicians because they are subcontracts.

Capitation Arrangements With Physicians

Comment: Several commenters, including a major organization, stated that the threshold should not apply to capitation. Their argument was that the thresholds were based on withhold data and, further, that it is difficult to separate services furnished by the physicians from referral services. The commenters also claimed that we did not specify that the capitation applies only to referral services.

The commenters raised the concern that the capitation payments may include payments for services furnished directly by the physician group. Thus, they point out, we are limiting the

amount of risk a physician can accept for his or her own services. The commenters stated that to do so is beyond the mandate of the statute, which is intended to apply only to services not provided by the physician group.

Response: We gave this issue a great deal of thought. We decided, however, to continue with our proposed policy of applying a 25 percent threshold. To exempt capitation from the threshold could place physicians who are compensated in this manner at substantial financial risk, without subjecting the prepaid plans to the requirement either to set limits to the risk in the form of maximums and minimums, or provide adequate stop-loss protection and conduct beneficiary surveys as required by the statute. Furthermore, the commenters are incorrect; the proposed and final rules are concerned with referral services. If the incentive plan applies only to the services furnished by the physician group, these rules do not apply. The legislation specifies that we address services not furnished by the physician group. If the incentive plan applies to all services or just referral services, these rules apply.

The commenters are correct on these two points: our policy does affect services that the physician group directly provides if we are dealing with capitation for all services; and services furnished directly by the physician group or physician are not covered by the statute. However, when the capitation covers all services, we are not able to separate those service furnished directly from the referral services. And, since the referral services are our primary concern, we need to be inclusive rather than exclusive.

Comment: One commenter recommended that we not require the maximum and minimum formula for capitation arrangements if the organization can show that a 25 percent differential had not occurred in the past.

Response: While there is merit to this recommendation, we have decided to reject it. The legislation requires that organizations that place their physicians at substantial financial risk, as determined by the Secretary, provide stop-loss protection and conduct enrollee surveys. Thus, the formula is necessary for us to determine if substantial financial risk exists. Also, past behavior is no guarantee of future behavior. Thus, physicians could still feel the pressure if they are placed at substantial financial risk, regardless of past payments.

Comment: One commenter believed the rule should distinguish between a monthly capitation payment to a physician group that includes an amount for referral services, and an incentive plan assessment or payment.

Response: The applicability of the provisions of this rule depends upon the specific arrangements in the incentive plan. As stated earlier, if the incentive plan applies only to services directly furnished by the physician or physician group and does not cover referral services, the regulations do not apply. If the capitation includes payment for referral services, the provisions of § 417.479(f)(5) apply. If the organization capitates its physicians only for services they directly furnish and uses withholds or bonuses (or a combination of withholds and bonuses) as incentives to control referrals, the requirements of § 417.479(f)(5) concerning capitation do not apply. In this case, however, if the withholds or bonuses or combination of withholds and bonuses exceed the 25 percent risk threshold, the stop-loss and survey requirements of this rule apply.

Comment: One commenter suggested that, if a physician group achieves a patient population of approximately 250 members from a single capitated HMO, there is no longer a need for the risk protection.

Response: There is no evidence that supports this number. As indicated later in this preamble, we have set an exception for the stop-loss requirements that is based on panel size.

Comment: A number of commenters stated that the proposed rules, as they relate to capitated payment arrangements, do not accommodate common, longstanding contractual arrangements and should be withdrawn to permit additional study.

Response: The Group Health Association of America (GHAA) has supplied us with updated data as of the Winter 1993–94. Furthermore, Mathematica has published data from 1995. We took these data into account as we revisited our decisions regarding specific risk thresholds and issues concerning capitation and stop-loss protection. These data support the approach we have taken in this final rule. If more recent data exists, we would appreciate receiving it.

Comment: Several commenters stated that they capitate their physicians but also provide adequate stop-loss protection. They believed that these physicians are not at risk, because of the stop-loss protection.

Response: We agree in principle with this view. If an HMO has stop-loss protection in place that ensures that no more than 25 percent of a physician's or physician group's income is at risk, we would determine that the plan does not involve substantial financial risk.

Stop-Loss

Comment: A commenter recommended that we put physicians at risk beyond the stop-loss limit. The commenter believed that setting an absolute limit on the amount of risk that physicians can accept (that is, requiring stop-loss protection to cover the cost of referrals in excess of 30 percent of payments) obstructs an organization's ability to control physician behavior beyond that point. The commenter suggested that the stop-loss requirement be constructed to allow for continued, but limited, risk sharing. The commenter recommended that the organization be allowed to hold physicians or physician groups responsible for 20 percent of the cost of referrals beyond the point at which the stop-loss protection begins. The commenter stated that it does not believe the statute requires an absolute limit on the amount of risk, but instead only ''adequate and appropriate'' stop-loss protection.

Response: The approach suggested by this commenter is consistent with the policy used by a number of HMOs. The practice of requiring physicians to continue to share in the risk beyond a stop-loss limit makes the physicians sensitive to the need to avoid furnishing unnecessary services. Therefore, this final rule allows for continued, but limited, risk sharing beyond the point at which the stop-loss protection begins.

For those prepaid plans that provide an aggregate stop-loss policy, we are setting the required stop-loss limit at 25 percent. The prepaid plan will bear 90 percent of the losses beyond this level and the physicians will bear 10 percent of the losses. (See § 417.479(g)(2)(i).) Because we are adding a 90/10 ratio to the potential loss level, we believe it is necessary to reduce the proposed 30 percent stop-loss limit to 25 percent to compensate for the added element of risk sharing. Furthermore, the 25 percent level is consistent with the threshold we established for substantial financial risk.

The 90/10 split also applies to those plans that provide per patient stop-loss protection.

Comment: Several commenters, including major organizations, stated that aggregate stop-loss policies are not currently used and would be difficult to obtain. They recommended that patient, dollar, and/or specific disease protections be substituted.

Response: We have decided to allow plans to provide either aggregate or per-patient limit stop-loss policies. (See

§ 417.479(g)(2).) The amount of the per patient policy required to be considered adequate and appropriate will vary with the patient panel size and will be discussed later in this preamble. We reached this decision on the following basis.

We agree that some organizations might have trouble purchasing aggregate stop-loss policies or that it may be expensive to switch from a per patient limit to an aggregate policy. Since most organizations do not have such policies, this aggregate policy requirement would, at the least, cause a significant change in policy, which could be very difficult or expensive to implement. Furthermore, actuarial analyses indicate that aggregate coverage is unlikely to be needed.

On the other hand, there are some organizations that do provide aggregate stop-loss protection. Requiring them to switch to a per-patient limit would also be expensive. There are advantages and disadvantages to both aggregate and per-patient stop-loss coverage. Aggregate policies provide greater overall protection, while per-patient policies provide better protection at the individual patient level.

Both of these options provide reasonable protection for physicians and their patients. By providing an option, we have eliminated the burden organizations might face to switch policies.

We considered the recommendation to include specific disease protections. We reviewed the Department's preliminary plans for implementing the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–203), major provisions of which were repealed before being implemented. The Department had not planned to specify any specific diseases as catastrophic and instead planned to use specific dollar levels to define ''catastrophic'' expenses.

Comment: Several commenters stated that the prepaid plans should not be required to pay for the cost of stop-loss protection. They believed they should be allowed to charge the physicians a reasonable premium for stop-loss protection.

Response: Section 1876(i)(8)(ii) of the Act reads, in relevant part, as follows:

(ii) If the plan places a physician or physician group at substantial financial risk * * * the organization—(I) provides stop-loss protection for the physician or group * * *.

In the case where the physician or physician group decides to purchase its own stop-loss protection, we interpret ''provides'' to mean that the organization either pays for the premium or reduces the level at which the stop-loss protection applies by the cost of the stop-loss. We also rejected the proposal of allowing HMOs to make available stop-loss protection rather than paying for it. Making available is not consistent with providing.

Thus, we provide, in § 417.479(g)(2)(iii), that the prepaid plan may either (1) Provide the stop-loss protection directly, (2) purchase the stop-loss protection, or (3) if the physician or physician group purchases the protection, pay the portion of the premium that covers its enrollees or reduce the level at which the stop-loss protection applies by the cost of the stop-loss. We are interested in any comments on this provision and alternative proposals.

Comment: Several commenters suggested that we establish a case-by-case exceptions process for stop-loss requirements.

Response: As stated previously for substantial financial risk, such a process would be administratively burdensome. Further, it would be difficult to make judgments.

Comment: One commenter, a major organization, disputed our statement that there is little information available regarding the impact of various factors on physician behavior.

Several commenters believed we should take patient panel size into account and exclude large panels from this requirement. Other commenters suggested that we have a higher stop-loss requirement, for example, $200,000 per patient, for larger panels. They noted that the legislation instructed us to take panel size into account for stop-loss protection. The commenters argued that, with a sufficiently large patient panel (generally a clinic), the physicians are able to spread the risk across all the patients.

In addition, several commenters pointed out that a number of physician groups have contracts with many different HMOs, particularly IPA models, and have the equivalent of a large panel spread out among the HMOs. The commenters recommended that HMOs that contract with these groups be exempt from the stop-loss requirements.

Response: Analyses by several actuarial firms and data from several HMOs support the position that having a large panel does reduce the level of risk. The data is also consistent with the findings of Rossiter and Adamache (1990) discussed previously. Based on these analyses, we have determined the limits specified in the following table (Table 1) for different panel sizes and have revised proposed § 417.479(g)(2) accordingly. Providing a higher stop-loss requirement (a higher stop-loss level is a lower level of protection) is consistent with the legislation, which specified that we take panel size into account.

TABLE 1.—STOP LOSS LIMITS PER PATIENT PANEL SIZE

Number of patients	Stop-loss limits per patient
Less than 1,000	$10,000
1,000 to 10,000	$30,000
10,000 to 25,001	$200,000
Greater than 25,000 (unpooled)	None
Greater than 25,000 (as a result of pooling).	$200,000

There are two ways physician groups can pool patients to meet the panel size requirements specified in the table: (1) Including commercial, Medicare, and/or Medicaid enrollees in the calculation of panel size, and (2) Pooling together, by the organization, of several physician groups into a single panel. Each method may lead to a panel size large enough to reduce the financial risk. These methods may be used to pool patients, provided they are consistent with the relevant contract between the physician or physician group and the prepaid plan. (For instance, if there are separate contracts for commercial, Medicare, and/or Medicaid enrollees, then, absent contractual provisions to the contrary, pooling would be precluded).

We consider physician groups whose panels are greater than 25,000 patients without pooling of patients as not at substantial financial risk. Thus, the organization would be exempt from stop-loss protection and beneficiary survey requirements.

For those groups whose panel size is greater than 25,000 patients as a result of pooling, the organization is required to provide stop-loss protection at the same level that is required if the panel size is between 10,000 to 25,000 patients ($200,000 per patient). This policy is adopted so that plans will not use pools to circumvent the stop-loss requirements. Furthermore, physicians may be at higher risk for panels that are pooled than panels that are not pooled since the former may experience greater variability in costs than the latter.

We have not established an increasing scale for the aggregate stop-loss option, except that those panels over 25,000 patients without pooling do not need aggregate stop-loss coverage. The scale does not need to increase because, since a percentage formula is used, the dollar

amount represented by the threshold rises as the panel size increases.

We are willing to consider policy alternatives that are supported by empirical data. We are interested in receiving public comments in this regard.

Surveys

Comment: Several commenters believed a survey of enrollee satisfaction should be required of all prepaid plans, not just those where there is substantial financial risk.

Response: While most prepaid plans do conduct surveys, there is no legislative requirement to do so except as prescribed by this regulation.

Comment: One commenter, a major organization, stated that the proposed rule is silent about what HCFA must do with the survey results. This organization proposed that the regulations explicitly require HCFA to (1) Annually review the results as they are filed, (2) share the complete results with the appropriate PRO, (3) take appropriate action if the results indicate a problem; and (4) ensure public access to the survey results by requiring that they be published and disseminated to interested parties by the PRO, the organization, or HCFA.

Response: We partially addressed this comment earlier in this preamble. The survey results will be submitted to plan managers in HCFA's central and regional offices. They will review the results in conjunction with PRO results, disenrollment data, reconsiderations, and related information, as part of ongoing compliance monitoring activities. As HCFA develops performance measures and report cards over the next several years, it will consider the best way to make the survey results available to consumers and providers.

Comment: One commenter suggested that disenrollees that move be excluded from the surveys.

Response: We agree with this recommendation since it may be very hard to locate these beneficiaries. Therefore, we have revised proposed § 417.479(g) accordingly.

Comment: One commenter, a major organization, requested that we specify that surveys do not need to be done more often than annually.

Response: This final rule, at § 417.479(g)(1)(iv), revises the requirement to specify that the survey must be conducted no later than 1 year from the effective date of the incentive plan, and at least every 2 years thereafter. As noted in the **DATES** section of this preamble, compliance with § 417.479(g)(1)(iv) is not required until 1 year after the effective date of this rule.

Medicaid

Comment: One commenter asked whether States have the option to prohibit incentive plans that place providers at a substantial financial risk. The commenter believed this option would eliminate the need to obtain and monitor stop-loss requirements and a member survey.

Response: Nothing in OBRA '90 prohibits States from placing more restrictive requirements under State law on the physician incentive plans of their HMO and HIO contractors. As a result, States do have the option of under State law prohibiting altogether incentive plans that place providers at substantial financial risk, regardless of any stop-loss arrangements and member satisfaction surveys used by the contractor. We point out, however, that the sanctions and penalties provided for under this final rule would apply only with respect to violations of the Federal requirements in this rule.

Comment: One commenter asked whether, if annual member surveys are already required under quality assurance standards, an additional member survey is necessary for those plans placing providers at substantial financial risk.

Response: No additional survey is required, as long as the survey conducted under the quality assurance standards meets the requirements specified at § 417.479(g) of this rule.

Comment: One commenter stated that sufficient time must be allowed for States to incorporate the new provisions in program rules and existing provider agreements.

Response: We agree with this comment. As a result, as stated in the **DATES** section of this preamble, the compliance date for most provisions is 60 days after publication of this final rule. This time period is the standard commonly used for implementation under Medicaid.

Comment: One commenter stated that incentive plans for physicians serving Medicaid recipients need to address access to primary and preventive services and quality of care services. The commenter stated that these plans must include incentives based on specific health outcomes, timely access to primary care, and enrollee satisfaction based on specific health outcomes.

Response: OBRA '90: (1) Prohibits certain physician incentive arrangements and (2) specifies two requirements to be met if other types of arrangements that place physicians at substantial financial risk are used. The statute does not go beyond these prohibitions and requirements to mandate the use of any particular type of incentive arrangements, including those described by the commenter. Accordingly, the rule does not include any requirements that certain types of incentives be used.

Comment: One State agency stated that incentive plans for physicians serving Medicaid must limit the payment of any incentives to once annually. The commenter believed this would decrease the possibility that physicians will cut back on services or refuse to treat individual patients because of fear of financial losses.

Response: OBRA '90 prohibited only one type of incentive arrangement: those that make specific payments, ''directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.'' All other types of incentive arrangements are allowed, including those that place physicians at ''substantial financial risk.'' (Those that place physicians at substantial financial risk must meet certain requirements for the provision of stop-loss protection for physicians and periodic enrollee satisfaction surveys.) The statute makes no provision, including the one recommended by the commenter, for banning other types of incentive plans. We cannot impose the restrictions on the incentive program that were recommended by the commenter. As noted above, however, OBRA '90 would not prohibit a State from imposing such a restriction under State law.

Comment: One commenter recommended that the reporting and other requirements for physician incentive plans be limited to only those HMOs, CMPs, or HIOs that institute percentage risk levels that are greater for the Medicaid and Medicare populations than for their commercial contracts.

Response: With respect to Medicaid, OBRA '90 amended section 1903(m)(2)(A) of the Act to condition a State's receipt of FFP for expenditures in prepaid capitation or other risk-based reimbursement contracts upon a contractor's adherence to the requirements for physician incentive plans also described in OBRA '90. The statute does not authorize the Secretary to exempt certain plans or State Medicaid contracts from compliance with these reporting and other requirements. Therefore, we cannot change the regulation as the commenter has proposed.

Comment: One commenter stated that the definitions of ''substantial risk,'' ''withhold,'' and ''bonus'' are too inflexible to meet the special needs related to the Medicaid program. Citing monthly eligibility variation and differences in payments based on varying Medicaid eligibility categories as examples of variables that can affect payment to a provider in any given period, the commenter questioned how, if incentive payments are based on end of year results and a percent sharing arrangement, a plan can know in advance if its providers will be at substantial risk.

Response: The maximum potential (as opposed to the actual) amount of withhold or bonus lost or awarded, respectively, determines whether a prepaid plan has placed a physician or physician group at substantial financial risk. If the plan places the practitioner at risk of losing more than 25 percent of his/her potential earnings, then the plan has placed the physician or physician group at substantial financial risk. The actual amount of withhold returned or not returned or bonus awarded or not awarded at the end of the assessment and disbursement period is not the determinant of substantial financial risk because money returned or awarded after care has already been delivered does not serve as an inducement. It is the promise of potential earnings (or the prospect of loss thereof) that serves as the inducement. Therefore, a prepaid plan does not need to know its end of year results in order to determine if it is placing its physicians and physician groups at substantial financial risk.

The minimum and maximum potential earnings, including the portions that are the result of incentive arrangements, should be known both to the plan and the physician or physician group under contract at the beginning of each risk assessment period. As a result, the regulation states that capitation arrangements in which the maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract constitute substantial financial risk.

Comment: One commenter stated that the rules are not very clear on defining a number of terms. As examples, the commenter asked the following questions:

- What does ''risk based on the levels or costs of referral services'' mean? Are the ''levels or costs'' applied to an individual capitated physician, physician group, or organization?
- What if the amount allocated to cover referral services is placed in a pool account for debiting patient costs and the amount from these services that might be paid as part of the incentive plan depends on the performance of the larger pool formed by a number of separate physicians and these physicians pool accounts?
- What if the ''capitation'' amount actually paid to a physician is meant to cover that physician's services and involves a 15 percent withhold?

Response: In response to the first question, the term ''referral services'' is defined in § 417.479(c) of the regulation. In addition, the word ''level'' has been changed to ''use'' for greater clarity.

In response to the first two questions, it is important to note that, in general, the regulation does not attempt to address how a prepaid plan chooses to design or implement its physician incentive plan. Rather, it attempts to regulate one of the final products, that is, the maximum financial risk to which a physician or physician group may be exposed for referral services. Plans may use a variety of incentive arrangements, including those identified by the commenter, in structuring their physician incentive plans. However, prepaid plans should be able to determine or establish, as part of their physician incentive plans, the maximum financial risk, when the risk is based on referral services, to which a physician or physician group may be exposed under the physician incentive plan. If a plan is unable, based on the structure and operation of its incentive plan, to determine the amount of the financial risk, then, according to § 417.479(f)(5)(ii), we would determine that the plan places physicians or physician groups at ''substantial financial risk'' and the plan would be required to implement stop-loss protection and conduct enrollee surveys. As indicated previously, we have decided to allow a plan to pool patients for different physician groups.

In response to the third question, the threshold for withhold arrangements is established in § 417.479(f) of this final rule. This section would apply only if the withhold is based in part or in its entirety on utilization or costs of referral services. If the return of the withhold is based solely on the physicians' own services, then, under § 417.479(f) of this final rule, these regulations would not apply.

Comment: One commenter stated that the proposed rule does not allow for the differences found in HIOs, specifically that they have mandatory enrollment in a specific area, may be at-risk for retroactively eligible individuals, and may be responsible for an ongoing category of special members who are not capitated to a particular physician. The commenter noted that the cost of services to this population affects the incentive plan (withhold payment and surplus sharing). The commenter also specifically noted that the HIOs in California which are Medicaid only were not specifically addressed in the proposed rule.

Response: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) generally subjected HIOs which were operational on or after January 1, 1986, to the same requirements as other organizations contracting with Medicaid agencies on a risk basis to provide or arrange for comprehensive services (HMOs). (Certain exceptions to this are allowed under the law.) Therefore, this proposed rule did not reiterate the fact that HIOs subject to the same requirements for HMOs are also subject to these requirements for physician financial incentive plans.

Further, OBRA '90 did not contain any provisions calling for the differential treatment of HIOs. Because of this, and the historical interest of the Congress in subjecting HIOs to the same standards as HMOs, we did not identify the need for differential treatment of HIOs in this regulation.

Comment: One commenter stated that the proposal on enrollee surveys excludes only those Medicaid enrollees who have disenrolled because of a loss of Medicaid eligibility. The commenter recommended we consider excluding those who disenroll from a prepaid plan because they moved from the plan's service area.

Response: As stated earlier, we agree that individuals who have disenrolled from the plan because they have moved outside of a plan's service area may be omitted from the plan's enrollee survey. The regulations text at § 417.479(g)(1) has been appropriately modified.

Comment: One commenter stated that, in addition to an enrollee survey, monitoring of the complaint/appeals process for the plan and the State's Medicaid fair hearing process would be another check on the quality of care and the denial of needed service.

Response: OBRA '90 does not address monitoring the complaint/appeals process for the plan and the State Medicaid fair hearing process in the State. However, monitoring the plan's complaint hearing process is the responsibility of the State Medicaid agency as part of its routine monitoring of its managed care contractors. In addition, HCFA routinely monitors a State's fair hearing process as part of the monitoring of each State's Medicaid plan. As a result, these areas are not included in these regulations.

Miscellaneous

Comment: One commenter recommended that we clarify the definition of ''medically necessary services'' as it applies in the prohibition on specific payment as an inducement to reduce or limit medically necessary services to a specific enrollee.

Response: We are preparing a final rule entitled ''Medicare Program: Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology.'' This rule will specify the definition of medically necessary services that will apply for purposes of the prohibition in question. (The rule will be in response to a notice we published in the Federal Register on April 29, 1987, at 52 FR 15559, that requested comments on procedures for medical services coverage decisions.)

Comment: One commenter stated that managed care plans should be specifically directed to provide for effective physician participation in the development of incentive plans and other elements of the organization's management.

Response: Physicians have the opportunity for input before they sign a contract with the organization. Physicians have the opportunity to negotiate all aspects of the contract. Since the contract specifies the nature of the incentive arrangements, the physicians have an opportunity for input through the negotiation process.

Comment: Some commenters recommended that patients be allowed direct access to specialists and/or that the prepaid plan explain, as part of the enrollment contract, that patients have limited access to specialists.

Response: HCFA supports the practice of HMOs using gatekeepers to limit patients from direct access to specialists. HMOs have found this to be an effective way to limit inappropriate utilization and expenditures. HMOs are required to explain this practice as part of the enrollment.

Comment: Several commenters suggested that there be an appeals process for physicians and patients.

Response: HCFA requires prepaid plans to provide an appeals process for enrollees. For physicians, there are several arrangements. All physicians have an opportunity to informally appeal decisions through the plan's medical review board and through the contract negotiation process. In addition, for Medicare risk contractors, unaffiliated physicians can represent a Medicare beneficiary in an appeal to the prepaid plan. In the case of a cost contract, the physician can represent a beneficiary in an appeal to whichever entity (prepaid plan, carrier, or intermediary) made the determination.

VII. Provisions of the Final Regulations

The proposed rule is adopted, with the changes listed below. Many of these changes are discussed in section V. of this preamble. If the change is not discussed in section V, the reason for the change is given below.

Changes to Proposed § 417.479

- We add a new paragraph (a); and designated proposed paragraph (a) as paragraph (b). New paragraph § 417.479(a) is added to reflect the requirement at section 1876(i)(8) of the Act that each contract between HCFA and an eligible organization contain provisions related to physician incentive plans. This new paragraph also makes it clear why this provision is placed in part 417, subpart L (Medicare Contract Requirements).
- We designate paragraph (b) as paragraph (c) and revise the definition of ''physician group'' so that it no longer inadvertently excludes physician groups that pay their physicians using a methodology under which the amount of payment is affected by referrals. We also clarify, in that definition, that an IPA is a physician group only if it is composed of individual physicians and has no subcontracts with physician groups.
- We designate proposed (c) as paragraph (d). We also revise this paragraph to remove language that, because of the addition of new paragraph (a), became redundant. Also, in response to a comment, we change ''to reduce or limit medically necessary services'' to ''to reduce or limit medically necessary services covered under the organization's contract''.
- Proposed paragraph (d) is designated as paragraph (e). Additionally, the difference in risk threshold based on the frequency of distribution or assessment of incentive payments is removed.
- Proposed paragraph (e) is designated as paragraph (f) and is revised to—

  + Provide a definition of ''potential payments'' and clarify that it is these payments that are used in the calculation of the level of risk.

  + Provide that substantial financial risk does not exist if, without pooling, the patient panel size is 25,000 patients or more.
- Proposed paragraph (g) is revised to—

  + Specify that individuals who disenroll from a prepaid plan because they relocate outside the plan's service area need not be included in the enrollee survey.

  + Provide that, in the case of aggregate stop-loss protection, the protection must cover 90 percent of the costs of referral services (beyond allocated amounts) that exceed 25 percent of potential payments.

  + Establish, in the case of stop-loss protection based on a per-patient limit, requirements as to the amount of stop-loss protection that are based on patient panel size.
- Proposed paragraph (h) is revised to-

  + Specify the items of information that must be disclosed to HCFA and to Medicare beneficiaries and, in accordance with § 434.70(a)(3) and (a)(4), to the State Medicaid agency or recipient, respectively.

  + Include methods that may be used in the calculation of panel size.

  + Specify those types of changes in the incentive plan that must be reported to HCFA and require that this information be submitted to HCFA 45 days before implementing the changes.

  + Remove proposed paragraph (h)(5). The proposed paragraph addressed when organizations with existing contracts must comply with the disclosure requirements. Because that provision would become quickly irrelevant, we have decided to address this issue in the **DATES** section of this final rule, rather than by incorporation into the CFR.

  + Require that organizations provide Medicare beneficiaries a summary of the disclosure information, if they request it.
- We designate proposed § 417.479(i) as § 417.479(j). We add a new § 417.479(i) to specify requirements related to subcontracting arrangements.

Changes to Proposed § 434.70

- Proposed paragraph (a)(2) is revised to—

  + Require compliance with §§ 417.479(d) through (g) and the requirements related to subcontracts set forth at § 417.479(i) if the subcontract is for the provision of services to Medicaid recipients.

  + Specify the items of information that must be disclosed to the State agency.

  + Require that the organization provide certain information concerning the physician incentive plan to any Medicaid recipient who requests it.

  + Remove proposed paragraph (a)(2)(iv). The proposed paragraph addressed when organizations with existing contracts (agreements) must comply with the disclosure requirements. Because that provision

would quickly become irrelevant, we have decided to address this issue in the **DATES** section of this final rule, rather than by incorporation into the CFR.

Crosswalk Between Proposed Rule and This Final Rule

Note that those provisions related to civil money penalties and intermediate sanctions that were included in the July 22, 1991, proposed rule and that were merely republished in the December 1992 proposed rule on physician incentive plans are not included in this final rule or in the following crosswalk.

Proposed	This rule
	§ 417.479(a)—new contents.
§ 417.479(a)	§ 417.479(b).
§ 417.479(b)	§ 417.479(c).
§ 417.479(c)	§ 417.479(d).
§ 417.479(d)	§ 417.479(e).
§ 417.479(e)	§ 417.479(f).
§ 417.479(f)	Content deleted.
§ 417.479(g)	§ 417.479(g).
§ 417.479(h)	§ 417.479(h).
	§ 417.479(i)—new contents.
§ 417.479(i)	§ 417.479(j).
§ 417.495(a)(7)	§ 417.500(a)(9).
§ 434.44(a)	§ 434.44(a).
	§ 434.70(a)(3) and (a)(4)—added.
§ 1003.100(b)(vi)	§ 1003.100(b)(vi).
§ 1003.101 (definitions).	§ 1003.101—only definition of ''physician incentive plan'' added by this rule.
§ 1003.103(e)(iv) through (e)(vi).	§ 1003.103(e)(iv) through (e)(vi).
§ 1003.106(a)(4)(vii)	§ 1003.106(a)(4)(vii).

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

The information collection requirements in § 417.479(g)(1) (and § 434.70(a)(3) for Medicaid) concern organizations that operate incentive plans that place physicians or physician groups at substantial financial risk and require them to conduct annual enrollee surveys that include either all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (other than because of loss of eligibility in Medicaid or relocation outside the organization's service area) in the past 12 months, or a sample of these same enrollees and disenrollees. These surveys must be designed, implemented, and analyzed in accordance with commonly accepted principles of survey design and statistical analysis. They must address enrollees/disenrollees satisfaction with the quality of services furnished and their degree of access to the services. We estimate that 200 organizations will conduct the surveys each year. We estimate that a total of approximately 90,000 enrollees will respond to the survey.

The information collection requirements in §§ 417.479(h)(1) and (h)(2), 417.479(i), and 434.70(a)(3) specify that disclosure concerning physician incentive plans must be made to HCFA or to the State, as appropriate. The requirements apply to physician incentive plans between eligible organizations and individual physicians or physician groups with whom they contract to furnish medical services to enrollees. The requirements apply only to physician incentive plans that base compensation on the use or cost of services furnished to Medicare beneficiaries or Medicaid recipients.

The disclosure must contain the following information:

(1) Whether services not furnished by the physician or physician group are covered by the incentive plan. (If not, disclosure of other aspects of the plan need not be made.)

(2) The type of incentive arrangement.

(3) If the incentive plan involves a withhold or bonus, the percent of the withhold or bonus.

(4) The amount and type of stop-loss protection.

(5) The patient panel size and, if patients are pooled, the pooling method used.

(6) In the case of capitated physicians or physician groups, capitation payments paid to primary care physicians for the most recent year broken down by percent for primary care services, referral services to specialists, and hospital and other types of provider services.

(7) In the case of prepaid plans that must conduct beneficiary/recipient surveys, the survey results.

An organization must provide the information upon application for a contract; upon application for a service area expansion; at least 45 days before implementing certain changes in its incentive plan, and within 30 days of a request by HCFA or the State. The respondents that will provide the information are HMOs, CMPs, HIOs, and certain subcontractor entities that contract with the Medicare program or States and have physician incentive plans. We estimate that approximately 600 organizations will submit the information.

Sections 417.479(h)(3) and 434.70(a)(4) require that the following information be provided to any Medicare beneficiary or Medicaid recipient, respectively, who requests it: Whether the plan uses a physician incentive plan that affects the use of referral services; if so, the type of incentive arrangement; whether stop-loss protection is provided; and, if a survey is required, a summary of the survey results. The respondents who will provide this information will be HMOs, CMPs, HIOs, that contract with the Medicare program or States and have physician incentive plans. We estimate that approximately 300 organizations will provide this information to a total of approximately 1,500 Medicare beneficiaries and 1,500 Medicaid recipients.

The table below indicates the annual number of responses for each regulation section in this final rule containing information collection requirements, the average burden per response in minutes or hours, and the total annual burden hours.

CFR section	Annual No. of responses	Annual frequency	Average burden per response	Annual burden hours
417.479(g)(1)	90,000	1	10 minutes	15,000
417.479(h) (1) and (2) and 417.479(I)	600	1	1 hour	600

CFR section	Annual No. of responses	Annual frequency	Average burden per response	Annual burden hours
417.479(h)(3)	1,500	1	10 minutes	250
434.70(a)(4)	1,500	1	10 minutes	250

We have submitted a copy of this final rule with comment period to OMB for its review of the above information requirements. A document will be published in the Federal Register when OMB approval is obtained.

If you comment on these information collection and recordkeeping requirements, please mail your comments to the following address: Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

IX. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs, CMPs, and HIOs are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule with comment period will amend the regulations governing prepaid health care organizations with Medicare or Medicaid risk contracts. Sections 4204(a) and 4731 of OBRA 1990 repealed the prohibition of physician incentive plans in prepaid health care organizations and enacted requirements, effective January 1, 1992, for regulating these plans.

One of the requirements imposed was that each Medicare contract with a prepaid health care organization stipulate that, if a physician incentive plan places a physician or physician group at ''substantial financial risk'' for services not provided directly, the prepaid health plan organization must: (1) Provide the physician or physician group with adequate and appropriate stop-loss protection, and (2) conduct surveys of currently and previously enrolled members to assess the degree of access to services and the satisfaction with the quality of services.

We received one comment that dealt with the impact statement in the proposed rule published in the Federal Register on December 14, 1992 (57 FR 59034). The commenter believed that the proposed rule would have a substantial impact on prepaid health care organizations. The commenter stated that it would be required to make significant changes to limit physician group participation in incentive programs. The commenter also believed the proposed rule would limit its ability to control costs and also result in higher administrative expenses. We believe most plans already meet a majority of our requirements, as indicated by the survey data collected by GHAA and Mathematica discussed in the preamble. We strongly believe that if physicians are at substantial financial risk, organizations must provide stop-loss protection to ensure that essential health care services are received by Medicare beneficiaries and Medicaid enrollees.

All of the approximately 600 HMOs, CMPs, and HIOs could be affected by the revised incentive plan disclosure requirements. We believe, however, that few incentive plans will require changes to comply with the regulations. In addition, since we expect that most current incentive plans already comply with the regulations, we believe that we will rarely need to impose intermediate sanctions or civil money penalties on prepaid health plan organizations that fail to provide covered medically necessary services. Further, we expect few additional surveys of currently and previously enrolled members will be necessary to assess the degree of access to services and the satisfaction with the quality of services. Thus, we believe that additional costs will be incurred by only a small number of organizations.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. We will, however, publish a regulatory flexibility analysis and regulatory impact analysis if we receive comments and data that would enable us to do so.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs—Health, Health maintenance organization (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—Health, Health facilities, Health profession, Maternal and child health, Medicaid, Medicare, Penalties.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Chapter IV of title 42 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. Part 417 is amended as follows:

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. A new § 417.479 is added to read as follows:

§ 417.479 Requirements for physician incentive plans.

(a) The contract must specify that an organization may operate a physician incentive plan only if—

(1) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an individual enrollee; and

(2) The stop-loss protection, enrollee survey, and disclosure requirements of this section are met.

(b) *Applicability.* The requirements in this section apply to physician incentive plans between eligible organizations and individual physicians or physician groups with whom they contract to provide medical services to enrollees. These requirements apply only to physician incentive plans that base compensation (in whole or in part) on the use or cost of services furnished to Medicare beneficiaries or Medicaid recipients.

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

Bonus means a payment an organization makes to a physician or physician group beyond any salary, fee-for-service payments, capitation, or returned withhold.

Capitation means a set dollar payment per patient per unit of time (usually per month) that an organization pays a physician or physician group to cover a specified set of services and administrative costs without regard to the actual number of services provided. The services covered may include the physician's own services, referral services, or all medical services.

Payments means any amounts the organization pays physicians or physician groups for services they furnish directly, plus amounts paid for administration and amounts paid (in whole or in part) based on use and costs of referral services (such as withhold amounts, bonuses based on referral levels, and any other compensation to the physician or physician group to influence the use of referral services). Bonuses and other compensation that are not based on referral levels (such as bonuses based solely on quality of care furnished, patient satisfaction, and participation on committees) are not considered payments for purposes of this subpart.

Physician group means a partnership, association, corporation, individual practice association, or other group that distributes income from the practice among members. An individual practice association is a physician group only if it is composed of individual physicians and has no subcontracts with physician groups.

Physician incentive plan means any compensation arrangement between an organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services furnished to Medicare beneficiaries or Medicaid recipients enrolled in the organization.

Referral services means any specialty, inpatient, outpatient, or laboratory services that a physician or physician group orders or arranges, but does not furnish directly.

Risk threshold means the maximum risk, if the risk is based on referral services, to which a physician or physician group may be exposed under a physician incentive plan without being at substantial financial risk.

Withhold means a percentage of payments or set dollar amounts that an organization deducts from a physician's service fee, capitation, or salary payment, and that may or may not be returned to the physician, depending on specific predetermined factors.

(d) *Prohibited physician payments.* No specific payment of any kind may be made directly or indirectly under the incentive plan to a physician or physician group as an inducement to reduce or limit covered medically necessary services covered under the organization's contract furnished to an individual enrollee. Indirect payments include offerings of monetary value (such as stock options or waivers of debt) measured in the present or future.

(e) *General rule: Determination of substantial financial risk.* Substantial financial risk occurs when the incentive arrangements place the physician or physician group at risk for amounts beyond the risk threshold, if the risk is based on the use or costs of referral services. Amounts at risk based solely on factors other than a physician's or physician group's referral levels do not contribute to the determination of substantial financial risk. The risk threshold is 25 percent.

(f) *Arrangements that cause substantial financial risk.* For purposes of this paragraph, *potential payments* means the maximum anticipated total payments (based on the most recent year's utilization and experience and any current or anticipated factors that may affect payment amounts) that could be received if use or costs of referral services were low enough. The following physician incentive plans cause substantial financial risk if risk is based (in whole or in part) on use or costs of referral services and the patient panel size is not greater than 25,000 patients or is greater than 25,000 patients only as a result of pooling patients using a method set forth in paragraph (h)(1)(v) of this section:

(1) Withholds greater than 25 percent of potential payments.

(2) Withholds less than 25 percent of potential payments if the physician or physician group is potentially liable for amounts exceeding 25 percent of potential payments.

(3) Bonuses that are greater than 33 percent of potential payments minus the bonus.

(4) Withholds plus bonuses if the withholds plus bonuses equal more than 25 percent of potential payments. The threshold bonus percentage for a particular withhold percentage may be calculated using the formula—

Withhold %=−0.75 (Bonus %)+25%.

(5) Capitation arrangements, if—

(i) The difference between the maximum possible payments and minimum possible payments is more than 25 percent of the maximum possible payments; or

(ii) The maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract.

(6) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 25 percent of potential payments.

(g) *Requirements for physician incentive plans that place physicians at substantial financial risk.* Organizations that operate incentive plans that place physicians or physician groups at substantial financial risk must do the following:

(1) Conduct enrollee surveys. These surveys must—

(i) Include either all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (other than because of loss of eligibility in Medicaid or relocation outside the organization's service area) in the past 12 months, or a sample of these same enrollees and disenrollees;

(ii) Be designed, implemented, and analyzed in accordance with commonly accepted principles of survey design and statistical analysis;

(iii) Address enrollees/disenrollees satisfaction with the quality of the services provided and their degree of access to the services; and

(iv) Be conducted no later than 1 year after the effective date of the incentive plan, and at least every 2 years thereafter.

(2) Ensure that all physicians and physician groups at substantial financial risk have either aggregate or per-patient stop-loss protection in accordance with the following requirements:

(i) If aggregate stop-loss protection is provided, it must cover 90 percent of the costs of referral services (beyond allocated amounts) that exceed 25 percent of potential payments.

(ii) If the stop-loss protection provided is based on a per-patient limit, the stop-loss limit per patient must be determined based on the size of the

patient panel. In determining patient panel size, the patients may be pooled using one of the methods set forth in paragraph (h)(1)(v) of this section if pooling is consistent with the relevant contract between the physician or physician group and the organization. Stop-loss protection must cover 90 percent of the costs of referral services that exceed the per patient limit. The per-patient stop-loss limit is as follows:

(A) Less than 1,000 patients—$10,000.

(B) 1,000 to 10,000 patients—$30,000.

(C) 10,000 to 25,001 patients—$200,000.

(D) Greater than 25,000 patients—

(*1*) Without pooling patients—none; and

(*2*) As a result of pooling patients—$200,000.

(iii) The organization may provide the stop-loss protection directly or purchase the stop-loss protection, or the physician or physician group may purchase the stop-loss protection. If the physician or physician group purchases the stop-loss protection, the organization must pay the portion of the premium that covers its enrollees or reduce the level at which the stop-loss protection applies by the cost of the stop-loss.

(h) *Disclosure requirements for organizations with physician incentive plans*—(1) *Disclosure to HCFA.* Each organization must provide to HCFA information concerning its physician incentive plans as required or requested. The disclosure must contain the following information in detail sufficient to enable HCFA to determine whether the incentive plan complies with the requirements specified in this section:

(i) Whether services not furnished by the physician or physician group are covered by the incentive plan. If only the services furnished by the physician or physician group are covered by the incentive plan, disclosure of other aspects of the plan need not be made.

(ii) The type of incentive arrangement; for example, withhold, bonus, capitation.

(iii) If the incentive plan involves a withhold or bonus, the percent of the withhold or bonus.

(iv) The amount and type of stop-loss protection.

(v) The panel size and, if patients are pooled according to one of the following permitted methods, the method used:

(A) Including commercial, Medicare, and/or Medicaid patients in the calculation of the panel size.

(B) Pooling together, by the organization, of several physician groups into a single panel.

(vi) In the case of capitated physicians or physician groups, capitation payments paid to primary care physicians for the most recent year broken down by percent for primary care services, referral services to specialists, and hospital and other types of provider (for example, nursing home and home health agency) services.

(vii) In the case of those prepaid plans that are required to conduct beneficiary surveys, the survey results.

(2) *When disclosure must be made to HCFA.* (i) An organization must provide the information required by paragraph (h)(1) of this section to HCFA—

(A) Upon application for a contract;

(B) Upon application for a service area expansion; and

(C) Within 30 days of a request by HCFA.

(ii) An organization must notify HCFA at least 45 days before implementing any of the following changes in its incentive plan:

(A) A change as to the type of incentive plan.

(B) A change in the amounts of risk or stop-loss protection.

(C) Expansion of the risk formula to cover services not furnished by the physician group that the formula had not included previously.

(3) *Disclosure to Medicare beneficiaries.* An organization must provide the following information to any Medicare beneficiary who requests it:

(i) Whether the prepaid plan uses a physician incentive plan that affects the use of referral services.

(ii) The type of incentive arrangement.

(iii) Whether stop-loss protection is provided.

(iv) If the prepaid plan was required to conduct a survey, a summary of the survey results.

(i) *Requirements related to subcontracting arrangements*—(1) *Physician groups.* An organization that contracts with a physician group that places the individual physician members at substantial financial risk for services they do not furnish must do the following:

(i) Disclose to HCFA any incentive plan between the physician group and its individual physicians that bases compensation to the physician on the use or cost of services furnished to Medicare beneficiaries or Medicaid recipients. The disclosure must include the information specified in paragraphs (h)(1)(i) through (h)(1)(vii) of this section and be made at the times specified in paragraph (h)(2) of this section.

(ii) Provide adequate stop-loss protection to the individual physicians.

(iii) Conduct enrollee surveys as specified in paragraph (g)(1) of this section.

(2) *Intermediate entities.* An organization that contracts with an entity (other than a physician group) for the provision of services to Medicare beneficiaries must do the following:

(i) Disclose to HCFA any incentive plan between the entity and a physician or physician group that bases compensation to the physician or physician group on the use or cost of services furnished to Medicare beneficiaries or Medicaid recipients. The disclosure must include the information required to be disclosed under paragraphs (h)(1)(i) through (h)(1)(vii) of this section and be made at the times specified in paragraph (h)(2) of this section.

(ii) If the physician incentive plan puts a physician or physician group at substantial financial risk for the cost of services the physician or physician group does not furnish—

(A) Meet the stop-loss protection requirements of this subpart; and

(B) Conduct enrollee surveys as specified in paragraph (g)(1) of this section.

(3) For purposes of paragraph (i)(2) of this section, an entity includes, but is not limited to, an individual practice association that contracts with one or more physician groups and a physician hospital organization.

(j) *Sanctions against the organization.* HCFA may apply intermediate sanctions, or the Office of Inspector General may apply civil money penalties described at § 417.500, if HCFA determines that an eligible organization fails to comply with the requirements of this section.

3. In § 417.500, the introductory text of paragraph (a) is republished, and a new paragraph (a)(9) is added to read as follows:

§ 417.500 Sanctions against HMOs and CMPs.

(a) *Basis for imposition of sanctions.* HCFA may impose the intermediate sanctions specified in paragraph (d) of this section, as an alternative to termination, if HCFA determines that an HMO or CMP does one or more of the following:

* * * * *

(9) Fails to comply with the requirements of §§ 417.479(d) through (i) relating to physician incentive plans.

* * * * *

PART 434—CONTRACTS

B. Part 434 is amended as follows:

1. The authority citation for part 434 continues to read as follows:

Authority: Secs. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 434.44, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows:

§ 434.44 Special rules for certain health insuring organizations.

(a) A health insuring organization that first enrolls patients on or after January 1, 1986, and arranges with other providers (through subcontract, or through other arrangements) for the delivery of services (as described in §§ 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in § 434.20(d) concerning services that may be covered and § 434.20(e) which sets forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in subpart E of this part; and

* * * * *

3. In § 434.67, the introductory text of paragraph (a) is republished, and a new paragraph (a)(5) is added to read as follows:

§ 434.67 Sanctions against HMOs with risk comprehensive contracts.

(a) Basis for imposition of sanctions. The agency may recommend that the intermediate sanction specified in paragraph (e) of this section be imposed if the agency determines that an HMO with a risk comprehensive contract does one or more of the following:

* * * * *

(5) Fails to comply with the requirements of §§ 417.479(d) through (g) of this chapter relating to physician incentive plans, or fails to submit to the State Medicaid agency its physician incentive plans as required or requested in § 434.70.

* * * * *

4. Section 434.70 is revised to read as follows:

§ 434.70 Condition for FFP.

(a) FFP is available in expenditures for payments to contractors only for the periods that—

(1) The contract—

(i) Meets the requirements of this part;

(ii) Meets the appropriate requirements of 45 CFR part 74; and

(iii) Is in effect;

(2) The HMO or HIO complies with the physician incentive plan requirements specified in §§ 417.479(d) through (g) of this chapter and the requirements related to subcontracts set forth at § 417.479(i) of this chapter if the subcontract is for the provision of services to Medicaid recipients;

(3) The HMO or HIO (or, in accordance with § 417.479(i) of this chapter, the subcontracting entity) has supplied the information on its physician incentive plan listed in §§ 417.479(h)(1) of this chapter to the State Medicaid agency. The information must contain detail sufficient to enable the State to determine whether the plan complies with the requirements of §§ 417.479(d) through (g) of this chapter. The HMO or HIO must supply this information to the State Medicaid agencies as follows:

(i) Upon application for a contract.

(ii) At least 45 days before implementing any of the following changes in its incentive plan:

(A) A change as to the type of incentive plan.

(B) A change in the amounts of risk or stop-loss protection.

(C) Expansion of the risk formula to cover services not furnished by the physician group that the formula had not included previously.

(iii) Within 30 days of a request by the State or HCFA; and

(4) The HMO or HIO has provided the information on physician incentive plans listed in § 417.479(h)(3) of this chapter to any Medicaid recipient who requests it.

(b) HCFA may withhold FFP for any period during which—

(1) The State fails to meet the State plan requirements of this part;

(2) Either party to a contract substantially fails to carry out the terms of the contract; or

(3) The State fails to obtain from each HMO or HIO contractor proof that it meets the requirements for physician incentive plans specified in §§ 417.479(d) through (g) and (i) of this chapter.

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

II. 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2).

2. In § 1003.100, paragraph (b)(1) introductory text is revised and paragraph (b)(1)(vii) is revised to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(vii) Substantially fail to provide an enrollee with required medically necessary items and services, or who engage in certain marketing, enrollment, reporting, claims payment, employment or contracting abuses, or that do not meet the requirements for physician incentive plans for Medicare specified in §§ 417.479 (d) through (i) of this title;

* * * * *

3. Section 1003.101 is amended by adding, in alphabetical order, a definition for the term ''Physician incentive plan'' to read as follows:

§ 1003.101 Definitions.

* * * * *

Physician incentive plan means any compensation arrangement between a contracting organization and a physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to enrollees in the organization.

* * * * *

4. In § 1003.103, paragraph (f)(1) introductory text is republished, paragraphs (f)(1)(iv) and (f)(1)(v) are revised, and a new paragraph (f)(1)(vi) is added, to read as follows:

§ 1003.103 Amount of penalty.

* * * * *

(f)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization has—

* * * * *

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or section 1903(m) of the Act;

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of the Act, regarding prompt payment of claims; or

(vi) Failed to comply with the requirements of §§ 417.479 (d) through (i) of this title for Medicare, and §§ 417.479 (d) through (g) and (i) of this title for Medicaid, regarding certain prohibited incentive payments to physicians.

* * * * *

5. In § 1003.106, paragraph (a)(5) introductory text is republished; paragraphs (a)(5)(vii) and (a)(5)(viii) are redesignated as paragraphs (a)(5)(viii) and (a)(5)(ix), respectively; and a new paragraph (a)(5)(vii) is added to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(5) In determining the appropriate amount of any penalty in accordance with § 1003.103(f), the OIG will consider, as appropriate—

* * * * *

(vii) The extent to which the failure to provide medically necessary services could be attributed to a prohibited inducement to reduce or limit services under a physician incentive plan and the harm to the enrollee which resulted or could have resulted from such failure. It would be considered an aggravating factor if the contracting organization knowingly or routinely engaged in any prohibited practice which acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.733—Medicare—Hospital Insurance Program; No. 93.774—Medicare Supplementary Medical Insurance Program; No. 93.778—Medical Assistance Program)

Dated: April 20, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 19, 1995.

June G. Brown,

Inspector General, Department of Health and Human Services.

Dated: November 2, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 96–7228 Filed 3–25–96; 8:45 am]

BILLING CODE 4120–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

43 CFR Part 10001

Operating Procedures

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Final rule.

SUMMARY: This part establishes the final rule that describes the operating procedures of the agency established by the Central Utah Project Completion Act. The rule meets the requirement of the Administrative Procedure Act that directs each agency to publish its organizational structure and functions in the Federal Register for the guidance of the public.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Michael C. Weland, Executive Director, Utah Reclamation Mitigation and Conservation Commission, 111 East Broadway, Suite 310, Salt Lake City, Utah, 84111. Telephone (801) 524–3146.

SUPPLEMENTARY INFORMATION: The final rule was adopted by the Utah Reclamation Mitigation and Conservation Commission in public session February 5, 1996.

List of Subjects in 43 CFR Part 10001

Administrative practice and procedures, Organization and functions (Government Agencies).

Chapter III of title 43 of the Code of Federal Regulations is amended to add new part as follows:

PART 10001—OPERATING PROCEDURES

Sec.
10001.1 Commissioners.
10001.2 Meetings.

Authority: Sec. 301, Pub. L. 102–575, 106 Stat 4625.

§10001.1 Commissioners.

(a) Three members of the Commission shall constitute a quorum.

(b) The affirmative vote of at least three members of the Commission in attendance at a meeting at which a quorum is present, on any matter within their duties and responsibilities, shall constitute the Commission's action, except as otherwise provided herein.

(1) The Commission may not take action on a matter not appearing on the published agenda for a particular meeting except upon the unanimous vote of the members present.

(2) Any proposed Commission action must be moved by a Commission member and seconded by another member before a vote may be taken by the Commission. Other questions of procedure will be decided by reference to generally accepted principles of parliamentary procedure, as determined by the Chairman or the Chairman's designee.

(3) A member who is present at a meeting of the Commission at which action on any matter is taken shall be presumed to have assented to the action taken unless that member's abstention or dissent shall have been entered into the minutes of the meeting or unless that member shall file a written dissent to such action with the Chairman before the adjournment of the meeting. A written dissent shall not apply to a member who voted in favor of such action.

(4) In a case where a member is recused due to a conflict in a particular matter, the member shall not be present during, nor take any part in, the proceedings on that matter and shall not be counted as having voted.

(5) No member of the Commission may appoint another individual, including another member, by proxy or otherwise, to assume his or her responsibilities or vote on his or her behalf as a member of the Commission.

(c) There shall be one office of Chairman of the Commission to be held by a member of the Commission.

(1) The Chairman shall be elected by an affirmative vote by at least three members of the Commission and shall hold office for one year, commencing immediately upon election, or until resignation from the office or the Commission.

(2) The Chairman shall be the presiding officer of the Commission and shall perform the following duties and responsibilities:

(i) Preside at all meetings of the Commission;

(ii) Vote on all matters requiring Commission action;

(iii) Execute all contracts, agreements, resolutions, and other documents approved and authorized by the Commission, except as otherwise delegated by the Commission;

(iv) Preside at ceremonial activities sponsored by the Commission and represent the Commission at other ceremonial activities upon invitation;

(v) Appoint any other member of the Commission to serve as Acting Chairman in the absence of the Chairman and Vice-Chairman; and

(vi) Serve as spokesperson for the Commission, unless otherwise directed by the Commission. When the Chairman or any other member of the Commission speaks as an individual member of the Commission, the Chairman or member shall state when he or she is representing his or her own views and not the consensus of the Commission as a whole.

(3) A member may not serve as Chairman for more than four consecutive full one-year terms.

(4) Whenever a vacancy occurs in the office of Chairman, the members shall at their next meeting elect a successor to fill the vacancy for the unexpired term.

(d) The Commission may, upon an affirmative vote by at least three members, elect one of its members to serve as Vice-Chairman.

(1) The Vice-Chairman, whenever such office may from time to time be established, shall perform all of the duties of the Chairman of the Commission when the Chairman is unable for any reason to act or when for any reason there is a vacancy in the office of Chairman.

(2) The term of office for the Vice-Chairman shall be one year, commencing immediately upon election unless otherwise established by the Commission.

(e) The Chairman or Vice-Chairman may be removed from office by an affirmative vote of at least four members of the Commission whenever in its judgment the best interests of the Commission would be served.

(f) Except as provided in paragraph (f)(1), of this section members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum of the annual rate of basic pay in effect for grade GS–15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(1) Members of the Commission who are full-time officers or employees of the United States or the State of Utah shall receive no additional pay by reason of their service on the Commission.

(2) Members of the Commission who are eligible for compensation under this paragraph shall be paid for the performance of the following activities:

(i) Preparation for and attendance at regularly scheduled meetings of the Commission or Commission meetings called pursuant to § 10001.2(a);

(ii) Preparation for and attendance at Commission inspections of mitigation and conservation projects;

(iii) Preparation for and attendance at ceremonial activities sponsored by the Commission; and

(iv) Upon the prior or subsequent approval of the Commission, preparation for and attendance at other meetings, or the performance of any activities assigned by the Commission.

(g) All members of the Commission, as special or intermittent Federal employees, shall be entitled to advances or reimbursement of expenses incurred in the performance of the activities described in paragraph (f) of this section in accordance with the applicable Federal regulations.

§ 10001.2 Meetings.

(a) The Commission shall meet at least quarterly each year and may meet at the call of the Chairman or upon the request of a majority of its members.

(1) Commission members may participate in a Commission meeting through the use of conference telephone or similar communications equipment with the consent of the Chairman, provided that all members so participating, members at the meeting, and attending members of the public, can hear each other clearly at all times.

(2) All meetings of the Commission shall be open and public, and all persons are permitted to attend except when the Commission meets in executive or work session.

(i) Site visits by a quorum of the Commission are not considered to be meetings of the Commission; however, whenever feasible, interested members of the press will be invited to accompany the Commission on site visits.

(ii) Paragraph (a)(2) of this section shall not be interpreted so as to prohibit the removal of any person who willfully disrupts a meeting.

(3) The Commission may meet in executive session at any time and for any purpose authorized by law.

(i) It is the intention of the Commission that its meetings should generally be open and public, and that executive sessions should be held only when permitted by law or when the reasons for the executive session clearly exceed the merits of public disclosure.

(ii) A unanimous vote of the members present is required to move into executive session.

(iii) The Commission shall not authorize or approve any mitigation or conservation plan, amendment, or project while in executive session, and shall report a summary of all non-exempt information from such sessions at the next open meeting.

(iv) In the course of an executive session, any member may request that the matter under discussion be moved into an open meeting. Upon receiving such a request, the Chairman shall poll the members present in the executive session. If a majority agree to move the matter into an open meeting, the Chairman will close the discussion of the matter and schedule it for consideration at the next open meeting of the Commission.

(b) The agenda for each Commission meeting shall be established by the Chairman upon recommendation from any member of the Commission or the Executive Director and shall briefly set out all items of business expected to come before the Commission at the meeting for action, consideration, or information, and identify items upon which the Commission will accept public comment.

(1) The agenda shall specify the time and location of the meeting.

(2) At least seven calendar days prior to a Commission meeting, the Executive Director shall publish the agenda for the upcoming meeting by providing copies to all members of the Commission, to major news media, and to all individuals, agencies, and organizations who have requested in writing to be given notice of Commission meetings.

(3) The deadline for submission to the Executive Director of items for Commission meetings shall be ten business days prior to the date of the meeting as previously set by the Commission.

(4) Any person appearing before the Commission to comment on an agenda item shall do so only when called by the Chairman. They shall state their name clearly for the record and may then address the Commission on the issue then under consideration, subject to reasonable time limits on the issue and individual speakers as established by the Chairman.

(5) The Executive Director shall make available for inspection by the public, at the commencement of and during a Commission meeting, copies of the meeting agenda and of any written material that is not exempt from public disclosure and that has been distributed in advance of the meeting to the Commission members for action, consideration, or information at the meeting. If non-exempt written material is distributed to the members during the meeting, copies thereof shall be made available for public inspection at the same time or as soon thereafter as practicable.

(6) Any person desiring to appear and present an item for Commission consideration shall file a written request to do so with the Executive Director. The request shall state the nature of the matter to be considered by the Commission. The Chairman shall then determine whether the matter should be placed on the agenda for a Commission meeting or should be referred to the Executive Director.

(c) The Executive Director shall record, or have recorded, by tape recording and stenographic notes, official minutes of all open portions of Commission meetings.

(1) The written minutes shall contain the following information:

(i) the date, time, and location of the meeting, together with the names of all members present and absent, the names of all staff present, and a copy of the registration list of others attending the meeting;

(ii) the substance of all matters proposed, considered, or decided, including actions to go into executive session and summaries of non-exempt information from executive sessions;

(iii) the names of all individuals who appeared before the Commission and the substance in brief of their comments;

(iv) all motions (including the identity of the moving and seconding members),

votes, and major decisions of the Commission; and

(v) any other information a member requests be entered in the minutes.

(2) The draft of the written minutes shall be prepared and forwarded to the members by the Executive Director in a reasonable time after the meeting. The members shall inform the Executive Director or his or her designee of any proposed additions or corrections prior to the final draft being sent to the members with the packet of materials for the next Commission meeting.

(3) The Commission shall approve the written minutes at its next regularly scheduled meeting. Upon such approval, the Chairman shall certify the approval of the minutes by signing the original document. One year after adoption of the minutes, the Executive Director shall cause the tape recording of the meeting to be erased and all stenographic notes to be destroyed, unless otherwise directed by the Commission.

(4) Within a reasonable time after approval of the minutes by the Commission, the Executive Director shall make the approved minutes available for public inspection.

(5) The Executive Director shall provide copies of the certified minutes to each member and maintain the original of the certified minutes in the agency files and archives.

Joan Degiorgio,

Acting Executive Director.

[FR Doc. 96–6755 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 960314074–6074–01; I.D. 030696C]

RIN: 0648–XX52

Summer Flounder Fishery; Emergency for the Scup Fishery

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

ACTION: Emergency interim rule.

SUMMARY: NMFS amends the regulations implementing the Summer Flounder Fishery Management Plan (Summer Flounder FMP) to establish management measures for the scup fishery. These measures are contained in an amendment to the Summer Flounder FMP that will be submitted for NMFS review shortly. Emergency implementation of these measures is necessary because of the overexploited status of the stock. This action establishes a minimum fish size for both the recreational and commercial fisheries, and implements a minimum codend mesh requirement for otter trawl vessels that possess 4,000 lb or more (1,814 kg or more) of scup harvested in or from the exclusive economic zone (EEZ).

EFFECTIVE DATE: This emergency interim rule is effective from March 22, 1996, through June 25, 1996.

ADDRESSES: Copies of documents supporting this action, including the environmental assessment, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (508)281–9221.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council (Council) began the development of a scup fishery management plan (scup FMP) in 1978. Although preliminary development work was done, a scup FMP was not completed.

In January 1990, the Council and the Atlantic States Marine Fisheries Commission (ASMFC) began the development of an amendment to the Summer Flounder FMP to manage scup. However, the development of an amendment to manage scup was delayed because of a series of other amendments to the Summer Flounder FMP. Work on a separate scup FMP was not resumed until 1993.

The Council and the ASMFC adopted a scup FMP for NMFS review in November 1995. The Council had accelerated its work on the scup FMP after the release in March 1995 of the Plenary Report of the 19th Stock Assessment Workshop (19th SAW). The 19th SAW report established that the scup spawning stock biomass was at a record low level, and warned that recruitment failure in a single year could collapse the fishery. The report urged immediate action to substantially reduce fishing mortality. To provide some protection to the stock immediately, the Council also voted in November 1995 to request emergency implementation on January 1, 1996, of some of the management measures contained in the proposed scup FMP. The efforts of the Council and NMFS to prepare and review the required documents associated with emergency action were delayed by the government shutdown from December 21, 1995, through January 7, 1996, and by additional shutdowns due to severe winter weather.

These delays have also affected the submission of the proposed scup FMP. In addition, subsequent to the adoption of the scup FMP by the Council, NMFS requested that the proposed scup FMP be incorporated into the Summer Flounder FMP, as an amendment, to reduce the number of separate FMPs and regulations. As a result, the Council shortly will submit the scup FMP for NMFS review as Amendment 8 to the Summer Flounder FMP.

The management unit for the fishery is scup (*Stenotomus chrysops*) in U.S. waters of the Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, N.C., northward to the U.S.-Canadian border.

Implementing regulations are authorized by the Magnuson Fishery Conservation and Management Act (Magnuson Act), and are found at 50 CFR part 625, subparts C and D. This action is consistent with the criteria contained in a ''Notice of policy guidelines for the use of emergency rules'' published at 50 CFR chapter VI (57 FR 375, January 6, 1992). The Council and NMFS agree that the biological status of the scup stock requires immediate action through this emergency interim rule for conservation and management measures to protect the stock while Amendment 8 undergoes Secretarial review. The measures contained in this action for minimum fish sizes and minimum mesh size are the same as those adopted by the Council for Amendment 8. However, issuance of this emergency rule in no way prejudges approval or disapproval of Amendment 8. Further, this emergency rule contains a gear restriction, the effective date of which will be delayed 15 days to provide adequate time for affected industry members to adjust.

Background

Abundance indices derived from NMFS trawl surveys and surveys conducted by the States of Rhode Island and Connecticut, and the Commonwealth of Massachusetts, indicate that the biomass of adult scup is at low levels. For example, the Northeast Fisheries Science Center's autumn offshore survey indices of scup (age 1+) abundance have declined dramatically in recent years. The 1993 index was the third lowest value observed in the time series and the 1994 index was the all-time lowest value since the survey began in 1967.

Reduced abundance is also evident in data collected from commercial otter trawl vessels. Standardized catch per unit effort (CPUE) of these vessels peaked in 1978 at greater than 2.5 metric tons (mt)/day. CPUE has since trended downward to about 1.0 mt/day in recent years. Based on the trawl survey and CPUE indices, the overall declining trend suggests that recent exploitation has reduced stock abundance substantially.

Additionally, the length frequency distribution of scup in commercial landings has shifted to smaller, younger fish, including young-of-year, indicating that the fishery is dependent primarily upon new year classes. Although scup may attain ages of 20 years, recent landings have been composed primarily of age 2 and 3 year old scup with a general absence of larger, older fish in the landed catch. This truncated age distribution also suggests a reduced population level.

All available information indicates that scup are overexploited and have been for several years. The scup advisory report issued from the 19th Stock Assessment Workshop Plenary Report in March 1995 stated that the current spawning stock biomass (SSB) is at a record low level and that recruitment has decreased in recent years. The report further warns that recruitment failure in a single year could collapse the fishery and that fishing mortality should be ''substantially reduced immediately.'' The current condition of the resource is such that immediate action is required to reduce fishing mortality on fully-recruited fish and allow for increases in SSB and yield. In the absence of a strong year class, continued exploitation at current levels will lead to further decline in the SSB.

In light of the overexploited condition of the stock, the Council requested emergency implementation of a 9–inch total length (TL) minimum fish size for the commercial fishery, and a 7–inch TL minimum fish size for the recreational fishery. These measures are included among those proposed for implementation in the first year of management if Amendment 8 is approved.

Discards of small fish are extremely high in this fishery and are particularly acute during years of good recruitment when small fish are abundant. NMFS has found that establishing a minimum fish size without an accompanying minimum mesh requirement would increase the discard of small fish. Therefore, this emergency action also establishes a 4–inch (10.2–cm) minimum codend mesh size for otter trawl vessels when those vessels possess 4,000 lb or more (1,814 kg or more) of scup harvested in or from the EEZ. The 4,000–lb (1,814–kg) threshold for the minimum mesh size requirement was selected through an iterative process between the Council and industry representatives. It is considered to represent the level at which the directed fishery is differentiated from the bycatch fishery. This level is substantiated by the fact that trips of 4,000 lb (1814 kg) or more accounted for 80 percent of all landings of scup in 1992 and 1993. The measures are designed to reduce discarding of small scup by otter trawl vessels, increase yields, and allow more scup to reach sexual maturity and spawn.

Analyses of these measures indicate that implementation on an emergency basis may impose a short-term cost on some harvesters, although most already use the required mesh. The benefits of implementing this action include a reduction of discards of small fish and an improved economic return to the industry due to resulting increased yields. The benefits outweigh the costs to the industry of complying with these measures.

Classification

The Assistant Administrator Fisheries, NOAA (AA) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The AA finds that failure to implement the actions in this emergency rule could result in collapse of the fishery.

The foregoing constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address a biological emergency constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. However, a 15-day delay in effectiveness of the gear restriction contained in § 625.54, and a prohibition related to that measure in § 625.39(a)(3), is necessary to allow the industry sufficient time to adjust to this new requirement.

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

The emergency rule is exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because this rule is not required to be issued with prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625–-SUMMER FLOUNDER AND SCUP FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Subpart C, consisting of §§ 625.31, 625.32, 625.33, and 625.39, and subpart D, consisting of §§ 625.53 and 625.54 are added to read as follows:

Subpart C—General Provisions, Scup
625.31 Purpose and scope.
625.32 Definitions.
625.33 Relation to other laws.
625.39 Prohibitions.
Subpart D—Management Measures, Scup
625.53 Minimum sizes.
625.54 Gear restrictions.

Subpart C—General Provisions, Scup

§ 625.31 Purpose and scope.

The regulations in this part govern the conservation and management of scup.

§ 625.32 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Charter or party boat means any vessel that carries passengers for hire to engage in fishing.

Commercial fishing means fishing that is intended to or results in the barter, trade or sale of fish.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Recreational fishing means fishing that is not intended to, nor does it result in, the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Scup means the species *Stenotomus chrysops*.

Total length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side.

§ 625.33 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Nothing in these regulations supersedes more restrictive state management measures.

§ 625.39 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel fishing commercially for scup, which are harvested in or from the EEZ, to do any of the following:

(1) Land or possess at sea any scup, or parts thereof, that fail to meet the minimum fish sizes specified in § 625.53(a);

(2) Sell any scup harvested in or from the EEZ that fail to meet the minimum fish size specified in § 625.53(a).

(3) Possess 4,000 or more lb (1,814.4 or more kg) of scup harvested in or from the EEZ unless the vessel meets the minimum mesh size requirement specified in § 625.54(a).

(4) Fish with or possess nets or netting in the EEZ that do not meet the minimum mesh requirement, or that are modified, obstructed, constricted, or constructed with mesh in which the bars entering or exiting the knots twist around each other, if subject to the minimum mesh requirement specified in § 625.54, unless the nets or netting are stowed in accordance with § 625.24(d).

(5) Engage in recreational fishing in the EEZ while simultaneously conducting commercial fishing operations.

(b) It is unlawful for the owner or operator of any recreational fishing vessel, including party or charter boats, to: (1) Possess scup harvested in or from the EEZ smaller than the minimum size limit for recreational fishermen established pursuant to § 625.53(b);

(2) [Reserved]

(c) It is unlawful for any person to do any of the following:

(1) Purchase any scup harvested in or from the EEZ that fail to meet the minimum fish size specified in § 625.53(a).

(2) Possess any scup harvested in or from the EEZ that fail to meet the minimum fish size specified in § 625.53(b).

(3) Sell any scup harvested in or from the EEZ that fail to meet the minimum fish sizes specified in § 625.53(a).

(4) Land any scup harvested in or from the EEZ in fillet form with the skin removed.

Subpart D—Management Measures, Scup

§ 625.53 Minimum sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) total length for all vessels engaged in commercial fishing.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that are engaged in recreational fishing.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets.

§ 625.54 Gear restrictions.

(a) *General.* Applicable April 8, 1996, otter trawl vessels that land or possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ must fish with nets that have a minimum mesh size of 4 inches (10.2 cm) applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

(b) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure described in § 625.24(c).

(c) *Net modification and mesh obstruction and constriction.* Vessels are prohibited from modifying, obstructing, and/or constricting their nets as described in § 625.24(d) and (e).

(d) *Stowage of nets.* Applicable APril 8, 1996, otter trawl vessels retaining 4,000 lb or more (1,814.4 or more kg) of scup harvested in or from the EEZ, and subject to the minimum mesh requirement specified in paragraph (a) of this section may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to the specifications specified in § 625.24(f) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

[FR Doc. 96–7386 Filed 3–22–96; 3:45 pm]

BILLING CODE 3510–22–F

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50 CFR Part 649

[Docket No. 960304058–6058–01; I.D. 020696A]

RIN 0648–XX50

American Lobster Fishery; Emergency Gear Conflict Regulations

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

ACTION: Emergency interim rule.

SUMMARY: NMFS, by emergency interim rule, amends the regulations implementing the American Lobster Fishery Management Plan (FMP). This emergency rule implements a prohibition on mobile gear vessels fishing in newly defined Restricted Gear Areas I and II; a prohibition on lobster pot vessels fishing in and lobster pots in newly defined Restricted Gear Area III; and a requirement that all mobile gear vessels in Restricted Gear Areas I and II and all lobster pot (fixed gear) vessels in Restricted Gear Area III stow their gear while transiting the restricted gear areas. The intended effect is to reduce gear losses caused by use of fixed and mobile gear simultaneously in the same area.

EFFECTIVE DATE: April 1, 1996 through June 25, 1996. Restricted Gear Areas I and II will be closed to mobile gear for the duration of this emergency action. Restricted Gear Area III will be closed April 1, 1996 through April 30, 1996, to fishing by fixed gear vessels.

ADDRESSES: Copies of the Environmental Assessment supporting this action may be obtained from Douglas Marshall, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

American lobster pot gear vessels began losing fixed gear in the offshore waters of Southern New England as a result of increased trawling by mobile gear fishers targeting monkfish during 1991. In 1992, offshore lobster fishers and some mobile gear fishers sought assistance from the Council. At that time, the Council believed that voluntary industry agreements were preferable to regulatory action. The Council helped several groups of fixed and mobile gear fishers draft and circulate the ''Southern New England Offshore Gear Conflict Resolution.'' The agreement was initially effective, because the fishers designed it to allow them to fish their gear in the most productive areas and seasons. Both fixed and mobile gear fishers gave up access to fishing grounds when they were less productive to gain easier access to grounds during more productive seasons. Besides setting aside areas to separate fixed and mobile gear, the resolution stressed cooperation

and good communication among the different fishing groups. Due to the resolution, the fishers reported much greater cooperation and significantly less gear loss.

During the 1994–95 season conflicts rapidly escalated as mobile gear fishers changed their fishing practices. The pursuit of alternative species, declining abundances of traditional species, additional regulations to reduce fishing on stressed fish stocks, and changing market conditions all have contributed to the recent increase in gear conflicts. New mobile gear fishers targeting monkfish with deepwater trawls frequently failed to recognize the agreement and gear conflicts increased.

Because of the increase in gear conflicts, the Council decided at its February 1995 meeting to hold additional meetings and reemphasize its support of the voluntary agreement. The Council also warned that regulations designed to reduce the gear conflicts would be developed if the voluntary agreement continued to be ineffective. Continued efforts by the Council to resolve the problem through voluntary means were not successful during the first half of 1995.

Due to these failed efforts and the anticipated economic hardship, the Council requested on August 21, 1995, that NMFS take Secretarial emergency action to implement segments of the voluntary agreement by regulation. On September 13, 1995, NMFS disapproved the request, because the situation described by the Council in the emergency request was a longstanding one and the recent escalation from increased monkfish trawling was known to the Council the previous fall, the proposed boundaries were unenforceable, and the Council had not proposed a permanent solution to the problem.

On October 25, 1995, the Council announced that gear conflicts had increased. The U.S. Coast Guard affirmed this statement by reporting that gear conflicts had almost doubled those for October 1994. Due to the unanticipated level of the increase in fishing effort for monkfish in areas where lobster fishers place their traps during the winter, the Council reiterated its request for Secretarial emergency action on October 25, 1995, and modified its August 21, 1995, request to include defined straight lines by latitude and longitude, rather than the fathom contoured lines defined in their last request. The Council's Gear Conflict Committee met on November 15, 1995, and boundaries defined by latitude and longitude for the two mobile gear and one fixed gear areas were developed to accommodate the ability of the U.S. Coast Guard to enforce the gear closure areas.

In recommending the emergency action, the Council stated that it recognizes that the action does not address all types of fixed gear conflicts, nor does it apply to all fishing areas within Southern New England. The failure of the current industry agreement to adequately manage the gear conflict is an unforeseen event, for which the Council had insufficient time to respond by developing amendments and implementing rules through the standard rulemaking process. Additionally, the magnitude of the conflict and the degree of economic hardship in the fixed gear fleet due to the conflict was unanticipated by the Council.

During the Council's October 25, 1995, meeting, NMFS informed the Council that development of permanent measures was a requisite for consideration of its request for Secretarial emergency action. At its December 13, 1995, meeting, the Council voted to hold public hearings on an action that will insert a framework mechanism in each of its FMPs through the amendment process to allow gear conflicts to be addressed in a timely manner in the future.

Although the development of these framework actions is moving forward, it will likely take several months for them to be completed and implemented, if approved. Due to the unanticipated levels of increases in effort by mobile gear vessels on monkfish and the time needed for the Council to develop measures to alleviate this problem, NMFS believes that emergency action is warranted.

NMFS concurs with the Council that this emergency action is necessary because substantial harm and disruption to the fishery is occurring on a scale unforeseen in previous seasons that threatens the economic liability of offshore lobster fishing operations. Direct economic losses to individual lobster vessels are reported by the Council to be as high as $75,000. The value of lost gear reported to the Council for a partial season by eight lobster vessels totaled more than $290,000. There are approximately 50 active lobster vessels fishing within the gear conflict areas. If the above data are extrapolated across the 50 vessel fleet, the direct economic loss as a result of lost gear is potentially $1.8 million.

The value of lobster landings during October through June, when operators of lobster vessels move their gear inshore, averaged more than $8.5 million for 1991–93. Landings data showing the magnitude of lost fishing opportunity during 1994 and 1995 are unavailable. Lobster fishers reported setting their gear in a severely closed band that had a significant effect on catch per trap. Even if the number of traps remained constant and catch per trap only declined 25 percent, the lost revenue could have totaled more than $2.1 million. The total estimated economic loss that could be prevented by taking emergency action is therefore nearly $4 million. The Council believes that the potential benefit of taking emergency action significantly exceeds the economic loss by trawlers targeting monkfish in the restricted gear areas, and greatly outweighs the value of advance notice and public comment. This action is consistent with the FMP objectives to minimize social, cultural, and economic dislocation in the lobster fishery.

The Council is actively pursuing viable means to mitigate the long-term gear conflicts, but recent conditions have caused rapid escalation of the conflicts and efforts to resolve this problem have only recently failed. These conditions include increased targeting of monkfish by mobile gear vessels, as reported to the Council by the U.S. Coast Guard on October 25, 1995. The emergency measures are a set of initial measures addressing the immediate interim need to begin the process of curtailing gear conflicts. These measures were selected rather than other options because they are relatively less controversial, as evidenced by the near unanimous support of the Council and because the area boundaries are more narrowly defined and more easily enforced.

The emergency action is expected to greatly reduce gear damage and economic loss. The Council believes, and NMFS agrees, that preventing the potential economic loss greatly outweighs the need for advance notice and public comment before taking action.

The closures will be known as Restricted Gear Areas I, II, and III. Restricted Gear Areas I and II will be closed to mobile gear (defined as trawls, beam trawls, and dredges) for the duration of this emergency action. Restricted Gear Area III will be closed upon implementation of this rule through April 30, 1996, to fishing by fixed gear vessels. Vessels may transit these areas if their gear is properly stowed.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the

Magnuson Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, also finds for good cause that the reasons justifying implementation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide additional notice and opportunity for public comment, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment, therefore, no analysis has been prepared.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: March 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.2 definitions for ''Beam trawl'', ''Dredge or dredge gear'', ''Fixed gear'', ''Mobile gear'', and ''Trawl'' are added, in alphabetical order to read as follows:

§ 649.2 Definitions.

* * * * *

Beam trawl means gear consisting of a twine bag attached to a beam attached to a towing wire designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

* * * * *

Dredge or dredge gear means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

* * * * *

Fixed gear means lobster pot trawls.

* * * * *

Mobile gear means trawls, beam trawls, and dredges that are attached to a vessel at all times and which maneuver with that vessel.

* * * * *

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls and Danish and Scottish seine gear.

* * * * *

3. In § 649.8, paragraphs (c)(11) and (c)(12) are added to read as follows:

§ 649.8 Prohibitions.

* * * * *

(c) * * *

(11) Enter or be in the areas described in § 649.23 (a)(1) and (b)(1) on a mobile gear fishing vessel, during the time periods specified in § 649.23 (a)(2) and (b)(2), except as provided in § 649.23 (a)(3) and (b)(3).

(12) Enter or be in, and no fixed gear may be deployed or remain in, the areas described in § 649.23(c)(1) on a fixed gear fishing vessel, during the time periods specified in § 649.23(c)(2), except as provided in § 649.23(c)(3).

* * * * *

4. Section 649.23 is added to subpart B to read as follows:

§ 649.23 Restricted gear areas.

(a) *Restricted Gear Area I.* (1) No mobile gear fishing vessel or person on a mobile gear fishing vessel, may enter, fish, or be in the following areas during the time period specified in paragraph (a)(2) of this section (Figure 4 to part 649), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (a)(3) of this section:

Point	Latitude	Longitude
Inshore Boundary		
to 120.		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
72	40°08.7′ N.	68°49.6′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°36.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181.		
Offshore Boundary		
to 69.		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.

Point	Latitude	Longitude
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119.		

(2) *Duration.* No mobile gear fishing vessel or person on a mobile gear fishing vessel may enter, fish, or be in Restricted Gear Area I from April 1, 1996 through June 25, 1996, except as specified in paragraph (a)(3) of this section.

(3) *Transiting.* Vessels may transit Restricted Gear Area I as defined in paragraph (a)(1) of this section, provided that gear is stowed and not available for immediate use in accordance with the provisions of paragraph (d)(1) of this section.

(b) *Restricted Gear Area II.* (1) No mobile gear fishing vessel or person on a mobile gear fishing vessel may enter, fish, or be in the following areas during the time period specified in paragraph (b)(2) of this section (Figure 5 to part 649), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(3) of this section:

Point	Latitude	Longitude
Inshore Boundary		
to 1.		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48.		
Offshore Boundary		
to 49.		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70.		

(2) *Duration.* No mobile gear fishing vessel or person on a mobile gear fishing vessel may enter, fish, or be in Restricted Gear Area II from April 1, 1996 through June 25, 1996, except as specified in paragraph (b)(3) of this section.

(3) *Transiting.* Vessels may transit Restricted Gear Area II as defined in paragraph (b)(1) of this section, provided that gear is stowed and not available for immediate use in accordance with the provisions of paragraph (d)(1) of this section.

(c) *Restricted Gear Area III.* (1) No fixed gear fishing vessel or person on a fixed gear fishing vessel may enter, fish, or be in, and no fixed gear may be deployed or remain in, the following areas during the time period specified in paragraph (c)(2) of this section (Figure 6 to part 649), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (c)(3) of this section:

Point	Latitude	Longitude
Inshore Boundary		
to 49.		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70.		
Offshoe Boundary		
to 182.		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192.		

(2) *Duration.* No fixed gear fishing vessel or person on a fixed gear fishing vessel may enter, fish, or be in, and no fixed gear may be deployed or remain in, Restricted Gear Area III from April 1, 1996 through April 30, 1996, except as specified in paragraph (c)(3) of this section.

(3) *Transiting.* Vessels may transit Restricted Gear Area III as defined in paragraph (c)(1) of this section, provided that their gear is stowed in accordance with the provisions of paragraph (d)(2) of this section.

(d) *Gear stowage requirements.* (1) Mobile gear vessels transiting Restricted Gear Area I and Restricted Gear Area II specified under paragraphs (a)(1) and

(b)(1) of this section must stow their gear so it is not available for immediate use as follows:

(i) *Trawl vessel net stowage requirements.* A net that is stowed and is not available for immediate use conforms to one of the following specifications:

(A) A net stowed below deck, provided:

(*1*) It is located below the main working deck from which the net is deployed and retrieved;

(*2*) The towing wires, including the leg wires, are detached from the net; and

(*3*) It is fan-folded (flaked) and bound around its circumference; or

(B) A net stowed and lashed down on deck, provided:

(*1*) It is fan-folded (flaked) and bound around its circumference;

(*2*) It is securely fastened to the deck or rail of the vessel; and

(*3*) The towing wires, including the leg wires, are detached from the net; or

(C) A net that is on a reel and is covered and secured, provided:

(*1*) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(*2*) The towing wires, including the leg wires, are detached from the net; and

(*3*) The codend is removed from the net and stored below deck; or

(D) Nets that are secured in a manner authorized in writing by the Regional Director.

(ii) *Scallop dredge and beam trawl stowage requirements.* A scallop dredge and beam trawl that is stowed and is not available for immediate use must:

(A) Detach the towing wire from the scallop dredge or beam trawl;

(B) Reel the wire up onto the winch; and

(C) Secure and cover the dredge or beam trawl so that it is rendered unusable for fishing.

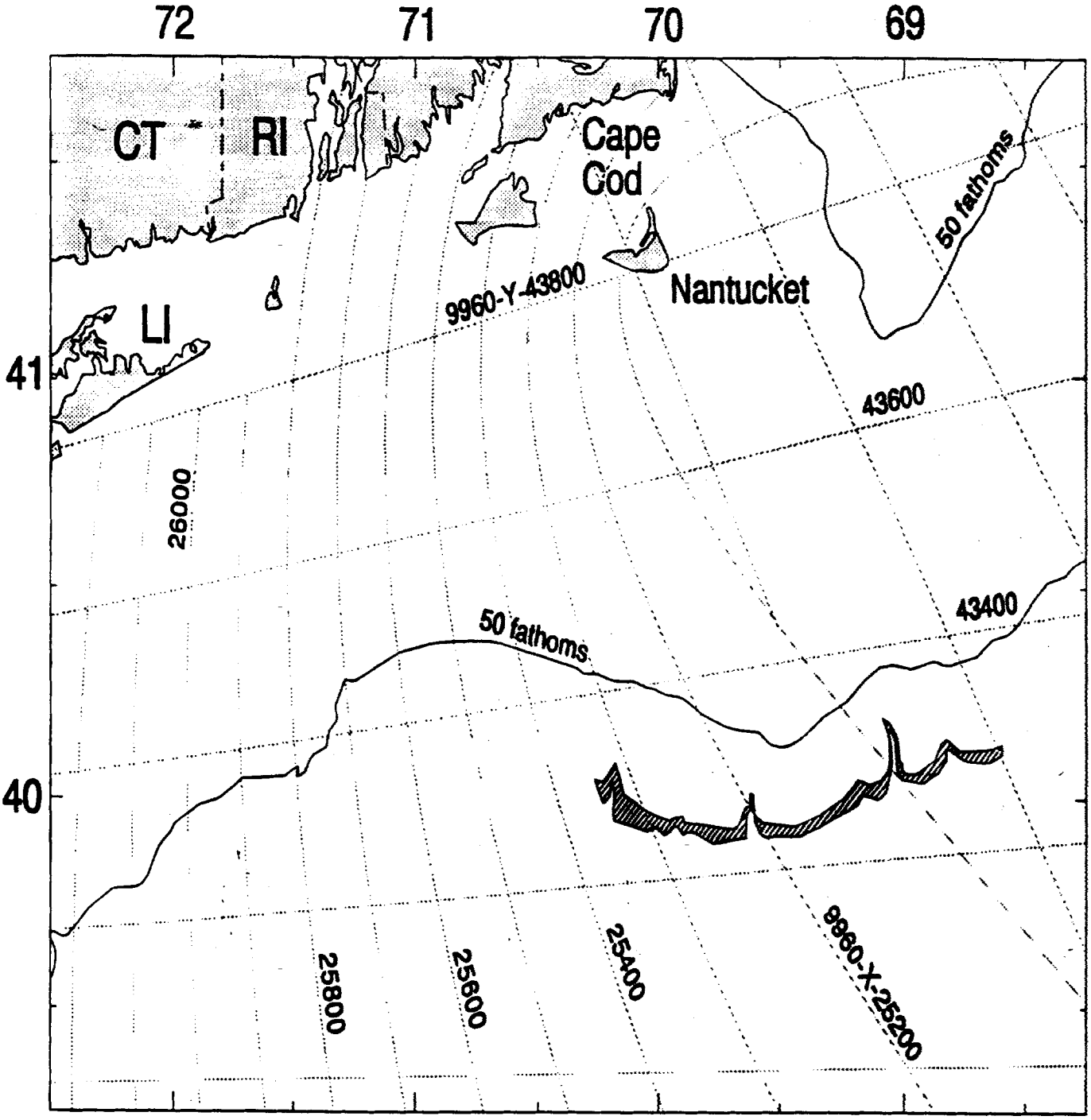
(2) *Fixed gear stowage requirements.* Fixed gear vessels transiting Restricted Gear Area III specified under paragraphs (c)(1) of this section must stow their gear as follows so it is not available for immediate use:

(i) Secure all pots, buoys, and high flyers so that the gear is not available for immediate use and

(ii) The pots must not have trawl warps connected to the bridles and must be unbaited.

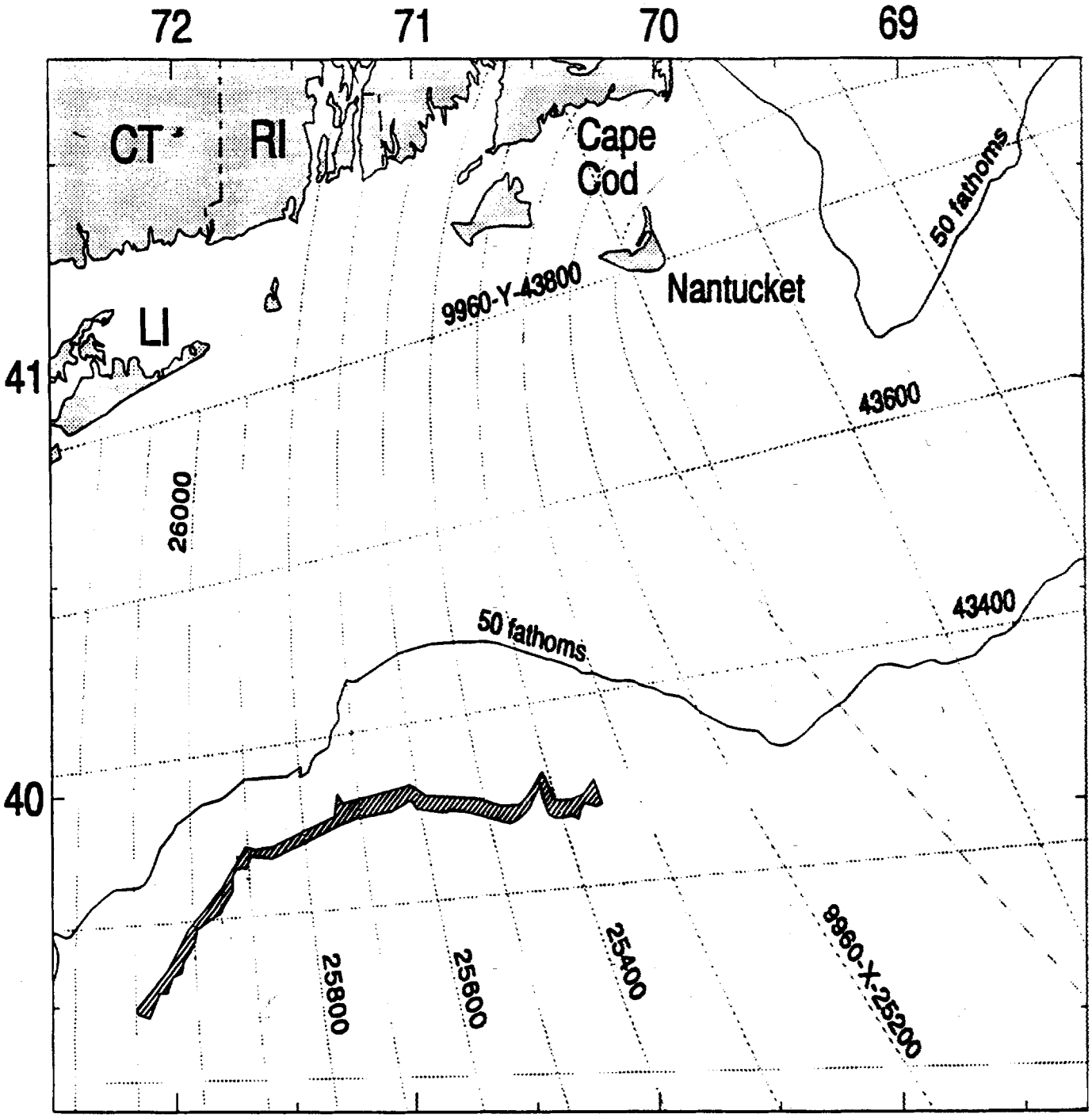
5. Figures 4, 5 and 6 are added to part 649 to read as follows:

BILLING CODE 3510–22–P



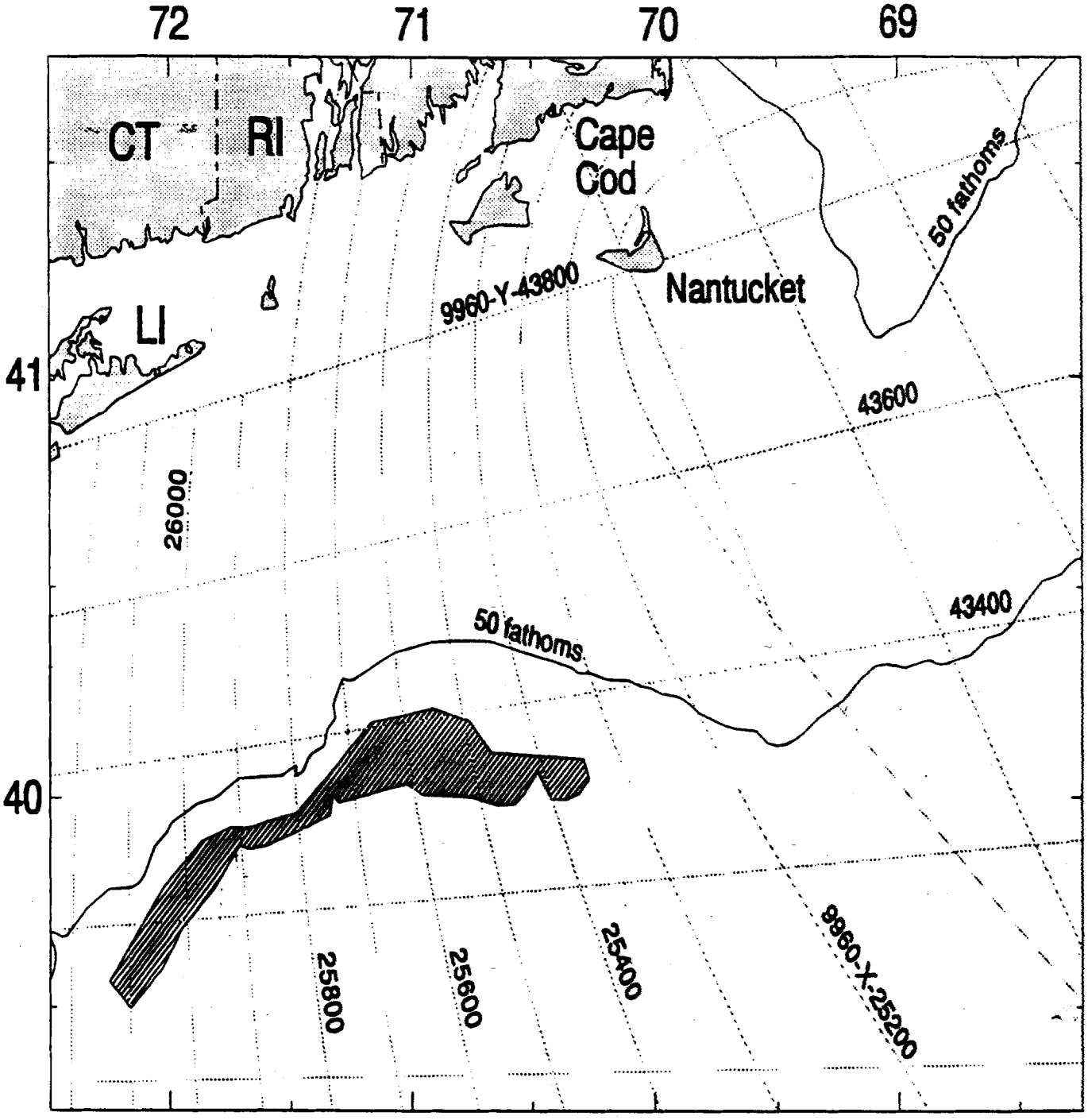
Restricted Gear Area I; Closed to Mobile Gear Towed From a Vessel

Figure 4 to Part 649—Restricted Gear Area I



Restricted Gear Area II; Closed to Mobile Gear Towed From a Vessel

Figure 5 to Part 649—Restricted Gear Area II



Restricted Gear Area III, Closed to Lobster Trap Gear

Figure 6 to Part 649—Restricted Gear Area III

[FR Doc. 96–7317 Filed 3–22–96; 3:45 pm]

BILLING CODE 3510–22–C

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 032096B]

Groundfish of the Gulf of Alaska; Deep-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 21, 1996, until 12 noon, A.l.t., April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

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.

In accordance with § 672.20(f)(1)(i) the deep-water species fishery, which is defined at § 672.20(f)(1)(i)(B)(2) was apportioned 100 mt of Pacific halibut prohibited species catch for the first season, the period January 20, 1996, through March 31, 1996 (61 FR 4304, February 5, 1996) .

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the first seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

After the effective date of this closure the maximum retainable bycatch amounts, calculated using the retainable percentages at § 672.20(g), apply at any time during a trip.

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: March 21, 1996.

Richard W. Surdi,

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

[FR Doc. 96–7316 Filed 3–21–96; 4:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 60
Wednesday, March 27, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV96–920–1]

Kiwifruit Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California kiwifruit to determine whether they favor continuance of the marketing order regulating the handling of kiwifruit grown in the production area.

DATES: The referendum will be conducted from June 3 through June 21, 1996. To vote in this referendum, growers must have been producing California kiwifruit during the period August 1, 1995, through May 31, 1996.

ADDRESSES: Copies of the text of the aforesaid marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agriculture Marketing Service, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 920 (7 CFR Part 920), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period June 3 through June 21, 1996, among California kiwifruit growers in the production area. Only growers who were engaged in the production of California kiwifruit during the period of August 1, 1995, through May 31, 1996, may participate in the continuance referendum.

The Secretary of Agriculture (Secretary) has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of California kiwifruit represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0149 for California kiwifruit. It has been estimated that it will take an average of 20 minutes for each of the approximately 500 growers of California kiwifruit to cast a ballot. Participation is voluntary. Ballots postmarked after June 21, 1996 will not be included in the vote tabulation.

Rose M. Aguayo and Kurt J. Kimmel of the California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), are hereby designated as the referendum agents of the Secretary to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

Authority: 7 U.S.C. 601–674.

Dated: March 20, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–7443 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1240

[AMS–FV–96–701.PR]

Honey Research, Promotion, and Consumer Information Order—Amendment of the Rules and Regulations To Add HTS Code for Flavored Honey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Harmonized Tariff Schedule (HTS) code number for imported flavored honey to the rules and regulations issued under the Honey Research, Promotion, and Consumer Information Order to provide authority for the U.S. Customs Service to collect an assessment on all imported, flavored honey.

DATES: Comments must be received by April 26, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit

and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456; fax (202) 205–2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–So., Washington, D.C. 20090–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Honey Research, Promotion, and Consumer Information Act, as amended [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

This proposed rule has been issued in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a compliant is filed within 20 days after the date of entry of the ruling.

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

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small service firms are defined as those having annual receipts of less than $5 million.

The Administrator of the AMS has determined that this rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act [44 U.S.C. Chapter 35], and OMB regulations [5 CFR Part 1320], the information collection and recordkeeping requirements contained in this action have been previously approved under OMB control number 0581–0093.

Background

The Honey Research, Promotion, and Consumer Information Order (Order) provides that each producer and importer shall pay to the Board a one cent per pound assessment rate on honey and honey products produced in or imported into the United States. Section 1240.5 of the Order defines honey products as products wherein honey is a principal ingredient.

In order for the U.S. Customs Service (Customs) to collect the assessments on imported honey and honey products, each product needs to be identified by an HTS Code. Since the Board inception, honey has been assessed by Customs under HTS code number 0409.00.00. However, there were no HTS codes for honey products.

The Board has identified flavored honey as a product containing approximately 99 percent honey. The Board estimates that 500,000 pounds of flavored honey are imported into the United States annually without the importer paying the required assessment. Therefore, at the recommendation of the Board, the Department requested the Committee for Statistical Annotation of Tariff Schedules (Committee) on the International Trade Commission to establish an HTS code for flavored honey. The Committee notified the Department on February 13, 1996, that a code has been established for flavored honey. The purpose of this rule is to add the new HTS code for flavored honey to the rules and regulations under the Order to provide authority for Customs to collect the assessment on all imported, flavored honey.

This proposed rule would add the new 2106.90.9988 HTS code for flavored honey to section 1240.115(e) of the rules and regulations issued under the Order. Flavored honey would be assessed at the one-cent-per-pound rate. A conversion factor is not necessary because the amount of honey in flavored honey is estimated at 99 percent of the total product. Customs will notify importers 60 to 90 days before it begins collecting the assessment on flavored honey. The notification will be made only after a final rule, if any, is issued on this action.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1240 is proposed to be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612

2. In § 1240.115, paragraph (e) is revised to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading numbers 0409.00.00 and 21006.90.9988) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessment paid.

* * * * *

Dated: March 21, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–7441 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1996–10]

Electronic Filing of Reports by Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules to implement an electronic filing system for reports of campaign finance activity filed with the agency. Although the agency has been working on the development of an electronic filing sytem for some time, the proposals in this Notice are also designed to reflect recent changes in the Federal Election Campaign Act of 1971. The proposed rules would establish requirements for filing reports electronically, including specifying the format for data to be submitted by filers, procedures for submitting amendments to reports, and methods of satisfying signature requirements under the law.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 28, 1995, Public Law 104–79 amended the Federal Election Campaign Act of 1971 to require, *inter alia,* that the Commission create a system to ''permit reports required by this Act to be filed and preserved by means of computer disk or any other electronic format or method, as determined by the Commission.'' 109 Stat. 791(1995), section 1(a). The new law requires this system to be available for reports covering periods after December 31, 1996. This means the new system will be in place for the first reports filed in the 1998 election cycle. The goals of such a system include more complete on line access to reports on file with the Commission, reduced paper filing and manual processing, and more efficient and cost-effective methods of operation for filers and for the Commission. Note that participation in the electronic filing program by committees and other persons filing reports will be voluntary.

There are a number of factors that should be considered before any system can be successfully implemented. The information must be submitted in a standardized format so that the Commission's computer system can read the information and locate all the different data elements that are part of a committee's report. At the outset, the Commission plans to accept reports filed electronically, store them, and make them available to the public. The information will then be processed by the Commission in the same manner as paper reports (i.e. creating paper copies for review and integration into the disclosure data base). Ultimately, the electronically filed material will be directly integrated into the Commission's data bases. While most electronic filing systems developed at the state and local level have required submission of paper reports along with electronic media, the FEC process does not include this requirement. In fact, committees choosing to file electronically would have to include all information found in a report in the electronic data submitted. When paper copies of reports are necessary for processing, the Commission will create those documents.

(Note: However, that certain forms and schedules have special requirements that may require submission of a paper copy under proposed paragraph (f).)

It is also important, however, that the system be designed in a fashion that allows committees to comply most easily with the Act's requirements. Thus, the Commission is developing methods for complying with statutory requirements such as submitting a report signed by the committee's treasurer, and to accommodate, for example, the need to file amendments to reports or to explain more fully certain transactions included on a committee's report. However, certain schedules and forms require signatures of third parties or submission of additional materials such as loan agreements. The Commission will need to design the format structure to include the information provided on these forms and schedules, but will also need a mechanism to meet the additional requirements of these documents.

The system being designed by the Commission will be available to all committees required to file reports with the Commission that wish to file in an electronic format. Public Law 104–79 changed the place of filing for committees that formerly filed with the Clerk of the House of Representatives. These committees, as well as those that have historically filed with the Commission, will have the opportunity to file under the new system. Proposed section 104.18 will set forth the requirements for electronic filing. Please note that committees that are required to file reports with the Secretary of the Senate will not be covered by the Commission's new rules.

The Commission welcomes comments from committees that will be affected by this change. Vendors with knowledge of the software concerns that might be involved in implementing such a system, and state and local jurisdictions that have had experience with electronic filing, are also encouraged to participate. Finally, end-users of campaign finance information, such as researchers and the media, may wish to offer their suggestions from a consumer's perspective.

Interested persons should also note that the Commission will be developing its record format specifications in a separate process at the same time it is considering these rules. Software vendors and committees that wish to comment or make suggestions regarding the format specifications should contact the Data Systems Division to be included on the list of those consulted.

Standard Format

Several different standardization issues are presented by the Commission's proposal. A key requirement is that any data submitted electronically be conveyed in the Commission-approved format. The agency has dealt with these concerns previously in the context of publicly financed presidential candidates and convention committees. To address those situations, the Commission issued its Computerized Magnetic Media Requirements (CMMR), which established format specifications for certain computerized data submitted by these committees. The CMMR specifies the record format for submitting data; that is, it specifies the ''fields'' (required information) that make up the records and how much space is allocated for each field of data. There are separate fields for receipt and disbursement records, consistent with the Act's reporting provisions.

A similar set of requirements is being developed for electronic filing of reports. These requirements will be contained in a document titled ''The Federal Election Commission's Electronic Filing Specifications Requirements.'' As previously noted, the format specifications will be made available to interested persons for comment and suggestions as they are being developed. When completed, this document will be available from the Commission at no charge.

Another set of issues relates to the steps that will be necessary to integrate

the reports filed into the Commission's data base. Currently, the Commission uses the reports to enter certain selected data into its computer data base. For the most part, this data is limited to totals from the committees' summary pages, and information on contributions and independent expenditures. When the Commission first implements its electronic filing program in 1997, it expects to continue its cross-indexing of information from all reports, including those filed electronically. In addition, the Commission will maintain reports filed electronically in a separate data base, in order to preserve a record of what has been filed by each reporting entity. A copy of these records will be accessible on-line.

In the future, the Commission intends to structure its program so that the data submitted by reporting entities will be in a form that can be directly added to the agency's data base. This development may require the specification of standards for reporting certain categories of information, in order to maintain the accuracy and integrity of the Commission's current data base. This will ensure, for example, that all contributions made by PACs to a particular candidate are reported in the same way so they can be accurately attributed in the Commission's data base to that candidate. Currently, the Commission ensures that the correct recipient is identified in the data base, even though reporting entities may have described the recipient in slightly different ways. The Commission may also wish to establish a standard list of purposes for reported disbursements, which could in turn be based on the expense classifications used in a chart of accounts. Both of these issues could be addressed by making updated lists available through the Internet that could be downloaded by committees. Information from these lists could then be moved into reports, simplifying the reporting process for committees.

Acceptance of Reports Filed Electronically

A related issue addressed by the proposed rules concerns the need to ensure that reports filed electronically can be read by the Commission's computers. Data submitted in a format that does not meet the Commission's filing specifications and therefore does not permit the Commission's computers to read and locate required information will not be treated as a filed report under proposed paragraph 104.18(c). Similarly, a damaged disk that cannot be read by the computer system will not be accepted. In addition, filings that do not contain valid identifying information for the committee and the report being submitted, or that are not signed using one of the signature mechanisms provided by the rules, will not be considered filed. The Commission proposes to notify committees whose reports are not accepted.

To determine that a report submitted in an electronic format meets these requirements, the Commission is developing validation software that will check the submitted record structures to be sure they meet the requirements of the format specifications. This software will be available to committees at no charge, to enable them to run their reports against this program and ensure that their submission will not be rejected.

Another issue involves the method of submitting electronic reports. When the program first goes into effect in 1997, the Commission proposes to accept reports only on floppy disk. This approach will help ease the transition to accepting reports in this new format, since it is comparable to the Commission's past practice of accepting computerized media from Presidential campaigns. As soon as practicable, however, the Commission expects to initiate acceptance of reports through telecommunications. Among other things, since the law provides that reports are due on specified dates, this option would require the arrangement of a mechanism for handling a large influx of data during a compressed time period with intervening periods of no activity. As a guide to assessing the potential load factor involved in accepting reports via modem, the Commission encourages committees to comment on whether they are currently capable of submitting an electronic report via telecommunications and whether they perceive any problems with a system that allows reports to be filed in this manner.

Amended Reports

Proposed paragraph (d) would require that amendments to reports be filed in an electronic format if the original report was filed electronically, and that the amendment consist of a complete version of the report as amended, not just those portions of the earlier submission that are being changed. The Commission welcomes comments on how to address amendments, particularly with regard to whether the amendment should be a complete version of the report. This approach has the advantage of placing a complete revised copy of the report on the public file, and therefore would not require those reviewing a committee's records to piece later amendments of reports together with earlier submissions. However, filing a complete revised version would not immediately indicate what aspects of the earlier report had changed. Larger reports could pose a particular problem in this regard. In addition, the Commission encourages comments on whether one approach would be easier for committees to comply with than the other.

Signature Requirements

The Act requires that reports and statements shall be signed by the person responsible for filing them. See, 2 U.S.C. 434(a)(1) and (c). Public Law 104–79 directs the Commission to develop one or more methods for verifying reports filed electronically and states that such a verification will be treated the same as a signature for all purposes. In the initial phase of the new system, paragraph (e) of the proposed rule would require that filers utilize one of two methods for verifying their reports. Either a signed certification page would be submitted with the disk containing the electronic report, or the disk would contain a digitized version of the signed certification. When the Commission begins to accept reports filed by telecommunications, it plans to provide other methods for verification, such as providing an encryption key to the treasurer or allowing simultaneous mailing of a signature page, similar to the system being used by the Internal Revenue Service in its electronic filing program. Suggestions for other methods are welcome.

Certain schedules and forms must be filed with signatures from third parties, however. For example, the Act requires that Schedule E and Form 5, which are used to report independent expenditures, be notarized. Schedule C–1 (Loans and Lines of Credit from Lending Institutions) and Form 8 (Debt Settlement Plans) must be filed with signatures from lenders and creditors, respectively. In addition, Schedule C–1 must be accompanied by a copy of the relevant loan agreement. The electronic record format will be designed to include the data provided on these forms and schedules. However, to satisfy these additional requirements, proposed paragraph (f) would also require that either a signed version of these schedules and forms (and any accompanying materials) be digitized and submitted as a separate file in the electronic submission, or that a signed paper original of these schedules and forms (and accompanying materials) be submitted with the electronic media.

Additional Issues

For those commenters who are reporting entities, some additional information about the committee would be helpful to the Commission's inquiry. In particular, the Commission would be interested in whether the committee uses a computer to maintain its records and prepare its reports. If so, what data is maintained on the computer? For example, does the data include information regarding contributors, contributions to candidates, other receipts and disbursements? If the committee uses a software package to maintain this data and/or to prepare its reports, what package(s) does it use? Does this software incorporate all the information the committee needs to file its reports or is it necessary to bring in information from other sources?

In addition, the Commission would welcome comments indicating whether reporting committees plan to take advantage of this option. The Commission recognizes that, to be successful, any electronic filing program must accommodate to the extent possible the needs and capabilities of the filing community. A major factor to be considered in this regard is the high level of turnover among filers. A significant portion of the filing population is only involved in campaign finance disclosure for a relatively short period. This includes unsuccessful candidates as well as political committees that go out of existence after a few months or a year. Many committees, including those that have a more stable existence (such as party committees), operate largely with volunteers or experience frequent staff changes. Consequently, there also may be little staff continuity in some ongoing committees. Moreover, those that depend on volunteers may be disadvantaged by the limited time those individuals can devote to committee responsibilities.

However, other committees have a more permanent staff and are sophisticated in their use of computers and their knowledge of the law. These committees might have an easier time converting to an electronic filing format.

Therefore, a fundamental question on which the Commission welcomes comment concerns the potential benefits of an electronic filing system to filers and others. How can electronic filing make disclosure easier? Conversely, are there any perceived problems with the Commission's approach to electronic filing, whether from a procedural or technical perspective, and how can these problems be averted?

A related point concerns committees that begin filing electronically but for some reason are later unable to do so. Proposed paragraph (a) would require that committees continue to submit reports in an electronic format for the remainder of the calendar year in which they elect to begin filing electronically. This provision has been added for several reasons, including enabling the agency to efficiently administer the disclosure program and to ensure continuity in the means by which a committee's reports are placed on the public record. While these are important considerations for the Commission's administration of the Act, should the Commission attempt to distinguish committees with a genuine problem from those who simply decide to discontinue submitting electronic reports? If so, how could this be accomplished?

Information on the electronic capability of current filers would be helpful in assessing the community's readiness to move to this reporting format. Any other information the committee feels would be helpful to the Commission in its efforts to assess the ability of the regulated community to move to an electronic filing format would be appreciated.

Finally, the Commission is interested in the experience of other jurisdictions that have implemented an electronic filing program. What have these jurisdictions found to be the most effective means of introducing filers to the new system, without jeopardizing the integrity of their ongoing program? Since the Commission will not have a test period for filing reports electronically before it begins accepting these reports solely in electronic format, are there any concerns of committees that should be addressed?

List of Subjects in 11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

Certification of No Effect Pursuant to 5 U.S.C. 605(B) (Regulatory Flexibility Act)

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no small entity is required to submit reports electronically under these proposed rules.

For the reasons set out in the preamble, it is proposed to amend subchapter A, Chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for Part 104 would be amended as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(d), 432(i), 434, 438(a)(8), 438(b).

§ 104.17 [Reserved]

2. Section 104.17 is reserved.

3. Section 104.18 would be added to read as follows:

§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).

(a) *General.* A political committee that files reports with the Commission, as provided in 11 CFR Part 105, may choose to file its reports in an electronic format that meets the requirements of this section. If a committee chooses to file its reports electronically, and its first electronic report passes the Commission's validation program in accordance with paragraph (c) of this section, it must continue to file in an electronic format all reports covering financial activity for that calendar year.

(b) *Format specifications.* Reports filed electronically shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Electronic Filing Specifications Requirements. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Electronic Filing Specifications Requirements.

(c) *Acceptance of reports filed in electronic format.*

(1) Each committee that submits an electronic report shall check the report against the Commission's validation program before it is submitted, to ensure that the files submitted meet the Commission's format specifications and can be read by the Commission's computer system. Each report submitted in an electronic format under this section shall also be checked upon receipt against the Commission's validation program. The Commission's validation program is available on request and at no charge.

(2) A report that does not pass the validation program will not be accepted by the Commission and will not be considered filed. If a committee submits a report that does not pass the validation program, the Commission will notify the committee that the report has not been accepted.

(d) *Amended reports.* If a committee files an amendment to a report that was filed electronically, it shall also submit the amendment in an electronic format. The committee shall submit a complete version of the report as amended, and

not just the portions of the earlier report that are being amended.

(e) *Signature requirements.* The committee's treasurer, or any other person having the responsibility to file a designation, report or statement under this subchapter, shall verify the report in one of the following ways: by submitting a signed certification on paper that is submitted with the computerized media; or by submitting a digitized copy of the signed certification as a separate file in the electronic submission. Each verification submitted under this section shall certify that the person has examined the report or statement and, to the best of the signatory's knowledge and belief, it is true, correct and complete. Any verification under this section shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature on a report submitted in a paper format.

(f) *Schedules and forms with special requirements.* The following list of schedules, materials, and forms have special signature and other requirements and reports containing these documents shall include, in addition to providing the required data within the electronic report, either a paper copy submitted with the committee's electronic report or a digitized version submitted as a separate file in the electronic submission: Schedule C–1 (Loans and Lines of Credit From Lending Institutions), including copies of loan agreements required to be filed with that Schedule, Schedule E (Itemized Independent Expenditures), Form 5 (Report of Independent Exepnditures Made and Contributions Received), and Form 8 (Debt Settlement Plan). The committee shall submit any paper materials together with the electronic media containing the committee's report.

(g) *Preservation of reports.* For any report filed in electronic format under this section, the treasurer shall retain a machine-readable copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer shall retain the original signed version of any documents submitted in a digitized format under paragraphs (e) and (f) of this section.

Dated: March 22, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–7405 Filed 3–26–96; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–84–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, PA31T, and PA42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) PA31, PA31P, PA31T, and PA42 series airplanes. The proposed action would require inspecting for cracks beneath and in the area of the inboard aileron hinge bracket on the aileron spar and rib using dye penetrant methods, replacing any cracked aileron spar or rib, and replacing the inboard aileron hinge bracket with a hinge bracket of improved design. Several reports of cracks in the vicinity of the inboard aileron hinge bracket, aileron spar, and aileron rib prompted this proposed action. The actions specified by the proposed AD are intended to prevent structural failure of the aileron caused by cracks in the area of the inboard aileron hinge bracket, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before June 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. 95–CE–84–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.

Piper Service Bulletin (SB) No. 967, dated January 24, 1994, and Piper SB No. 974, dated October 19, 1994, may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., 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. 95–CE–84–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several service difficulty reports (SDRs) on certain Piper PA31, PA31P, PA31T, and PA42 series airplanes reflecting a problem with cracks in the aileron spar in the area of the inboard aileron hinge brackets. The cracks are appearing in certain Piper airplanes having between 3,000 hours time-in- service (TIS) and 12,000 hours TIS. The cause of this condition is believed to be the location of the inboard aileron hinge bracket in relation to the aileron pushrod. The inboard aileron hinge bracket is located 2.06 inches from the center line of the pushrod whereas the outboard aileron hinge bracket is located 45.17 inches from the center line of the pushrod, with both brackets being identical in

design. This arrangement causes the majority of the load to be transferred to the inboard hinge bracket, which in time could cause cracks to develop in the aileron spar or in the corresponding aileron rib in the area of the inboard aileron hinge bracket. As a result of the reported cracking, Piper has redesigned the inboard aileron hinge bracket to better distribute the load into the aileron spar web. A crack in the aileron spar or in the vicinity of inboard aileron hinge bracket, if left uncorrected, could possibly compromise the structural integrity of the aileron.

Piper has issued two service bulletins (SB), No. 967, dated January 24, 1994, and Piper SB No. 974, dated October 19, 1994, which specify procedures for inspecting the designated areas for cracks and replacing the aileron inboard hinge brackets with a part of improved design as a terminating action.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent structural failure of the aileron caused by cracks in the area of the inboard aileron hinge bracket, 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 PA31, PA31P, PA31T, PA42 series airplanes of the same type design, the proposed AD would require:

- Inspecting the aileron spar beneath and in the area of the inboard aileron hinge bracket for cracks;
- If cracks are found in the area of the aileron spar, inspecting the aileron rib for cracks, and replacing the cracked spar assembly and any cracked rib;
- Replacing the inboard aileron hinge brackets with part number (P/N) 74461–02 (left) and P/N 74461–03 (right).

The FAA estimates that 2,501 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane for the inspection and 5 workhours per airplane for the modification, with a total of 7 workhours to accomplish the proposed action, 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 for the initial inspection and the modification of the proposed AD on U.S. operators is estimated to be $1,800,720 or $720 per airplane. This figure does not include the amount for repetitive inspections and is based on the assumption that all of the owners/operators of the affected airplanes have not inspected for cracks, repaired cracks, or incorporated the modification of this proposed AD. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur before the proposed modification is accomplished.

Piper has informed the FAA that parts have been distributed to equip approximately 1,250 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $900,000 from $1,800,720 to $900,720.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 95–CE–84–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Nos.
(The following aircraft should reference Piper Service Bulletin No. 974, dated October 19, 1994)	
PA31, PA31–300, and PA31–325.	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P–350 ...	31P–8414001 through 31P–8414050.
PA31T3	31T–8275001 through 31T–8475001, and 31T–5575001.
(The following aircraft should reference Piper Service Bulletin No. 967, dated January 24, 1994)	
PA31P	31P–1 through 31P–7730012, and 31P–03.
PA31T	31T–7400002 through 31T–7400009, and 31T–7520001 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA42	42–7800001 through 42–7800004, and 42–8001001 through 42–8001106.
PA42–720	42–8301001, 42–8301002, 42–5501003 through 42–5501023, 42–5501025 through 42–5501027, 42–5501129 through 42–5501031, 42–5501033, and 42–5501039 through 42–5501059.
PA42–720R ...	42–5501024, 42–5501028, 42–5501032, and 42–5501034 through 42–5501038.
PA42–1000	42–5527002 through 42–5527044.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Upon the accumulation of 3,000 hours time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

To prevent structural failure of the aileron caused by cracks in the area of the inboard aileron hinge bracket, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect (using dye penetrant methods) the area beneath and in the area of the inboard aileron hinge bracket on the aileron spar for cracks in accordance with the INSTRUCTIONS section of Piper Service Bulletin (SB) No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, whichever service bulletin applies to the particular model and serial number.

(1) If cracks are found on the aileron spar:

(i) Prior to further flight, inspect the corresponding aileron rib at the inboard aileron hinge bracket location;

(ii) Prior to further flight, replace any cracked spar assembly and any cracked aileron rib in accordance with the applicable Maintenance Manual;

(iii) Prior to further flight, replace the inboard aileron hinge brackets with an inboard aileron hinge bracket of improved design, part number (P/N) 74461–02 (left) and P/N 74461–03 (right), in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(2) If no cracks are found, prior to further flight, replace the inboard aileron hinge brackets with a part of improved design P/N 74461–02 (left) and P/N 74461–03 (right), in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(b) If the inboard aileron hinge brackets, P/N 74461–02 (left) or P/N 74461–03 (right) have been ordered from the manufacturer but are not available, prior to further flight, and thereafter at intervals not to exceed 100 hours TIS, dye penetrant inspect beneath and in the vicinity of the inboard aileron hinge bracket for cracks in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(c) If any one of the following occurs, prior to further flight, terminate the above repetitive inspections, replace any cracked aileron rib and any cracked spar assembly (if applicable), and replace the inboard aileron hinge bracket as specified in paragraph (a)(1)(iii) of this AD:

(1) Parts become available;

(2) An inboard aileron bracket hinge, aileron spar or aileron rib is found cracked; or

(3) 1,000 hours TIS are accumulated after the initial inspection required by this AD.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, 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 Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., 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.

Issued in Kansas City, Missouri, on March 20, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7329 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–13–P

Coast Guard

33 CFR Parts 62 and 66

[CGD 94–091]

RIN 2115–AF14

Conformance of the Uniform State Waterways Marking System and the Western Rivers Marking System With the United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of the President's Regulatory Reinvention Initiative, the Coast Guard proposes to eliminate the Uniform State Waterway Marking System (USWMS), which is not widely used and may be confusing to the mariner. The Coast Guard also proposes to replace the solid-color crossing dayboards in the Western Rivers Marking System (WRMS) with the checkered non-lateral dayboards used in the United States Aids to Navigation System (USATONS); the latter dayboards would have the same meaning and be the same size and shape as the former, but would be easier to see. These changes would help mariners avoid misinterpreting navigational markers they might see when transiting different bodies of water now subject to different marking systems.

DATES: Comments are requested by April 26, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–091), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this request for comments. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Chad Asplund, Short Range Aids to Navigation Division, Telephone: (202) 267–1386.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this request for comments by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 94–091) and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The brevity of the comment period owes to three facts. First, an advanced notice of proposed rulemaking (ANPRM) has already sounded public opinion. Second, that opinion holds the two changes proposed here to be minor and non-controversial. Third, this rulemaking constitutes part of the President's Regulatory Reinvention Initiative.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reason why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by later notice in the Federal Register.

Regulatory History

On December 29, 1995, the Coast Guard published an ANPRM in the Federal Register (60 FR 67345). It gave interested persons until February 9, 1996, to submit comments. The Coast Guard received two comments on that notice. One came from a trade association and the other from an independent consultant.

The ANPRM intended to gauge public opinion towards eliminating the USWMS, replacing the crossing dayboards in the WRMS, and allowing the aids to navigation in the WRMS a larger selection of flash characteristics from which to chose. The first two items were non-controversial; therefore, the Coast Guard here proposes eliminating the USWMS and replacing the crossing dayboards in the WRMS.

The issue of flash characteristics may be more important that the Coast Guard thought it would be. The Coast Guard has determined that more time is necessary to study this issue and may address it in a future rulemaking.

Background and Purpose

The USWMS was created in 1966 to adequately mark State waters. It offers two types of aids to navigation, a system of regulatory markers as well as a system to supplement the USATONS. It features red and black buoys to mark lateral hazards. But 33 CFR 66.10–1(b) already allows the USATONS on all waterways in the United States. Many states already use the USATONS instead of the USWMS. The Coast Guard proposes eliminating the USWMS to move towards a unitary lateral aids to navigation system. This change would make the waterways less confusing for the mariner.

The WRMS was created to adequately mark the dynamic waterways of the Mississippi River and its Western counterparts. Some deviations from the USATONS were necessary for this. One of these is the use of crossing dayboards. These dayboards indicate where the river channel (''sailing line'') crosses from one bank to the other. The dayboards currently used in the WRMS are either solid green or solid red. They are important aids, but can be difficult to see, especially the green dayboards against the overgrowth of trees that line the Western Rivers. The Coast Guard proposes replacing the (red or green) solid-color crossing dayboards used in the WRMS with the checkered (green-and-white or red-and-white) non-lateral dayboards used in the USATONS. The checkered non-lateral dayboards would retain the same meaning as the sold-color crossing dayboards, yet would be easier to see.

The purpose of these two proposed changes is to adequately mark the Uniform State Waterways and Western Rivers and reduce the number of systems of aids to navigation.

Consultation With Advisory Committee

The Coast Guard has consulted with the National Association of State Boating-Law Administrators (NASBLA) concerning elimination of the USWMS. NASBLA indicates this would be a minor, non-controversial change.

Discussion of Comments

1. Should crossing dayboards used in the WRMS be replaced by the non-lateral dayboards used in the USATONS?

The comments generally indicated that this change would entail a massive reeducation. The Coast Guard believes, with an adequate phase-in period and increased boaters' awareness, this change would not be problematic. The benefits gained from the increased visibility would far outweigh the possible confusion.

2. What is the best way to mark obstructions in the USWMS? Should the meaning of the red-and-white striped buoys in the USWMS be changed so such buoys mark safe water as in the USATONS?

The comments generally supported this change. They did express some concern towards boaters' reeducation. The Coast Guard has consulted with NASBLA, which believes this would be a minor, insignificant change. Very few states, if any, use the USWMS.

Discussion of Proposed Rule

The Coast Guard has weighed the needs of the mariner against the conflicts cited in the comments and has decided to propose eliminating the USWMS and replacing the solid-color crossing dayboards used in the WRMS with the checkered non-lateral dayboards used in the USATONS. Therefore, the Coast Guard is proposing the following changes to 33 CFR Parts 62 and 66:

Revise § 62.45(d)(6) to include mooring buoys and their light characteristics. The elimination of the USWMS, § 66.10, also removes the reference to the lighting characteristics on mooring buoys. § 62.45(d)(6) will be revised to place the requirements for lighting characteristics on mooring buoys in the regulatory text for the USATONS.

Revise § 62.51(b)(3) to replace diamond-shaped crossing dayboards, solid red or solid green as appropriate, with diamond-shaped crossing dayboards, checkered red-and-white or green-and-white, non-lateral dayboards similar to those used in the USATONS as appropriate.

Revise Part 66 to eliminate the USWMS by deleting Subpart 66.10. The USWMS is not used and is obsolete.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11010; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Eliminating the USWMS would ultimately save money for states still using this system. States could purchase the aids to navigation used in the USATONS, which are manufactured in bulk and should cost less than the aids peculiar to the USWMS. Replacing the solid-color crossing dayboards of the WRMS would cost the Federal government little additional money, since new ones would cost essentially the same as the current ones. The Coast Guard proposes to replace the current ones with the new ones when it would otherwise replace them in kind, so the cost will be similar to that of regular maintenance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Cost Guard must consider whether this proposal, if adopted, would have a significant impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2)

government jurisdictions with populations less than 50,000.

This proposal would have minimal impact on small entities. Eliminating the USWMS would not affect small entities; the USWMS is a system run by the State governments. Replacing the crossing dayboards on the WRMS would only affect the Federal government. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal would economically affect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(34)(a) of Commandant Instruction M164475.1B, this proposal is categorically excluded from further environmental documentation. Eliminating the USWMS and replacing the solid-color crossing dayboards in the WRMS would have no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 62

Navigation (water)

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Parts 62 and 66 as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

§ 62.45 [Amended]

2. In § 62.45, paragraph (d)(6) is revised to read as follows:

* * * * *

(d) * * *

(6) Information and Regulatory Marks, and mooring buoys, display white lights of various rhythms.

* * * * *

§ 62.51 [Amended]

3. In § 62.51, paragraph (b)(3) is revised to read as follows:

* * * * *

(b) * * *

(3) Diamond-shaped non-lateral dayboards, checkered red-and-white or green-and-white, similar to those used in the USATONS, as appropriate, are used as crossing dayboards where the river channel crosses from one bank to the other.

* * * * *

PART 66—PRIVATE AIDS TO NAVIGATION

4. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

Subpart 66.10—[Removed]

5. Subpart 66.10 is removed.

Dated: March 21, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–7333 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 67

[CGD 95–052]

RIN 2115–AF15

Testing of Obstruction Lights and Fog Signals on Offshore Facilities.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In keeping with the National Performance Review, the Coast Guard proposes to amend its testing procedures for obstruction lights and fog signals on Outer Continental Shelf facilities. Presently, manufacturers of lighting equipment must forward an application to each of the ten Coast Guard districts for approval. Fog signal equipment manufacturers must schedule and pay for Coast Guard representatives to observe their tests. This proposal would allow independent laboratories to conduct the tests using Coast Guard approved procedures. This would improve the quality control of the tests, reduce the administrative burden on the pubic, and minimize the cost to the Coast Guard.

DATES: Comments are requested by April 26, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–052), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Chad Asplund, Short Range Aids to Navigation Division, (202) 267–1386.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–052) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comments period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and

place announced by a later notice in the Federal Register.

Regulatory History

On January 10, 1996, the Coast Guard published a notice requesting comments in the Federal Register (61 FR 708). Interested persons were given until February 12, 1996, to submit comments. The Coast Guard received six letters commenting on the questions raised in the notice. Five of the letters came from owners of offshore structures and one letter came from an independent laboratory.

The January 10, 1996, notice asked questions about whether (1) the flash characteristics of obstruction lights should be changed from a quick-flashing rhythm to a Morse ''U'', (2) the candlepower requirements on obstruction lighting should be adapted to the new transmissivity tables developed by the Coast Guard, and (3) lights and fog signals should be tested by independent laboratories rather than by the Coast Guard. The Coast Guard has determined that more time is needed to study issues (1) and (2) and may address them in a future rulemaking project. This rulemaking is limited to issue (3).

Background and Purpose

The existing 33 CFR 67.05–10 states that manufacturers of lights must have their equipment approved by the District Commander and a permit must be issued before the equipment can be distributed. Currently the manufacturer must apply to each Coast Guard district in which the lights are to be operated. This proposal would amend this provision to require that the tests be conducted by an independent laboratory in accordance with Coast Guard procedures. The manufacturer would then forward one application and the test results of the independent laboratory to Commandant (G–NSR), U.S. Coast Guard, 2100 2nd Street SW., Washington, DC, 20593, for review.

Under 33 CFR 67.10–20, manufacturers of fog signals must apply to the Coast Guard and schedule to have a Coast Guard representative observe the test procedure. The test must be completed using equipment supplied and calibrated by the Coast Guard. The manufacturer must also bear the cost of Coast Guard personnel and test equipment. This requirement would be changed to require independent laboratories to conduct fog signal tests in accordance with existing Coast Guard procedures.

The amendments would relieve the financial and administrative burden from both the public and the government.

Discussion of Comments on Testing by Independent Laboratories

The comments were generally favorable towards this change. The consensus was that independent laboratory testing would improve quality and reduce the costs and administrative burden associated with inspection. However, one company commented that the existing procedures are adequate. In light of the favorable response to the testing issue, the Coast Guard is pursuing this change in this rulemaking project.

Discussion of Proposed Rules

(1) Proposed § 67.05–30 would be added to require testing of lights by independent laboratories. One sample of each product model would be tested. Once approved, the manufacturer and model numbers would be placed on a Coast Guard approved list which would be made available to the public. Information regarding testing procedures may be obtained from Commandant (G–NSR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(2) Existing § 67.10 would be amended to require testing of fog signals by independent laboratories. This procedure would be similar to that used for lights. One sample of each product model would be tested. Once approved, the manufacturer and model numbers would be placed on a Coast Guard approved list which would be made available to the public. Information regarding testing procedures may be obtained from Commandant (G–NSR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(3) Section 67.10–25, Application for tests, would be removed because of the proposed changes to § 67.10–20.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11010; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The cost of testing each model of light by an independent laboratory is approximately $500.00 per test. This is an initial cost to the manufacturer and will only apply to the production sample tested. Once the sample passes the tests, its manufacturer and model numbers are placed on the approved list. Many manufacturers of lighting equipment are already using independent laboratories to conduct tests, and, therefore, would not incur additional costs.

The cost for testing fog signal equipment will be greatly reduced. Presently, the manufacturer has to bear all expenses of conducting the test including all expenses of the U.S. Government in sending a Coast Guard representative to the test. The expense to the manufacturer for Coast Guard personnel to observe a test is approximately $2,000.00. By having an independent laboratory conduct the test without Coast Guard representatives, manufacturers would save a minimum of $2,000.00. Manufacturers would submit one production sample to an independent laboratory for testing. Once the sample passes the tests, its manufacturer and model numbers are placed on an approved list. Manufacturers will see a significant savings by having independent laboratories conduct tests.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations less than 50,000.

Small entities would not be affected by this proposal. The manufacturers of lighting and fog signal equipment are large corporations. If anything, small entities would benefit from this proposal by creating jobs for small independent laboratories. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically effect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(34)(a) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Revision of the testing procedures for lighting and fog signal equipment will have no effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 67

Continental shelf, Navigation (water), Reporting and recording requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 67 as follows:

PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

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

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; 49 CFR 1.46.

2. In subpart 67.05, § 67.05–30 is added to read as follows:

§ 67.05–30 Testing of obstruction lights.

Each obstruction light must be tested by an independent laboratory to ensure that it meets or exceeds the requirements in subparts 67.20, 67.25, and 67.30 of this part for the class of structure on which it is to be used. Information on the test procedure may be obtained from Commandant (G–NSR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

3. Section 67.10–30 is revised to read as follows:

§ 67.10–20 Fog signal tests.

Each fog signal must be tested by an independent laboratory to ensure that it meets the required sound pressure levels in table A of this section. Information on the test procedure may be obtained from Commandant (G–NSR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

§ 67.10–25 [Removed]

4. Section 67.10.25 is removed.

Dated: March 15, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, and Waterway Services.

[FR Doc. 96–7332 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E4365 and 4E4376/P645; FRL–5348–1]

RIN 2070–AB18

Diquat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the imported raw agricultural commodities bananas and coffee at 0.05 part per million (ppm). Zeneca, Inc., petitioned for this proposed regulation to establish a maximum permissible level for the residues of the plant growth regulator.

DATES: Comments identified by the docket number, (PP 4E4365 and 4E4376/P645), must be received on or before April 26, 1996.

ADDRESSES: Submit written comments by mail 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: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 (PP 4E4365 and 4E4376/P645). 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.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures as 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 will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the above address, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), 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. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Zeneca, Inc., P.O. Box 15458, Wilmington, DE 19850, has submitted pesticide petition (PP 4E4365 and 4E4376) to EPA. This petition requested that the Administrator, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for residues of the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazinediium derived from application of the dibromide salt and calculated as the cation in or on the raw agricultural commodity bananas at 0.02 ppm and coffee at 0.05 ppm. The petition for bananas was subsequently amended to raise the tolerance level to 0.05 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include the following:

1. A 2-year chronic toxicity/carcinogenicity study in rats resulted in a systemic lowest-observed-effect level (LOEL) of 2.91 mg/kg/day in males and 3.64 mg/kg/day in females (expressed as diquat cation), and a systemic no-observed effect level (NOEL) of 0.58 mg/

kg/day in males and 0.72 mg/kg/day in females (expressed as diquat cation).

2. A 1-year feeding study in dogs resulted in a systemic LOEL of 2.5 mg/kg/day and a systemic NOEL of 0.5 mg/kg/day in both sexes (expressed as diquat cation).

3. A 2-year feeding study in mice resulted in a systemic LOEL of 11.96 mg/kg/day in males and 16.03 mg/kg/day in females (expressed as diquat cation), and a systemic NOEL of 3.56 mg/kg/day in males and 4.78 mg/kg/day in females (expressed as diquat cation).

4. A developmental toxicity study in rats resulted in a maternal toxicity LOEL of 32 to 56 mg/kg/day and a maternal toxicity NOEL of 8 to 14 mg/kg/day (expressed as diquat cation), and a developmental toxicity LOEL of 32 to 56 mg/kg/day and a developmental toxicity NOEL of 8 to 14 mg/kg/day (expressed as diquat cation).

5. A developmental toxicity study in rabbits resulted in a maternal toxicity LOEL of 5.0 mg/kg/day and a maternal toxicity NOEL of 2.5 mg/kg/day (expressed as diquat cation). The developmental toxicity was not clearly established.

6. A recently submitted developmental toxicity study in rabbits resulted in a maternal toxicity LOEL of 3 mg/kg/day and a maternal toxicity NOEL of 1 mg/kg/day (expressed as diquat cation), and a developmental toxicity LOEL of 10 mg/kg/day and a developmental toxicity NOEL of 3 mg/kg/day (expressed as diquat cation).

7. A developmental toxicity study in mice resulted in a maternal toxicity LOEL of 2 mg/kg/day and a maternal toxicity NOEL of 1 mg/kg/day (expressed as diquat cation), and a developmental toxicity LOEL of 4 mg/kg/day and a developmental toxicity NOEL of 2 mg/kg/day (expressed as diquat cation).

8. A two-generation reproduction study on rats resulted in a systemic toxicity LOEL of 4 mg/kg/day and a systemic toxicity NOEL of 0.8 mg/kg/day (expressed as diquat cation), and a reproductive toxicity LOEL of 12 to 20 mg/kg/day and a reproductive toxicity NOEL of 4 mg/kg/day (expressed as diquat cation).

9. Diquat showed nonmutagenicity in one gene mutation test (Ames), two structural chromosome aberration tests (mouse micronucleus and dominant lethal in mice), and one test for other genotoxic effects (unscheduled DNA synthesis in rat hepatocytes *in vitro*). Positive results were seen in one gene mutation test (mouse lymphoma cell assay) and in one chromosome aberration test (human blood lymphocytes, depending on the concentration of diquat and the presence of the metabolic activation system).

10. Metabolism studies showed about 90% of the administered dose being eliminated in feces, indicating that diquat was poorly absorbed from the gastrointestinal tract. Following a subcutaneous injection to circumvent the intestine, nearly all of the administered dose was recovered in the urine within 2 days.

The Office of Pesticide Program's Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified diquat as a Group E carcinogen (no evidence of carcinogenicity) under the Agency's *Guidelines for Carcinogen Risk Assessment,* published in the Federal Register of September 24, 1986 (51 FR 33992). In its evaluation, CPRC gave consideration to body weight changes in a 2-year feeding study in mice and histopathological changes in the eyes in a 2-year chronic feeding/carcinogenicity study in rats.

The Reference Dose (RfD) is established at 0.005 mg/kg/day, based on a NOEL of 0.5 mg/kg/day from the chronic toxicity study in dogs and an uncertainty factor of 100. The Anticipated Residue Concentration (ARC) from the current actions is estimated at 0.00074 mg/kg/day of body weight/day for the general population and utilizes 15% of the RfD for the U.S. population. The ARC for the most exposed subgroup is 0.0024 mg/kg/day of body weight/day for nonnursing infants (less than 1-year old) and utilizes 48% of the RfD. Therefore, no appreciable risk is expected from the chronic dietary intake since the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for the purposes of the tolerances. An adequate analytical method, extraction with sulfuric acid with spectrometric detection, is available for enforcement purposes. The analytical method for enforcing these tolerances have been published in the *Pesticide Analytical Manual, Vol. II* (PAM II).

The pesticide is considered useful for the purposes for which it is sought, and the tolerances are capable of achieving the intended physical or technical effect. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency concludes that the proposed tolerances will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

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 the ingredient listed herein, may request within 30 days after the publication of this document in the Federal Register that this 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. Comments must bear a notation indicating the document control number, [PP 4E4365 and 4E4376/P645). All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the above address from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this proposal under docket number (PP 4E4365 and 4E4376/P645) (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 proposal, 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.

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 proposed 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: March 20, 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. In § 180.226, by adding new paragraph (c) to read as follows:

§180.226 Diquat; tolerances for residues.

* * * * *

(c) Tolerances are established for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following raw agricultural commodities:

Commodity	Parts per million
Bananas	0.05
Coffee	0.05

There are no U.S. registrations as of December 6, 1995.

[FR Doc. 96–7445 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

RIN 2070–AB18

[OPP–300418; FRL–5355–6]

Oxidized Pine Lignin, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that oxidized pine lignin, sodium salt (CAS Reg. No. 68201-23-0) be exempted from the requirement of a tolerance when used as an inert ingredient (surfactant or adjuvant to surfactant) in pesticide formulations. This proposed regulation was requested by LignoTech USA, Inc.

DATES: Comments, identified by the docket control number [OPP–300418], must be received on or before April 26, 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 deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

ADDRESSES: The Agency invites any interested person who has concerns about the implementation of this action to submit written comments in triplicate to: By mail: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 ''OPP–300418.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 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 Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive North Tower, Arlington, VA, (703) 308-8375, e-mail acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474-1998 submitted pesticide petition (PP) number 5E04471 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001 (c) and (e) by establishing an exemption from the requirement of a tolerance for oxidized lignin, sodium salt when used as a surfactant or adjuvant to surfactant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest or to animals. Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a

pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for oxidized lignin, sodium salt will need to be submitted. The rationale for this decision is described below:

1. Similar chemicals such as pine lignin (used as an absorbent) and sulfonated kraft lignin/lignosulfonates (used as a surfactant or related adjuvant to surfactant), are exempt from the requirement of a tolerance when used in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest or to animals under 40 CFR 180.1001 (c) and (e).

2. Pine lignin, also known as kraft lignin, is a derivative of a natural plant polymer, lignin, which is the most abundant polymer in nature. Pine lignin is used as a raw material for oxidized kraft lignin as well as a starting material for pine-kraft lignin-based lignosulfonates. It is produced as a coproduct during the manufacture of paper via the kraft pulping process.

3. The toxicological data show that pine lignin, sulfonated pine lignin as well as oxidized pine lignin or lignosulfonates are of very low acute toxicity (LD50 >2 to >5 g/kg in rats and LC50 >1000 to >3000 mg/l in fish).

4. Pine lignin is classified as toxicity category IV in a skin irritation and eye irritation studies.

Based on the submitted toxicological data, physico-chemical properties of the sodium salt of oxidized kraft lignin, its structural similarity to related chemicals such as kraft lignin/lignosulfonates and pine/kraft lignin that have already been exempted under 40 CFR 180.1001(c) and (e), and the review of its use, the Agency has found that, when used as a surfactant or adjuvant to surfactant in pesticide formulations applied preharvest, postharvest or to animals in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

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 document in the Federal Register that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP–300418].

A record has been established for this proposal under docket number ''OPP–300418'' (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 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 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 the proposal 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 rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354 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

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 13, 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. Section 180.1001 is amended by revising the table in paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, oxidized pine lignin to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Oxidized pine lignin, sodium salt (CAS Reg. No. 68201-23-0)	Maximum of 2% of formulation	Surfactant or adjuvant to surfactant
* * *	* * * *	

* * * * * (e) * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Oxidized pine lignin, sodium salt (CAS Reg. No. 68201-23-0)	Maximum of 2% of formulation	Surfactant or adjuvant to surfactant
* * *	* * * *	

[FR Doc. 96–7448 Filed 3–26–96; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 960315082–6082–01; I.D. 031296C]

RIN 0648–XX55

American Lobster Fishery; Removal of Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS announces its initial determination to withdraw approval of the Fishery Management Plan for the American Lobster Fishery (FMP), and proposes to remove the regulations implementing the FMP. Withdrawal of FMP approval appears necessary, because changed circumstances have called into question whether this FMP is consistent with the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The intended effect of this action is to ensure that Federal management of the American lobster fishery more closely complies with state-administered programs.

DATES: Comments on the proposed rule must be received on or before May 13, 1996.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-3799.

Copies of the Environmental Assessment (EA) supporting this action and the regulatory impact review (RIR) are available from the same address.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION:

The subject FMP, prepared by the New England Fishery Management Council (Council), was approved and implemented in 1983. Implementing regulations are found at 50 CFR part 649. The FMP has been amended several times since implementation, most recently by Amendment 5. The purpose of Amendment 5 is to prevent overfishing through adoption of a stock rebuilding program in the exclusive economic zone (EEZ) to be developed by effort management teams (EMTs) to enhance the existing regulations, including those implemented by the individual coastal states and the Atlantic States Marine Fisheries Commission (ASMFC). Amendment 5 has not yet achieved this objective and on September 18, 1995 (60 FR 48086), NMFS published an advance notice of proposed rulemaking (ANPR) that requested comments from the public on options for lobster management. This proposed rule discusses the comments received as a result of the ANPR and the other circumstances that give rise to this proposed action to withdraw the FMP.

These options were discussed in the ANPR: Whether to withdraw the FMP and develop regulations under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), or proceed with development of a Secretarial fishery management plan, or some other option. NMFS stated that it wished to retain as many current measures as possible under the law, and especially desired to consider those measures proposed by the group of industry, government, and other non-government participants who constituted the EMTs. Written responses were received on the ANPR from the Council, the ASMFC, two state fishery agencies, three fishing associations, and one individual. Two comments favored withdrawal of the FMP and the development of regulations under the ACFCMA. Five comments requested that NMFS keep the current FMP in place while the ASMFC develops an amendment to its lobster coastal management plan (CMP). The one remaining comment was in favor of Secretarial action for the offshore lobster fishery.

There are several reasons to withdraw this FMP. In accordance with the goals of the initiative to reform the Federal regulatory system announced by the President on February 21, 1995, the lobster FMP can be eliminated without compromising resource management and conservation objectives. The American lobster fishery is prosecuted primarily in state waters from Maine to Virginia and these states have implemented protective measures under state law in addition to the ASMFC CMP. Final withdrawal of the FMP and its implementing regulations would only occur upon completion of an effective state management program, most likely developed by the ASMFC. The primary objective of the FMP has been to serve as a vehicle for coordinated management of the American lobster fishery throughout its range. The FMP was prepared to support the management efforts of the states. However, the need for a Magnuson Act fishery management plan for lobster is now in question, given the

compliance authority included in the ACFCMA.

In addition, NMFS can no longer ensure that the FMP is, or can be amended to be, consistent with National Standard 1, which requires implementation of conservation and management measures to prevent overfishing. Fishing mortality for American lobster is occurring at a rate in excess of that in the overfishing definition, and Amendment 5 has not fostered the necessary cooperation between the Atlantic coastal states, the Council, and the ASMFC to address the problem. Withdrawal would allow the ASMFC to address the overfished condition of the stocks unhindered by the Council process.

Withdrawal would also ensure consistency with National Standard 7, which requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Prior to the implementation of the ACFCMA, interstate plans lacked effective compliance authority and states relied upon Federal regulations under the Magnuson Act to provide cohesiveness and compliance. This is no longer a problem, because the ACFCMA, as recently amended, now provides a mechanism for state compliance to coastal management plans implemented by the ASMFC and, therefore, is a more appropriate vehicle to support the effective implementation of these plans. As a result, in some instances where a coastal plan exists or is proposed, the Magnuson Act may be an unnecessary duplication.

Withdrawal of the FMP, provided that complementary Federal regulations are issued by NMFS under the ACFCMA, is consistent with the formal comments submitted by the ASMFC during the comment period on the ANPR. During the comment period, the ASMFC requested a status quo approach until the states, through ASMFC, determine where lobster management should go from here by amending its CMP for American lobster. The Maine Department of Marine Resources commented that management of lobster should transfer from the Council to the ASMFC immediately. The Connecticut Department of Environmental Protection requested that the FMP remain in place to allow the ASMFC time to develop its CMP. Timely withdrawal of this FMP and replacement by a state-administered CMP is consistent with the requests of these agencies.

Therefore, NMFS is publishing this proposed rule stating its intent to withdraw the FMP and remove its implementing regulations. Final action would be contingent upon appropriate action by the ASMFC that would allow NMFS to issue effective Federal regulations under the ACFCMA, as necessary.

Timing the withdrawal to coincide with implementation of an ASMFC CMP is necessary, because a lapse in the Federal regulations would suspend conservation measures in the EEZ. For instance, the Federal minimum size limit, the protective measures for egg-bearing lobsters, and the limited access permit program would lapse, jeopardizing conservation and canceling roughly 3,000 Federal limited access moratorium permits. The administrative and resource costs that would result from a lapse in the regulations would exceed the benefits of this action.

Amendment 5 to the FMP was approved on the basis that it established a participative process to reduce effort and prevent overfishing. As stated in the ANPR, NMFS supports the EMT concept and the prevention of overfishing objective of Amendment 5 and expects that the state management plan initiative will be guided by the national standards and guidelines to ensure effective conservation and management of the American lobster resource.

Classification

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

At this time, the Assistant Administrator for Fisheries (AA) has not determined that the action this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The AA, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared a draft EA for this amendment that discusses the impact on the environment as a result of this rule. A copy of the draft EA may be obtained from NMFS (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has 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. As a result, a regulatory flexibility analysis was not prepared. This rule has no direct effect on the stock of lobster or the lobster fishery, since the management measures that would be removed via this action are expected to be implemented under the ACFCMA before withdrawal is complete. If NMFS intends to alter, add, or eliminate any regulations implemented under the FMP under the authority of the ACFCMA, an initial regulatory flexibility analysis will be done for those specific regulations at that time.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: March 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, part 649 is proposed to be removed.

[FR Doc. 96–7319 Filed 3–26–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 60
Wednesday, March 27, 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

Agricultural Marketing Services

[TB–96–12]

Burley Tobacco Advisory Committee; Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Burley Tobacco Advisory Committee for a period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, AMS, USDA, 300 12th Street, S.W., Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the burley marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the burley tobacco industry and meets at the call of the Secretary. The Secretary has determined that the reestablishment of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: March 19, 1996.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 96–7439 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

[TB–96–08]

Flue-Cured Tobacco Advisory Committee; Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of Committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Flue-Cured Tobacco Advisory Committee for a period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The Secretary has determined that the reestablishment of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App).

Dated: March 19, 1996.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 96–7440 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. PY–95–001]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of test-market period.

SUMMARY: On March 30, 1995, the Agricultural Marketing Service (AMS) published a notice in the Federal Register (60 FR 16428) announcing a one-year test-market period for USDA grade-identified, boneless-skinless poultry legs and drumsticks, based on tentative grade standards. AMS is extending the test-market period beyond its scheduled end, April 1, 1996, until it makes a final determination about the tentative standards.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION: On March 30, 1995, the Agricultural Marketing Service (AMS) published a notice in the Federal Register (60 FR 16428) announcing a one-year test-market period for USDA grade-identified, boneless-skinless poultry legs and drumsticks, based on tentative grade standards. The test-market period is scheduled to end April 1, 1996, after which the Agency will evaluate the test results. If AMS decides to amend the current poultry grade standards, a proposal with comment period will be published in the Federal Register. To allow processors to continue marketing these products while the Agency evaluates test results, AMS has determined that it is appropriate to extend the test-market period until a final determination is made about the tentative grade standards.

Dated: March 21, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–7442 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, April 18, 1996. The meeting will held in the Conference Room, at Salem District Office, Bureau of Land Management; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5646. The meeting is scheduled to begin at 9 a.m. and conclude at approximately 4 p.m. Topics tentatively scheduled on the agenda include: (1) Advisory

Committee feedback on the Forest Health proposal from the Klamath Province and a presentation by the Small Log Utilization Group, (2) Discussion with federal managers about the short-term and long-term response to flood impacts on Forest Service and Bureau of Land Management lands in the Province, (3) Overview of Northwest Forest Plan monitoring strategy, (4) Group information sharing

The meeting is open to the public and opportunity will be available to address the Advisory Committee during a public forum. The public forum will follow the agenda topics mentioned above and will occur in the afternoon. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: March 21, 1996.

Richard C. Stem,

Deputy Forest Supervisor.

[FR Doc. 96–7391 Filed 3–26–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–001]

Truck Trailer Axle and Brake Assemblies From Hungary; Termination of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of antidumping duty investigation.

SUMMARY: On December 1, 1995, the Department received a letter from counsel to Rockwell International Corporation (''the petitioner''). The letter notified the Department that the petitioner had no further interest in the suspended investigation on truck trailer axle-and-brake assemblies and parts thereof from Hungary and that it was, therefore, withdrawing the petition. On December 8, 1995, the Department requested parties to the proceeding to provide comments on the Department's proposal to terminate the suspended antidumping duty investigation on truck trailer axle-and-brake assemblies and parts thereof from Hungary. The Department is now terminating this suspended investigation.

EFFECTIVE DATE: March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1981, the Department received a petition from counsel representing Rockwell International Corporation of Pittsburgh, Pennsylvania. The petitioner simultaneously filed a copy of the petition with the United States International Trade Commission (the Commission). The petitition alleged that truck trailer axle-and-brake assemblies and parts thereof were being sold in the United States at less than fair value and that the truck trailer axle industry in the United States was being materially injured by reason of the importation of this merchandise. After conducting a summary review of the petition, the Department instituted an investigation, and notice was published in the Federal Register of March 11, 1981 (46 FR 16109).

On March 30, 1981, the Commission notified us that it had determined, as required by section 733(a) of the Act, that there was a reasonable indication that an industry in the United States was materially injured by reason of the importation of the subject imports. The Commission's determination and the reasons therefore were published in the Federal Register on April 8, 1981 (46 FR 21121).

On September 30, 1981, the Department preliminarily determined that truck trailer axle-and-brake assemblies were being sold in the United States at less than fair value. Notice of the preliminary affirmative antidumping determination was published in the Federal Register on September 17, 1981 (46 FR 46152).

In a letter dated October 29, 1981, counsel for the respondent Hungarian Railway Carriage and Machine Works (RÁBA) proposed to enter into a suspension agreement pursuant to section 734 of the Act and section 353.18 (19 CFR 353.18 (1994)) of the Department's regulations. On November 3, 1981, the Department provided copies of the proposed suspension agreement between RÁBA and the Department of Commerce to the petitioner for its consultation and to other parties to the proceeding for their comments. On December 1, 1981, Rockwell International Corporation (the petitioner) and Dana Corporation (a U.S. producer of the subject merchandise) submitted comments on the proposed suspension agreement. After considering all comments and consulting with the petitioner in accordance with section 734(e) of the Act, the Department determined that the criteria for suspension of an investigation pursuant to section 734(e) of the Act had been met.

On January 4, 1982, the Department published in the Federal Register a notice of suspension of antidumping duty investigation on truck trailer axles from Hungary (47 FR 66). The basis for the suspension of investigation was an agreement reached between the Department and RÁBA in which RÁBA agreed to revise its prices to eliminate sales of this merchandise to the United States at less than fair value.

Between January 1982 and June 1993, the suspension agreement was administered pursuant to the terms of the agreement. On June 9, 1993, the Department received a letter from RÁBA notifying the Department that RÁBA was withdrawing from the suspension agreement. In RÁBA's letter of withdrawal, RÁBA stated that it no longer possessed any physical capacity to manufacture truck trailer axles, and that its contractual obligations to provide truck trailer axles to its sole U.S. importer of the merchandise had terminated. Further, RÁBA stated that it had no intention for the foreseeable future of reinvesting in machinery and equipment in order to be able to manufacture truck trailer axles. Therefore, RÁBA stated that there was no purpose in continuing to maintain the suspension agreement, and that RÁBA was thereby withdrawing from it.

On June 21, 1993, the petitioner objected to RÁBA's withdrawal from the suspension agreement. The petitioner alleged that BPW–RÁBA, the company formed when RÁBA sold its truck trailer axle-producing facility to the German company BPW in 1991, was a successor in interest to RÁBA with regard to the suspension agreement. Therefore, the petitioner argued that BPW–RÁBA, and not RÁBA, was the proper party to withdraw from the suspension agreement.

In light of petitioner's objection regarding RÁBA's standing to withdraw from the suspension agreement, the Department, in a letter dated November 8, 1993, inquired into BPW–RÁBA's interest in the suspension agreement. The Department stated in the letter that if BPW–RÁBA indicated that it was not

interested in the suspension agreement, the Department would terminate the suspension agreement and resume the suspended investigation. Conversely, if BPW–RÁBA were to indicate that it was interested in the suspension agreement, the Department could initiate a changed circumstances administrative review to determine whether BPW–RÁBA should be treated as a successor in interest to RÁBA. The Department requested a response from BPW–RÁBA, indicating its interest in the continuation of the suspension agreement, no later than 60 days from the date of the letter. Absent a response from BPW–RÁBA by January 7, 1994, the Department would assume that BPW–RÁBA had no interest in the agreement and, therefore, the Department would resume the investigation.

On January 5, 1994, BPW–RÁBA notified the Department that the agreement seemed to have no relevance to it for the following reasons: 1) it had never been an exporter of truck trailer axles to the United States, although it had supplied RÁBA with certain truck trailer axle components; 2) it had stopped production of truck trailer axles for the United States in 1992; and 3) it had removed the truck trailer axle production equipment from its plant.

On May 5, 1994, the petitioner stated that they believed that BPW–RÁBA still produced axles, but that it was not currently exporting them to the United States. Rockwell stated that it would like the Department to inquire further into BPW–RÁBA's production capabilities. On September 29, 1994, the Department conducted a verification at the production facilities of BPW–RÁBA in Szombathely, Hungary. The primary purpose of the verification was to investigate BPW–RABA's claim that the agreement was no longer relevant due to BPW–RÁBA's cessation of production/exports of subject merchandise to the United States. Based on the verification, there was no evidence to support the claim that BPW–RÁBA was continuing to produce covered merchandise for the U.S. market. For further details of the verification, please see the verification report placed on the record.

On December 1, 1995, counsel to the petitioner notified the Department that Rockwell International Corporation had no further interest in the suspended investigation on truck trailer axle-and-brake assemblies and parts thereof from Hungary and that it was, therefore, withdrawing the petition.

On December 8, 1995, the Department notified parties to the proceeding of its intent to terminate the suspended investigation pursuant to § 353.17(a)(1) of the Department's regulations (19 CFR 353.17(a)(1)(1994)). We received comments from interested parties concerning the proposed termination on January 11, 1996.

Scope of Investigation

The merchandise covered by the investigation are those trailer axle-and-brake assemblies and parts thereof (the ''product'') imported under item numbers 692.32 and 692.60 of the Tariff Schedules of the United States (TSUS) or under item number 8716.40 and 8716.90 of the Harmonized Tariff Schedule (HTS) of the United States. This includes any parts which may be imported under any other TSUS category to be utilized in trailer axles. These parts include, but are not limited to the beam, spindle, brake spider, camshaft, brake shoes, and separate brake assemblies when imported for use on trailer axles. The agreement did not include separate brake assemblies and other parts which are to be utilized solely in truck components other than trailer axles.

Termination of Investigation

Under § 353.17(a) of the Department's regulations (19 CFR 353.17(a)(1994)) the Department may terminate an investigation if the petitioner withdraws the petition, after notifying all parties to the proceeding and after consultation with the International Trade Commission (ITC). Section 353.17(a) further provides that the Department may not terminate an investigation unless it concludes that the termination is in the public interest. We have notified all parties to the proceeding and have consulted with the ITC. We also conclude that termination of the investigation is in the public interest (see public interest assessment memo, March 6, 1996).

On December 1, 1995, Rockwell International Corporation notified the Department that it has no further interest in the suspended investigation on truck trailer axle-and-brake assemblies and parts thereof from Hungary and that it was, therefore, withdrawing its petition. Based on the Department's request for comments to the proposed termination, two letters were filed on January 11, 1996. Eaton Corporation (an importer of the subject merchandise) expressed its support for the proposed termination. Dana Corporation objected to the proposed termination. In its public interest assessment regarding the termination of the suspended investigaton , the Department addresses the objections raised by Dana Corporation.

Based on information contained in the record, the Department is terminating the antidumping duty investigation on truck trailer axle-and-brake assemblies and parts thereof from Hungary. This action is taken pursuant to section 734(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(a)(2)), and § 353.17(a)(2) of Commerce's regulations (19 CFR 353.17(a)(2)(1994)).

Dated: March 14, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–7346 Filed 3–26–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity, Office of the Secretary of Defense, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: May 16, 1996, 8:30 a.m. to 5 p.m. and May 17, 1996, 8:30 a.m. to 1 p.m.

ADDRESSES: On May 16, 1996, the meeting will be held in the Secretary of Defense Conference Room (3E869) in the Pentagon. On May 17, 1996, the meeting will be held at the headquarters building of the Department of Defense Education Activity, 4040 N. Fairfax Drive, Room 904, Arlington, Virginia 22203–1635.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Williams, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4246, extension 124.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b) (3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of

Education. In addition to a representative of each of the Departments, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDEA, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes reports about topics raised during ACDE team visits in October 1995, to DoD overseas schools in Germany, England, the Netherlands, and Belgium; the DoD Education Activity (DoDEA) Community Strategic Plan, to include communications, technology, assessment, budget, and organizational restructuring.

Dated: March 21, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7318 Filed 3–26–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant CeramOptec, Inc., a corporation of the State of New Jersey, an exclusive license under United States Patent Application S/N 08/385,002 filed in the name of Peter S. Durkin for a ''Portable Pumped Laser System.''

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9033.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–7451 Filed 3–26–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 19 and 20 March 1996.

Time of Meeting: 0800–1600, 19 and 20 March 1996.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on ''The Impact of Information Warfare on Army Command, Control, Communications, Computers and Intelligence (C4I) Systems'' will meet for briefings and discussion on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–7337 Filed 3–26–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 March 1996.

Time of Meeting: 1000–1600.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Independent Assessment Study on ''Reengineering the Acquisition and Modernization Processes of the Institutional Army'' will meet for briefings and discussion on the study subject. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–7338 Filed 3–26–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 and 22 March 1996.

Time of Meeting: 0900–1700, 21 March 1996. 1000–1700, 22 March 1996.

Place: Pentagon–Washington, DC.

Agenda: The Army Science Board (ASB) Summer Study on ''Technical Architecture C41'' will meet for briefings and discussion on the study subject. The meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–7339 Filed 3–26–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army; Corps of Engineers

Availability of Surplus Land and Buildings Located at Defense Depot Memphis, TN

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Defense Distribution Depot Memphis, Tennessee (DDMT). DDMT is located less than one mile North of Interstate 240 and one mile North of the Memphis Airport, in the southern sector of the city. Commercial rail adjoins the property.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Memphis Depot Redevelopment Agency, Attention: Ms. Cindy

Buchanan, Executive Director, 2163 Airways Blvd., Building 144, Suite 140, Memphis, TN 38114 (telephone (901) 942–4939). For more information regarding particular properties identified in this notice (i.e., acreage, floor plans, existing sanitary facilities, exact street address), contact Mr. Jim Phillips, U.S. Army Engineer District, Mobile, ATTN: CESAM–RE–MD, P.O. Box 2288, Mobile, AL 36628–0001, (telephone (334) 694–3681); or Ms. Buchanan at the above address.

The surplus real property consists of two parcels containing 642 and 60 acres respectively and includes 1 administration building, 35 warehouse buildings, and 82 miscellaneous support buildings. The current range of uses include administrative, storage, maintenance, residential and recreational. Future uses may be influenced by environmental conditions.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–7359 Filed 3–26–96; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

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 May 28, 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.

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 Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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 prior to submission of these requests to OMB. 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. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 21, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Title II—Dwight D. Eisenhower Professional Development Program Report Forms.

Frequency: Triennially.

Affected Public: Not-for-profit institutions, Federal Government, State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 52.

Burden Hours: 30.

Abstract: This will be used by the Department as one means of collecting information on the effectiveness of the program at the State and local levels. The data will be used to inform the Department and Congress on the progress of the State programs in meeting performance indicators. The information will assure statutory mandates are followed.

[FR Doc. 96–7357 Filed 3–26–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

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 26, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

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 Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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 prior to submission of these requests to OMB. 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. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 21, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Financial and Performance Report, Library Services and Construction Act, Titles I, II and III.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 55. Burden Hours: 2,481.

Abstract: The State Library Administrative Agency submits the Financial and Performance Report reflecting project expenditures and completion data, the relationship of the projects to the LSCA Long-range Plan, and evaluation project data for Title I (Public Library Services); Title II (Public Library Construction and Technology Enhancement); and Title III (Interlibrary Cooperation and Resource Sharing).

[FR Doc. 96–7360 Filed 3–26–96; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.004C and 84.00D]

Office of Elementary and Secondary Education; Desegregation of Public Education Programs—State Educational Agency and Desegregation Assistance Centers

ACTION: Extension notice.

SUMMARY: The purpose of this notice is to revise the closing date for receipt of applications for new awards for fiscal year (FY) 1996. On December 20, 1995, the Acting Assistant Secretary for Elementary and Secondary Education published in the Federal Register (60 FR 65643) an application receipt notice for two programs under Desegregation of Public Education. The two programs announced were CFDA No. 84.004C, State Educational Agency (SEA), and CFDA No. 84.004D, Desegregation Assistance Centers (DACs). The original deadline dates were January 31, 1996 for the SEA program and February 2, 1996 for the DAC program. Applications for these programs were not available until mid March. In order to give applicants sufficient time to develop and submit quality applications, the Secretary has extended the application deadline date.

Deadline for Transmittal of Applications: May 9, 1996. This deadline for transmittal of applications is for both programs.

Deadline for Intergovernmental Review: July 9, 1996.

Applications Available: March 26, 1996.

For Applications or Information Contact: Adell S. Washington, U.S. Department of Education, 600 Independence Avenue, S.W., Portals, Suite 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2495. Fax (202) 205–0302. 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. Internet: Adell—Washington@ed.gov

Program Authority: 42 U.S.C. 2000c–2,2000c–5.

Dated: March 21, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 96–7358 Filed 3–26–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Public Workshops On the Draft Environmental Impact Statement for the Nevada Test Site and Offsite Locations in the State of Nevada

AGENCY: Department of Energy.

ACTION: Notice of Public Workshops.

SUMMARY: The Department of Energy (DOE) in conjunction with the University of Nevada, Las Vegas, will conduct three additional public hearings in workshop format to solicit comments on the Draft Environmental Impact Statement (EIS) for the Nevada Test Site and Offsite Locations in the State of Nevada (DOE/EIS–0243).

DATES: The dates and locations for the public workshops are listed below. The Boulder City, Nevada meeting will be held at City Hall on April 8, 1996, from 6:00 to 9:00 p.m. The Caliente, Nevada meeting will be held at City Hall on April 16, 1996, from 6:30 to 9:00 p.m. The Tonopah, Nevada meeting will be held in the Commissioners Chambers at the Tonopah Court House on April 23, 1996, from 7:00 to 9.00 p.m.

ADDRESSES: Requests for a copy of the Draft EIS and written comments on the Draft EIS should be directed to: Dr. Donald R. Elle, Director, Environmental Protection Division, U.S. Department of Energy, Nevada Operations Office, P.O. Box 14459, Las Vegas, NV 89195–8066. Oral comments may be submitted at the public workshops or by calling the Nevada Test Site EIS Hotline, 1–800–405–1140 or (702) 295–1392. Comments may also be submitted via facsimile to (702) 295–1264 or via electronic mail at ntseis@nv.doe.gov.

FOR FURTHER INFORMATION CONTACT: For general information on the Department's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE released the Draft EIS to the public in February 1996 with a DOE notice in the Federal Register (61 FR 3924, February 2, 1996) and a U.S. Environmental Protection Agency notice in the Federal Register (61 FR 3932, February 2, 1996). Additional information on public hearings for the Draft EIS can be found in the DOE Federal Register notice. Written and/or oral comments on the Draft EIS are invited from the general public, other government agencies, and all other interested parties. Comments received or postmarked by May 3, 1996, whether written or oral, submitted directly to the Department, or presented during a public hearing, will be given equal consideration in preparation of the final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Issued in Washington, D.C., March 22, 1996.

Gary T. Palmer,

Environmental Specialist, Office of Environmental Support Defense Programs.

[FR Doc. 96–7406 Filed 3–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–41–003]

Colorado Interstate Gas Company; Notice of Petition To Amend

March 21, 1996.

Take notice that on March 20, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–41–003 a petition to further amend its application filed in Docket No. CP96–41–000 to delete compressors at three compressor stations as well as an 858-foot segment of 18-inch pipeline and measurement facilities, all currently classified as transmission, from those facilities CIG wishes to transfer to its affiliate, CIG Field Services Company (Field Services), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that, at a technical conference convened on March 5, 1996, in Docket No. CP96–41–000, as amended, parties questioned the consistency of the proposed reclassification of compression facilities and also raised the issue of whether Field Services could fully recover the cost of providing gathering services using compressors proposed to be reclassified from transmission to gathering. To alleviate these concerns, CIG indicates that it now seeks to amend its pending application to retain as facilities owned and operated by CIG subject to the Commission's jurisdiction under the Natural Gas Act, the compressors at its Lakin, Morton, and Mocane Compressor Stations currently classified as transmission. It is indicated that these compression facilities consist of 31,700 horsepower. CIG also proposed to retain a 858-foot segment of pipeline with measurement facilities extending from the outlet of the Mocane Compressor Station to the Warren Processing Plant. CIG also proposes to include dehydrators at Mocane and Morton among its transmission assets. No other changes to the original application, as amended on February 23, 1996, are proposed.

CIG indicates that, as a result of the instant petition and a previous petition filed February 23, 1996, the net book value of facilities to be transferred to CIG Field Services Company will be reduced from $36,111,594 to $32,982,883.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 1, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7355 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–118–002]

Eastex Power Marketing, Inc.; Notice of Filing

March 21, 1996.

Take notice that on March 1, 1996, Eastex Power Marketing, Inc. tender for filing a letter to expand upon prior representations regarding electric generation owned by affiliates of EPMI.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 3, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7353 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1301–000]

Florida Power Corporation; Notice of Filing

March 21, 1996.

Take notice that on March 13, 1996, Florida Power Corporation (Florida Power), tendered for filing service agreements providing service to Eastern Power Marketing, Inc. pursuant to its open access transmission tariff (the T–2 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on March 14, 1996.

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 NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7352 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2589–001]

Brian R. Foster; Notice of Filing

March 21, 1996.

Take notice that on January 3, 1996, Brian R. Foster (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions: Director, Savannah Electric and Power Company; Executive Vice President, NationsBank of Georgia, National Association.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7350 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–45–001]

Honeoye Storage Corporation; Notice of Electronic Tariff Filing

March 21, 1996.

Take notice that on March 18, 1996, Honeoye Storage Corporation (Honeoye) filed a diskette containing in electronic format its FERC Gas Tariff, Second Revised Volume No. 1, Honeoye states that the filing does not involve any change in rates or services.

Honeoye also states that the filing was made to comply with the FERC Order No. 582 issued September 28, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. 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 on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7351 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–000 and RP94–242–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

March 21, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 27, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–0053.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7356 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–159–000]

Shell Gas Pipeline Company; Notice of Technical Conference

March 21, 1996.

Take notice that a technical conference will be convened in the above-docketed proceeding on Wednesday, April 17, 1996, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. This technical conference is being convened to further discuss all rate and tariff issues raised by Shell Gas Pipeline Company's application. Any party, as defined in 18 CFR 385.102(c), and any participant, as defined in 18 CFR 385.102(b) is invited to participate.

For additional information please contact Robert A. Wolfe, (202) 208–2098, or Thomas F. Koester, III, (202) 208–2258 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7354 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–203–060 and RP92–132–047 (Phase II—PCB Issues)]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

March 21, 1996.

Take notice that on March 18, 1996, Tennessee Gas Pipeline Company tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariffff sheets in Appendix A to the filing, to become effective on July 1, 1995 and thereafter, as indicated.

Tennessee asserts that the purpose of this filing is to comply with the Commission's orders issued November 29, 1995 and February 20, 1996, in FERC Docket Nos. RP91–203 and RP92–132 (Phase II—PCB issues) by which the Commission approved the Stipulation and Agreement filed May 15, 1995 in this proceeding (''PCB Settlement'').

Tennessee states that the PCB Settlement resolves outstanding issues relating to Tennessee's recovery from its customers of the costs of remediating PCB and HSL contamination at specified locations on its pipeline system. Tennessee further states that the PCB Settlement requires that Tennessee file the identified tariff sheets to implement the terms and conditions of the PCB Settlement. Tennessee requests that the tariff sheets become effective consistent with the effective date prescribed in the PCB Settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. 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 on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7348 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–117–000]

Texas Eastern Transmission Corporation; Notice of Technical Conference

March 21, 1996.

In the Commission's order issued on February 15, 1996, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Wednesday, April 3, 1996, from 1:00 p.m. to 5:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7347 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1488–005, et al.]

Excell Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 20, 1996.

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

1. Excell Energy Services, Inc., National Power Exchange, Corp., Energy Services, Inc.

[Docket Nos. ER94–1488–005, ER94–1593–005, and ER95–1021–002 (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 March 1, 1996, Excell Energy Services, Inc. filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1488–000.

On March 6, 1996, National Power Exchange Corporation filed certain information as required by the Commission's October 7, 1994, order in Docket No. ER94–1593–000.

On March 4, 1996, Energy Services, Inc. filed certain information as required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

2. Cleveland Electric Illuminating Company

[Docket No. ER96–1073–000]

Take notice that on March 12, 1996, Cleveland Electric Illuminating Company tendered for filing an amendment to its February 15, 1996, filing in the above-referenced docket.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER96–1288–000]

Take notice that on March 11, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Restated and Amended Power Sales Agreement dated January 31, 1996 (Sales Agreement) between PacifiCorp and Public Utility District No. 1 of Clark County, Washington (Clark). The Sales Agreement replaces in its entirety the December 28, 1996, Power Sales Agreement, PacifiCorp Rate Schedule FERC No. 416.

Copies of this filing were supplied to Clark, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER96–1289–000]

Take notice that on March 11, 1996, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with FEDERAL Energy Sales Inc. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–1290–000]

Take notice that on March 11, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER96–1291–000]

Take notice that on March 11, 1996, Commonwealth Edison Company (ComEd) submitted four Service Agreements, establishing Southern Company Services (Southern), dated September 15, 1995; CNG Power Services Corp. (CNG), dated January 15, 1996; Northern Indiana Public Service Company (NIPSCO), dated January 25, 1996; and Illinois Power Company (IP), dated January 29, 1996, as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). ComEd also submitted two additional Service Agreements, establishing Illinois Power Company, (IP), dated January 29, 1996, and Sonat Power Marketing (Sonat), dated February 1, 1996, as customers under the terms of ComEd's Flexible Transmission Service Tariff (FTS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2, and the FTS–1 Tariff as FERC Electric Tariff, Second Revised Volume No. 3.

ComEd requests an effective date of February 11, 1996, for all six Service Agreements and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Southern, CNG, NIPSCO, IP, Sonat and the Illinois Commerce Commission.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER96–1302–000]

Take notice that on March 13, 1996, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Eastern Power Marketing, Inc. The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules has been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on March 14, 1996. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power & Light Company

[Docket No. ER96–1303–000]

Take notice that on March 13, 1996, Minnesota Power & Light Company, tendered for filing a signed Service Agreement and reciprocal Letter Agreement with Sonat Power Marketing, Inc. under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER96–1304–000]

Take notice that on March 13, 1996, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission, Service Agreements (the Agreements) between PP&L and Aquila Power Corporation, dated February 14, 1996, and between PP&L and Morgan Stanley Capital Group, Inc., dated February 28, 1996.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreements effective as of March 13, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Company

[Docket No. ER96–1305–000]

Take notice that on March 13, 1996, Montaup Electric Company (Montaup), filed a Notice of Cancellation of a service agreement between Montaup and New England Power Company, Montaup Rate Schedule No. 100 and Supplement No. 1 thereto. Montaup

requests that the Notice be allowed to become effective February 23, 1996.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Company

[Docket No. ER96–1306–000]

Take notice that on March 13, 1996, Montaup Electric Company (Montaup) filed 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III, and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff Original Volume No. IV. The service agreements under both tariffs are between Montaup and the following companies:

1. Massachusetts Municipal Wholesale Electric Company (MMWEC)
2. Bangor Hydro-Electric Company (BHE)
3. New York State Electric & Gas Corporation (NYSEG)
4. New England Power Company (NEP)

The service agreements under Original Volume No. IV allow them, through certificates of concurrence, to provide capacity from one of their units, in order to enable Montaup to make a system sale while maintaining its minimum monthly system capability required under the present NEPOOL agreement.

The transactions under the service agreements are purely voluntary and will be entered into only if mutually beneficial and agreeable. Montaup requests a waiver of the sixty-day notice requirement so that the service agreement may become effective January 3, 1996 for the MMWEC agreements, January 19, 1996 for the BHE agreements, and February 23, 1996 for the NYSEG and the NEP agreements.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No. ER96–1307–000]

Take notice that on March 13, 1996, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and USGenPS Power Services, L.P. (USGenPS). ACE requests that the Agreement be accepted to become effective December 19, 1995.

Copies of the filing were served on USGenPS and the New Jersey Board of Regulatory Commissioners.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER96–1308–000]

Take notice that on March 13, 1996, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and KN Marketing, Inc. under its TS Tariff. KU requests an effective date of February 23, 1996.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–1311–000]

Take notice that on March 14, 1996, PECO Energy Company (PECO) filed a Service Agreement dated February 14, 1996, with Entergy Power Marketing Corporation (EPMC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds EPMC as a customer under the Tariff.

PECO requests an effective date of February 14, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to EPCM and to the Pennsylvania Public Utility Commission.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER96–1312–000]

Take notice that on March 14, 1996, PECO Energy Company (PECO) filed a Service Agreement dated February 14, 1996, with Entergy Power, Inc. (Entergy Power) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Entergy Power as a customer under the Tariff.

PECO requests an effective date of February 14, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Entergy Power and to the Pennsylvania Public Utility Commission.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER96–1313–000]

Take notice that on March 14, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing a number of umbrella-type agreements for service under the AEP Companies' Power Sales and Point-to-Point Transmission Service Tariffs. The agreements were executed by AEPSC, on behalf of the AEP Companies and the following parties: Alpena Power Company, Aquila Power Corporation, Electric Clearinghouse, Inc., Entergy Power Corporation, InterCoast Power Marketing Co., Ohio Edison Company, and Tennessee Power.

The Point-to-Point Transmission Tariff has been accepted to replace AEPSC FERC Electric Tariff, Original Volume No. 1, effective August 15, 1995. The Power Sales Tariff has been designated as FERC Electric Tariff, Original Volume No. 2, effective October 1, 1995. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after February 13, 1996.

A copy of the filing was served upon the parties listed above and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. LSP-Cottage Grove, L.P.

[Docket No. QF94–142–002]

On March 4, 1996, LSP-Cottage Grove, L.P., of 402 East Main Street, Bozeman, Montana 59715 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility, to be located in Washington County, Minnesota, was previously certified as a qualifying cogeneration facility, *LSP-Cottage Grove, L.P.*, 69 FERC ¶ 62,130 (1994). The instant request for recertification is due to a change in the ownership structure and internal description of the facility.

Comment date: Within 30 days after the date of publication of this notice in the Federal Register, 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. 96–7431 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–14–000, et al.]

Metropolitan Edison Company, et al. Electric Rate and Corporate Regulation Filings

March 21, 1996.

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

1. Metropolitan Edison Company

[Docket No. EC96–14–000]

Take notice that on March 11, 1996, Metropolitan Edison Company (MetEd) submitted for filing an application under Section 203 of the Federal Power Act seeking authorization from the Commission for the sale and lease of certain MetEd transmission facilities to Pennsylvania Power & Light Company (PP&L). MetEd has served copies of the filing on the Pennsylvania Public Utility Commission and PP&L.

Comment date: April 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG96–50–000]

On March 18, 1996, PanEnergy Lake Charles Generation, Inc. (''Applicant''), 5400 Westheimer Court, Houston, Texas 77056, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, is an indirect, wholly-owned subsidiary of Panhandle Eastern Corporation, doing business as PanEnergy Corp. Applicant intends to purchase a portion of a generating facility (the ''Facility'') with a nominal capacity of 32 megawatts located in the vicinity of Lake Charles, Louisiana. Applicant's portion of the Facility is an eligible facility as defined under Section 32(a)(2) of the Public Utility Holding Company Act of 1935.

Comment date: April 11, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Louisville Gas and Electric Company

[Docket No. ER94–1380–007]

Take notice that on February 28, 1996, Louisville Gas and Electric Company tendered for filing revisions to its rate schedules to comply with the Commission's order issued on July 25, 1995 in Docket No. ER94–1380–000.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Ruffin Energy Services, Inc., Premier Enterprises, Inc.

[Docket Nos. ER95–1047–002 and ER95–1123–001 (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 March 11, 1996 Ruffin Energy Services, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–1047–000.

On February 26, 1996 Premier Enterprises, Inc. filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1123–000.

5. Great Bay Power Corporation

[Docket No. ER96–726–000]

Take notice that on March 15, 1996, Great Bay Power Corporation (Great Bay) tendered for filing further revisions to its Tariff for Short-Term Sales, under which it sells capacity and/or energy from its ownership interest in Seabrook Unit No. 1 and/or purchased power. The currently effective Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. Great Bay requests an effective date for the revisions of February 28, 1996.

Great Bay states copies of the filing were served on existing customers and on the New Hampshire Public Utilities Commission.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Electric & Gas Company

[Docket No. ER96–870–000]

Take notice that on March 15, 1996, South Carolina Electric & Gas Company (SCE&G), tendered for filing an amendment to a transmission service agreement dated January 1, 1996 between SCE&G and the South Carolina Public Service Authority under which SCE&G will provide specified transmission service to the Woodland Hills Substation effective January 1, 1996. SCE&G requests waiver of the Commission's notice requirements to implement the agreement as amended.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER96–1121–000]

Take notice that on March 18, 1996, Duke/Louis Dreyfus Energy Services (New England) L.L.C. (the Applicant) filed (1) additional exhibits to the prepared direct testimony of Mr. Boisvert enclosed with the original filing and (2) a revision to the Code of Conduct as originally filed. These enclosures are tendered as a supplement to the filing in response to a request by Staff.

The additional exhibits to Mr. Boisvert's testimony present the data already contained in his exhibits in the format which Staff has requested. The exhibits continue to show that Montaup Electric Company has only a small share of relevant generation markets.

The Applicant requests waiver of the 60-day notice requirement in order to allow the filing, as supplemented, to become effective on April 21, 1996, when the original filing was requested to become effective.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER96–1162–000]

Take notice that on March 4, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Nevada Power Company

[Docket No. ER96–1214–000]

Take notice that on March 1, 1996, Nevada Power Company tendered for filing supplemental information to its February 29, 1996, filing in the above-referenced docket.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER96–1227–000]

Take notice that Missouri Public Service, a Division of UtiliCorp United Inc. (MPS) on March 1, 1996, tendered for filing an Amendment dated February 20, 1996 to the Transmission and Interconnection Agreement between

MPS and Associated Electric Cooperative, Inc. (AEC) dated August 24, 1988 (the Agreement).

The filing states that the Amendment was entered into in order to add a new delivery point to the Agreement. No change in rates will occur as a result of the Amendment.

Copies of the filing were served upon AEC and the Missouri Public Service Commission.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Midwest Power Systems, Inc.

[Docket No. ER96–1252–000]

Take notice that on March 5, 1996, Midwest Power Systems, Inc. tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 52.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. NEES Transmission Services, Inc., New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, and Granite State Electric Company

[Docket No. ER96–1309–000]

Take notice that on March 13, 1996, NEES Transmission Services, Inc. (NEES Trans) filed open access transmission tariffs and service agreements for point-to-point and network service. Concurrent with this filing the New England Electric System is seeking Securities and Exchange Commission approval to establish a transmission-only company and an affiliate of the New England Electric System. According to NEES Trans, it will assume control of the transmission facilities and transmission entitlements held by New England Power Company (NEP) and the distribution facilities of Massachusetts Electric Company (Mass Electric), The Narragansett Electric Company (Narragansett) and Granite State Electric Company (Granite State) for wholesale purposes. NEES Trans will henceforth be the sole provider of wholesale transmission and wholesale distribution services across the integrated network of the NEES Companies.

As part of the filing, NEP also filed relevant amendments to its FERC Electric Tariff, Original Volume No. 1, which provides all-requirements service, to begin the unbundling of that tariff.

NEES Trans and NEP also tendered for filing a series of contracts which support the unbundling of generation and transmission services. NEP, Mass Electric, Narragansett and Granite State tendered a Transmission and Distribution Support Agreement which authorizes this arrangement and provides for the rates to be charged to NEES Trans.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. TransAlta Enterprises Corporation

[Docket No. ER96–1316–000]

Take notice that on March 15, 1996, TransAlta Enterprises Corporation (TEN), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible date but no later than 60 days from the date of its filing.

TEN intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TEN sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, TEN is an affiliate of TransAlta Utilities Corporation, an integrated electric utility serving customers in Alberta, Canada.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Co.

[Docket No. ER96–1317–000]

Take notice that on March 15, 1996, The Dayton Power and Light Company (Dayton), tendered for filing on an executed Master Electric Interchange Agreement between Dayton and Noram Energy Services (NES).

Pursuant to the rate schedules attached as Exhibit B to the Agreement Dayton will provide to NES power and/or energy for resale.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–1318–000]

Take notice that on March 15, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–1319–000]

Take notice that on March 15, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and NorAm Energy Services under Rate GSS.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER96–1320–000]

Take notice that on March 15, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing, two transmission tariffs: a Point-to-Point Transmission Service Tariff and a Network Integration Service Transmission Tariff. PSE&G states that the tariffs are substantively identical to the Pro-Forma tariffs attached to the Commission's NOPR in Docket No. RM95–8–000. Copies of this filing have been served to the New Jersey Board of Public Utilities.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Company

[Docket No. ER96–1321–000]

Take notice that on March 15, 1996, Tampa Electric Company (Tampa Electric), tendered for filing umbrella service agreements with InterCoast Power Marketing Company, Sonat Power Marketing, Inc., and the Utilities Commission, City of New Smyrna Beach under Tampa Electric's point-to-point transmission service tariff.

Tampa Electric proposes an effective date of March 12, 1996, for the service agreements, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on each customer under the service agreements and the Florida Public Service Commission.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER96–1322–000]

Take notice that on March 15, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Utilicorp United. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from the date of this filing. Copies of the filing have been served on Utilicorp United, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Interstate Power Company

[Docket No. ES96–20–000]

Take notice that on March 18, 1996, Interstate Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $75 million of short-term debt on or before December 31, 1997, with final maturities not later than December 31, 1998.

Comment date: April 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. AES Puerto Rico, L.P.

[Docket No. QF96–28–000]

On March 19, 1996, AES Puerto, L.P. tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership and technical aspects of the facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: April 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Trigen St. Louis, Inc.

[Docket No. TX96–8–000]

On March 19, 1996, Trigen St. Louis, Inc. (Trigen), One Ashley Place, St. Louis, Missouri, filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Union Electric (UE) to provide transmission services pursuant to Section 211 of the Federal Power Act.

Trigen requests the Commission to issue a proposed order directing that UE provide Trigen with firm point-to-point service to move 57 MW from the facility site to UE's interconnection with CIPSCO, with nonfirm service to other interconnections. Moreover, the service should be provided under rates, terms and conditions comparable and equivalent to those being provided to other users of UE's transmission system, including UE. Service should begin fifteen (15) months after a transmission agreement is reached and continue for a fifteen (15) year period.

Comment date: April 19, 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. 96–7432 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181005; FRL 5358–1]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the ''Applicant'') to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 1 million acres of cotton to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar the risk assessed by EPA under the Special Review of granular carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 11, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181005,'' should be submitted by mail to: Public Response and Program Resource 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, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 [OPP–181005]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (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 provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)308–8327; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the state of Arkansas is likely to experience a non-routine infestation of aphids during the 1996 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in much of the state will suffer significant economic losses. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The applicant proposes to make no more than two applications at the rate of 0.25 lb. active ingredient [(a.i.,)] (8 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1996 growing season (June 1, 1996 until September 30, 1996) would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1 million acres. If all acres were treated at the maximum proposed rates, then 500,000 lbs. a.i. would be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181005] (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 Resource 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 notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 18, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–7446 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2323–012 and 2334–001]

New England Power Company, Western Massachusetts Electric Company; Notice of Intention To Hold a Public Meeting for Discussion of the Draft Environmental Impact Statement for the Deerfield River

March 21, 1996.

On February 29, 1996, the Commission staff mailed the Deerfield River Projects DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of the ''Deerfield River Project, Offer of Settlement'' and continuing the operation and maintenance of the existing Deerfield and Garners Falls Projects, in Massachusetts and Vermont.

The DEIS also evaluates the environmental effects of implementing the Deerfield River Project, Offer of Settlement; applicants' proposals supplemented with staff's recommended enhancement measures; and the no-action alternative.

A public meeting which will be recorded by an official stenographer, is scheduled on Tuesday April 9, 1996, from 7:00 p.m. to 9:00 p.m. at the Mohawk Trail Regional High School at 26 Ashfield Road, Shelburne Falls, Massachusetts, and Wednesday, April 10, 1996, from 7:00 p.m. to 9:00 p.m. at the Wilmington High School in Wilmington, Vermont.

At the meetings, all interested person will have an opportunity to provide oral and written comments regarding the Deerfield River Projects DEIS for the Commission's public record.

For further information, please contact Mr. R. Feller (Telephone 202–219–2796), or Mr. Bob Bell (Telephone 202 219–2806), Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7349 Filed 3–26–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181004; FRL 5356–8]

Dimethomorph; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the North Carolina and Kentucky Departments of Agriculture (hereafter referred to as the ''Applicants'') to use the pesticide dimethomorph (CAS 110488–70–5) to treat up to 85,500 (NC) and 167,500 (KY) acres of tobacco to control metalaxyl - resistant blue mold. The Applicants propose the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before April 11, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181004,'' should be submitted by mail to: Public Response

and Program Resource 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, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 [OPP–181004]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (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 provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of dimethomorph on tobacco to control blue mold. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

In 1995, a national epidemic of tobacco blue mold, caused by metalaxyl - resistant strains of the pathogen, occurred. Resistant strains are becoming more widely disseminated, a situation which is exacerbated with a protracted wet weather pattern. Previously, blue mold was controlled primarily by treatment with metalaxyl, with significant assistance from ferbam and mancozeb. A very high level of control was possible with these materials until metalaxyl - resistant strains appeared. Labeled pesticides made under ideal spray conditions but high disease pressure do not provide acceptable economic levels of control.

The Applicants state that presently, there are no fungicides registered in the U.S. that will provide adequate control of the metalaxyl - resistant strains of blue mold. The Applicants state that dimethomorph has been shown to be effective against these strains of blue mold. Dimethomorph holds current registrations throughout many European countries. The Applicants state that losses in 1995 were greater than $70 million in Kentucky and $9 million in North Carolina. To have another year of losses on this scale could mean bankruptcy for many of these farmers. Under appropriate conditions, it is possible that this disease could develop to epidemic proportions, causing major changes and losses to the U.S. tobacco industry.

The Applicants propose to apply dimethomorph at a maximum rate of 1.725 lbs. active ingredient (a.i.), [(2.5 lb. of product)] per acre, by ground with a maximum of 4 applications per crop, to a maximum of 85,500 acres of tobacco in North Carolina and 167,500 acres of tobacco in Kentucky.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number ''OPP–181004'' (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 notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field OperationsDivision at the address above. The Agency, accordingly, will determine whether to issue the emergency exemptions requested by the North Carolina and Kentucky Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 18, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–7447 Filed 3–26–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: *96–7072.*

PREVIOUSLY ANNOUNCED DATE & TIME: *Tuesday, March 26, 1996, 10:00 a.m.; Meeting Closed to the Public.*

This Meeting Has Been Canceled.

PREVIOUSLY ANNOUNCED DATE & TIME: *Thursday, March 28, 1996, 10:00 a.m.; Meeting Open to the Public.*

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: FEC FORM 5, Report of Independent Expenditures Made and Contributions Received.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–7567 Filed 3–25–96; 11:58 am]

BILLING CODE 67105–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1103–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1103–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: March 19, 1996.

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

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1996:

Yancey County for Public Assistance.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7404 Filed 3–26–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: March 19, 1996.

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

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Wheeler County for Public Assistance and Hazard Mitigation.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7401 Filed 3–26–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: March 18, 1996.

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

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Spokane County for Individual Assistance, Public Assistance and Hazard Mitigation Assistance.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7402 Filed 3–26–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: March 19, 1996.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 23, 1996.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7403 Filed 3–26–96; 8:45 am]

BILLING CODE 6718–02–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, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 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.: 203–01130–007.

Title: Information System Agreement.

Parties:

A.P. Moller-Maersk Line
Crowley Maritime Corporation
P&O Containers, Ltd.
American President Lines, Ltd.
Sea-Land Service, Inc.
Hapag-Lloyd AG
Orient Overseas Container, Inc.
Lykes Bros. Steamship Co., Inc.
Nedlloyd (USA) Corp.
Kawasaki Kisen Kaisha

Synopsis: The proposed amendment expands the member's authority to discuss and agree on ways to reduce their costs' of operation and cooperate in the acquisition of goods and services used in their operations.

Agreement No.: 232–011535.

Title: Central American Space Charter Agreement.

Parties:

Tropical Shipping and Construction Co., Ltd.

Southeastern Shipping Line, Ltd.

Synopsis: The proposed Agreement permits the parties to charter space to and from one another, consult and agree upon the deployment and utilization of vessels, and to rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points, and ports and points in El Salvador, Honduras, Guatemala, and Nicaragua.

Agreement No.: 203–011536.

Title: Grand Alliance Agreement.

Parties:

Hapag-Lloyd Aktiengesellchaft

Neptune Orient Lines, Ltd.

Nippon Yusen Kaisha

P&O Containers Limited

Synopsis: The proposed Agreement permits the parties to charter vessel and vessel space to and from one another, consult and agree upon the deployment and utilization of vessels. The parties are also authorized to enter into service contracts in the trade between U.S. Atlantic, Gulf (Portland, Maine to and including Brownsville, Texas range and Puerto Rico) and Pacific Coast (including Hawaii and Alaska) ports and points, on the one hand, and port and points in the Far East, South East Asia, South West Asia, the Arabian Gulf, Red Sea, Gulf of Oman, Europe, Canada, and Mexico, on the other hand.

By Order of the Federal Maritime Commission.

Dated: March 22, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–7457 Filed 3–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Anthony A. & Mary E. Anderson, Mobridge, South Dakota; to acquire a total of 6.66 percent; Kelly L. & Shelly D. Christianson, Hot Springs, South Dakota, to acquire a total of 8.67 percent; Danny B. & Rebecca J. Decker, Casper, Wyoming, to acquire a total of 4.33 percent; Kenny L. & Barbara B. DeGering, Lusk, Wyoming, to acquire a total of 8.67 percent; Kenny G. & Linda M. Decker, Lusk, Wyoming, to acquire a total of 4.33 percent; Thomas D. & Candace L. Dooper, Lusk, Wyoming, to acquire a total of 8.67; Jay E. & Leslie L. Hammond, Lusk, Wyoming, to acquire a total of 4.33 percent; Ralph K. Hammond Trust, Ralph K. Hammond, trustee, both of Loveland, Colorado, to acquire 4.33 percent; Henry Dale & Janice K. Hytrek, Lusk, Wyoming, to acquire a total of 6.66 percent; Eugene L. & Carol A. Kupke, Lusk, Wyoming, to acquire a total of 8.67 percent; Norbanc Group, Inc., Pine River, Minnesota, to acquire a total of 8.67 percent; Jacob E. & Lorrie K. Reed, Lusk, Wyoming, to acquire a total of 8.67 percent; Joel D. & Laurie J. Wasserburger, Lusk, Wyoming, to acquire a total of 8.67 percent; and Thomas L. & Valerie A. Wasserburger, Lusk, Wyoming, to acquire a total of 8.67 percent, of the voting shares of Banker's Capital Corporation, Lusk, Wyoming, and thereby indirectly acquire Lusk State Bank, Lusk, Wyoming.

Board of Governors of the Federal Reserve System, March 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7433 Filed 3–26–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin, and *Firstar Corporation of Minnesota*, Milwaukee, Wisconsin; to merge with Jacob Schmidt Company, St. Paul, Minnesota, and American Bancorporation, Inc., St. Paul, Minnesota, and thereby indirectly acquire American Bank, N.A., St. Paul, Minnesota; American Commercial Bank, St. Paul, Minnesota; American Bank Lake City, Lake City, Minnesota; and American Bank Moorhead, Moorhead, Minnesota.

In connection with this application, Applicants also have allied to acquire American Credit Corporation, St. Paul, Minnesota, and Lake City Agency, Inc.,

Lake City, Minnesota, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and in insurance agency activities, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Security Bank Holding Company, and Security Bank Holding Company Employee Stock Ownership Plan, both of Coos Bay, Oregon; to acquire not less than 51 percent of the voting shares of Lincoln Security Bank, Newport, Oregon (in organization).

Board of Governors of the Federal Reserve System, March 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–7321 Filed 3–26–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq*.) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Figge Bancshares, Inc., Davenport, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Ossian State Bank, Ossian, Iowa, and thereby indirectly acquire Iowa State Bank, Calmar, Iowa.

Board of Governors of the Federal Reserve System, March 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7434 Filed 3–26–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Next Home Mortgage, Clive, Iowa, in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc. and Next Generation Realty, Inc., Clive, Iowa.

Board of Governors of the Federal Reserve System, March 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–7322 Filed 3–26–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 932–3176]

The Diet Workshop, Inc.; The Diet Workshop of Boston, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the respondents from misrepresenting the results of any weight loss program they offer, require them to have scientific data to back up any claims about weight loss and maintenance, and

mandate that they make certain disclosures in connection with maintenance and other claims. The consent agreement settles allegations that the respondents engaged in deceptive advertising by making unsubstantiated weight loss and weight-loss maintenance claims and by implying, without substantiation, that the consumer testimonials they used represented the typical experience of dieters on the programs.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Andrew D. Caverly, Boston Regional Office, Federal Trade Commission, Suite 810, 101 Merrimac Street, Boston, MA 02114–4719, 617–424–5960.

Gary Cooper, Boston Regional Office, Federal Trade Commission, Suite 810, 101 Merrimac Street, Boston, MA 02114–4719, 617–424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of The Diet Workshop, Inc., and The Diet Workshop of Boston, Inc., corporations.

[File No. 932–3176]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations (collectively referred to as ''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between The Diet Workshop, Inc., and The Diet Workshop of Boston, Inc., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents are Massachusetts corporations, with their principal office or place of business located at 1 University Office Park, 29 Sawyer Road, Waltham, Massachusetts 02154.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(b) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposed only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to purposed respondents: (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made *clearly and prominently* or in a *clear and prominent* manner, it must be given both in the same type style and in: (1) twelve (12) point type where the representation that triggers the disclosure is given in twelve (12) point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve (12) point type. For any Order-required disclosure given orally in a broadcast medium to be made *clearly and prominently* or in a *clear and*

prominent manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered that respondents, The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, *provided, further,* that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *provided, however,* that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness; pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: ''For many dieters, weight loss is temporary.''; *provided, further,* that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; *provided, however,* that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, *provided, further,* that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: ''Diet Workshop makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Workshop program.'';

Provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, or short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) include, clearly and prominently, and in immediate conjunction with such representation, the statement: ''Check at our clinics for details about our maintenance record.'';

(2) for a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled ''Maintenance Information,'' which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgement language (Times Roman 12 pt.) and signature block therein; *provided, further,* that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein:

MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

_____

_____]

For many dieters, weight loss is temporary.

I have read this notice.

_____

(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

Provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondents shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitive measure such as ''most of our customers maintain their weight loss long-term''; and *provided, however,* that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants in respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Diet Workshop customers in losing weight or maintaining achieved weight loss; *provided, however,* that in determining the generally expected success for Diet Workshop customers respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) ''You should not expect to experience these results.''

(b) ''This result is not typical. You may not do as well.''

(c) ''This result is not typical. You May be less successful.''

(d) ''_____'s success is not typical. You may do not as well.''

(e) ''_____'s experience is not typical. You may achieve less.''

(f) ''Results not typical.''

(g) ''Results not typical of program participants.'';

Provided, further, that is the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and *provided, however,* that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: ''Diet Workshop clients lose an average of __ pounds over an average __ week treatment period''; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, the rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents' weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

H. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

I. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

J. Misrepresenting, directly or by implication, the performance, efficacy, or benefits of any weight loss program or weight loss product.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of this Order.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees, who is involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order, and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents,

representatives, independent contractors and employees.

V

It is further ordered that:

A. Respondents shall distribute a copy of this Order to each of their franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondents may satisfy this contractual requirement by incorporating such Order requirements into their current Operations Manuals or, if they do not have a current Operations Manual, by notifying their franchisees and licensees that failure to comply with the provisions of this Order is at variance with respondents' methods, standards, and specifications for proper conduct of the franchisee's business under the franchise agreement; and

B. Respondents shall further make reasonable efforts to monitor their franchisees' and licensees' compliance with the Order provisions; respondents may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondents determine is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under their franchise or license agreements and applicable state law to bring about a cessation of that conduct by the franchisee or licensee; provided, however, that respondents' compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondents' franchisees or licensees that violates this Order where respondents: (a) have not authorized, approved or ratified that conduct; (b) have reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the Order, have diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc. (hereinafter ''Diet Workshop'' or ''respondents''), marketers of the Diet Workshop low-calorie diet (hereinafter ''LCD'') program. The Diet Workshop diet program is offered to the public throughout much of the United States through company-owned and franchised centers.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges that the proposed respondents have made deceptive claims regarding the success consumers have had losing weight on the respondents' LCD programs, and maintaining their weight loss. Respondents also are charged with having made deceptive claims regarding the rate at which consumers lose weight while on the respondent's ''Quick Loss'' LCD program. Finally, the complaint alleges that the respondents have engaged in the deceptive practice of failing to warn consumers whose weight loss progress the respondents monitored of the importance to their health of consuming all of the food called for in the diet instructions.

Success

The complaint alleges that the proposed respondents have represented, directly or by implication, that most consumers using the Diet Workshop LCD programs (1) reach their weight loss goals and (2) maintain their weight loss either long-term or permanently. The complaint charges that, at the time they were made, the respondents did not possess or rely upon a reasonable basis for these representations.

The complaint alleges further that the respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements and promotional materials for the Diet Workshop LCD programs reflect the typical or ordinary experience of members of the public who have used the programs. The complaint charges that the respondents failed to possess or rely upon a reasonable basis for these representations.

The proposed consent order seeks to address the alleged success misrepresentations cited in the proposed complaint in several ways. First, the order (Part I.A.) requires Diet Workshop to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants in any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a

particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that ''For many dieters, weight loss is temporary'' (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (e.g., ''60% of achieved weight loss was maintained''),

(2) The duration over which the weight loss was maintained, measured from the date that participants entered the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case—e.g., ''participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)'', and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. ''Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)'' or, in lieu of that factual disclosure, the statement: ''Diet Workshop makes no claim that this result is representative of all participants in the Diet Workshop program.''

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Diet Workshop, in lieu of making the factual disclosures required for such claims by Part I.C.: (1) Include in such advertisements the statement ''Check at our centers for details about our maintenance record.''; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the respondents' client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve Diet Workshop of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it ''takes back'' the exception from full quantiative disclosures in short broadcast advertising if Diet Workshop makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as ''most of our customers maintain their weight loss long term.'' Diet Workshop in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight loss and weight loss maintenance success claims made through endorsements or testimonials that are not representative of what Diet Workshop diet program participants generally achieve, the order (Part I.E.) requires that Diet Workshop disclose either what the generally expected success would be for Diet Workshop customers, or one of several alternative statements, such as ''This result is not typical. You may be less successful'', which explains the limited applicability of atypical testimonials in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonals in Advertising'' 16 C.F.R. 255.2 (a). Under the proposed order, Diet Workshop may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: ''Diet Workshop clients lose an average of _____ pounds over an average _____—week treatment period.''

Finally, the proposed order (Parts I.I. and I.J.) generally prohibits the respondents from misrepresenting (1) the existence, contents, validity, results, conclusions, or interpretations of any test or study; and (2) the performance, efficacy, or benefits of any weight loss program or product.

Rate of Weight Loss

The complaint alleges that the proposed respondents have represented, directly or by implication, that an appreciable number of consumers using the Diet Workshop's ''Quick Loss'' LCD program lose up to 20 pounds in a six-week period. The complaint charges that, at the time this representation was made, the respondents did not possess or rely upon a reasonable basis for the representation.

The proposed consent order (Part I.F.) prohibits Diet Workshop from representing the rate or speed at which participants in its LCD programs will lose weight, unless at the time of making such representation, Diet Workshop possesses and relies upon competent and reliable scientific evidence substantiating the representation. In addition, the proposed order (Part I.G.) prohibits Diet Workshop from representing that participants or prospective participants in Diet Workshop LCD programs will reach a specified weight within a specified period of time, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

Monitoring Practices

According to the complaint, Diet Workshop provides its customers with diet instructions that require the customers to come in to one of the proposed respondents' centers once a week for monitoring of their progress, including weighing in. It is further alleged that in the course of regularly ascertaining weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet instructions. According to the complaint, such conduct, if not corrected promptly, could result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Diet Workshop has failed to disclose to customers who are losing weight significantly in excess of their projected goals that failing to follow the diet instructions and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address this alleged deceptive practice in two ways. First, the order (Part I.H.) requires respondents to disclose in writing either (1) to each participant

who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participants' initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) to all participants when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.J.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

Compliance

Parts II, III, IV, V and VII of the proposed order are compliance reporting provisions that require the respondents to: notify the Commission of any changes in the structure of the respondents that may affect their compliance obligations under the order; retain all records that would bear on the respondents' compliance with the order; distribute copies of the order to the respondents' operating divisions and to those persons responsible for the preparation and review of advertising material covered by the order; distribute a copy of the order to each of the respondents' franchisees and licenses, take steps to contractually bind the franchisees and licensees to the order, and take certain additional steps designed to encourage or require the franchisees and licensees to comply with the order; and report to the Commission their compliance with the terms of the order.

Part VI of the proposed order provides generally that the proposed order will sunset twenty years from the date of issuance, unless a complaint to enforce the order (with or without an accompanying consent decree) was/is filed while the order was/is in force. In such a case, the order sunsets twenty years after the filing of the complaint.

The purpose of this analysis is to facilitate public comment on the proposed interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–7294 Filed 3–20–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently at 61 FR 1595 dated January 22, 1996) is amended to reflect the name change for the Division of Personnel within the Office of Operations and Management, Office of the Administrator, Health Resources and Services Administration (HRSA).

Under HB–10, Organization and Functions, amend the functional statements for the *Office of Operations and Management (HBA4)* as follows:

(1) Delete the functional statements for the *Division of Personnel (HBA44);* and

(2) Add the following functional statement immediately after the functional statement for the *Division of Financial Management (HBA43):*

Office of Human Resources and Development (HBA44). Provides Agency wide personnel management assistance to all Health Resources and Services Administration employees, both headquarters and field. Specifically: (1) Plans, conducts and evaluates the Agency's human resource studies, programs, policies and reports; (2) provides advice and assistance to management officials on individual actions arising from headquarters and field components; (3) administers the Agency's training functions; (4) acts as the focal point for the agency's labor relations activities; (5) develops and provides guidelines and regulations for the Agency's personnel programs; (6) administers the Agency's Ethics Program; (7) administers the Agency's merit and performance awards programs; (8) plans, directs and administers the appointing and processing of civil service employees; (9) plans and conducts position management surveys; (10) operates and oversees the Agency's merit promotion program; (11) manages and coordinates the Agency's personnel security program; (12) ensures that management practices and policies related to the Commissioned Corps are coordinated throughout the Agency; (13) and ensures compliance with established personnel rules and regulations governing HRSA.

Delegation of Authority. All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this consolidation will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this consolidation.

This consolidation is effective upon date of signature.

Dated: March 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–7308 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–15–M

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5p.m., April 25, 1996; 8:30 a.m.–1 p.m., April 26, 1996.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include: an update on research and TB among the foreign-born; considerations for managed care; newly approved rapid diagnostic tests for TB; recommendations for public health advocacy in TB during continuing decreases in morbidity trends; organizational approaches to community-based TB control in a managed care environment; challenges for local health departments in TB control at a community level managed care environment; and a pilot study of the effects of Medicaid managed care on structures, processes, and outcomes relevant to community-wide TB prevention and control.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Tracy Whitnell, Program Analyst, National

Center for HIV/STD/TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8006.

Dated: March 21, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–7387 Filed 3–26–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–5 p.m., May 2, 1996.

Place: Room 503A–529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will continue working on enrollment and encounter data, and receive updates on Federal developments.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees.

Thus, persons without a government identification card should plan to arrive at the building either between 8:30 and 9 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: March 19, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–7314 Filed 3–26–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 1997

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 1997 Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth Fiscal Year 1997 individual allotments and percentages to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the 1997 Budget Request and are contingent upon Congressional appropriations for Fiscal Year 1997. If Congress enacts and the President approves a different appropriation amount, the allotments will be adjusted accordingly.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Lonergan, Director, Division of Formula, Entitlement, and Block Grants, Office of Program Support, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade S.W., Washington, D.C. 20447, Telephone (202) 401–6603.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year. It should be noted that, as required, Palau's allotment has been adjusted to fifty percent of its Fiscal Year 1995 allotment.

The Administration on Developmental Disabilities has updated the data elements for issuance of Fiscal Year 1997 allotments for the Developmental Disabilities formula grant programs. The data elements used in the update are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1994, are from Table 5.J10 of the ''Social Security Bulletin: Annual Statistical Supplement 1995'' issued by the Social Security Administration. The numbers for the Northern Mariana Islands and the Republic of Palau, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1990–94, are from Table 2 of the ''Survey of Current Business,'' September 1995, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1994, are from Table 1 Estimates of Resident Population of States by Age of the ''Census Advisory: Updated National and State Population Estimates, CB95–39,'' issued by the Bureau of the Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, ''General Characteristics Report: 1980,'' which is the most recent data available from the Bureau.

TABLE 1.—FY 1997 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	State developmental disabilities councils	Percentage
Total	$70,438,000	100.000000
Alabama	1,340,972	1.903762
Alaska	420,475	.596943
Arizona	1,016,658	1.443337
Arkansas	768,612	1.091189
California	6,554,934	9.305963
Colorado	791,715	1.123988
Connecticut	703,588	.998876
Delaware	420,475	.596943
District of Columbia	420,475	.596943
Florida	3,128,797	4.441916
Georgia	1,728,544	2.453994
Hawaii	420,475	.596943
Idaho	420,475	.596943
Illinois	2,694,055	3.824718
Indiana	1,465,625	2.080731
Iowa	802,559	1.139384
Kansas	614,504	.872404
Kentucky	1,250,669	1.775560
Louisiana	1,431,968	2.032948
Maine	420,475	.596943
Maryland	979,588	1.390710
Massachusetts	1,356,158	1.925322
Michigan	2,482,101	3.523810
Minnesota	1,027,766	1.459107
Mississippi	948,730	1.346901
Missouri	1,338,242	1.899886
Montana	420,475	.596943
Nebraska	425,955	.604723
Nevada	420,475	.596943
New Hampshire	420,475	.596943
New Jersey	1,533,682	2.177350
New Mexico	480,298	.681873
New York	4,330,957	6.148609
North Carolina	1,818,663	2.581934
North Dakota	420,475	.596943

TABLE 1.—FY 1997 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	State developmental disabilities councils	Percentage
Ohio	2,956,009	4.196611
Oklahoma	919,612	1.305562
Oregon	744,861	1.057470
Pennsylvania	3,208,727	4.555392
Rhode Island	420,475	.596943
South Carolina	1,059,457	1.504099
South Dakota	420,475	.596943
Tennessee	1,476,074	2.095565
Texas	4,531,299	6.433032
Utah	550,178	.781081
Vermont	420,475	.596943
Virginia	1,443,415	2.049199
Washington	1,143,692	1.623686
West Virginia	809,722	1.149553
Wisconsin	1,317,695	1.870716
Wyoming	420,475	.596943
American Samoa	220,750	.313396
Guam	220,750	.313396
Northern Mariana Islands	220,750	.313396
Puerto Rico	2,381,894	3.381547
Palau	110,375	.156698
Virgin Islands	220,750	.313396

TABLE 2.—FY 1997 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection & advocacy	Percentage
Total	[1] $25,911,318	100.000000
Alabama	439,048	1.694426
Alaska	254,508	.982227
Arizona	344,561	1.329770
Arkansas	258,072	.995982
California	2,211,563	8.535124
Colorado	276,741	1.068031
Connecticut	260,970	1.007166
Delaware	254,508	.982227
District of Columbia	254,508	.982227
Florida	1,070,357	4.130847
Georgia	603,004	2.327184
Hawaii	254,508	.982227
Idaho	254,508	.982227
Illinois	906,534	3.498602
Indiana	506,712	1.955562
Iowa	264,834	1.022078
Kansas	254,508	.982227
Kentucky	405,708	1.565756
Louisiana	466,720	1.801221
Maine	254,508	.982227
Maryland	341,643	1.318509
Massachusetts	451,170	1.741208
Michigan	833,321	3.216050
Minnesota	357,383	1.379254
Mississippi	315,443	1.217395
Missouri	460,588	1.777555
Montana	254,508	.982227
Nebraska	254,508	.982227
Nevada	254,508	.982227

TABLE 2.—FY 1997 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection & advocacy	Percentage
New Hampshire	254,508	.982227
New Jersey	516,527	1.993442
New Mexico	254,508	.982227
New York	1,384,297	5.342441
North Carolina	635,552	2.452797
North Dakota	254,508	.982227
Ohio	997,392	3.849252
Oklahoma	307,034	1.184942
Oregon	263,782	1.018018
Pennsylvania	1,047,473	4.042531
Rhode Island	254,508	.982227
South Carolina	366,434	1.414185
South Dakota	254,508	.982227
Tennessee	495,147	1.910929
Texas	1,512,208	5.836091
Utah	254,508	.982227
Vermont	254,508	.982227
Virginia	505,699	1.951653
Washington	385,932	1.489434
West Virginia	275,697	1.064002
Wisconsin	448,512	1.730950
Wyoming	254,508	.982227
American Samoa	136,161	.525489
Guam	136,161	.525489
Northern Mariana Islands	136,161	.525489
Puerto Rico	800,722	3.090240
Palau	68,750	.265328
Virgin Islands	136,161	.525489

[1] In accordance with Public Law 103–230, Section 142(c)(5), $806,682 has been withheld for funding technical assistance and American Indian Consortiums in Fiscal Year 1997. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 143 to fund technical assistance. American Indian Consortiums are eligible to receive an alllotment under Section 142(c)(1)(A)(i). Unused funds will be reallotted in accordance with Section 142(c)(1) of the Act.

Dated: March 21, 1996.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 96–7379 Filed 3–26–96; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0005]

Review of Infant Formula Nutrient Requirements; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of March 5, 1996 (61 FR 8628). The document announced the Federation of American Societies for Experimental Biology (FASEB) study ''Review of Infant Formula Nutrient Requirements,'' requested scientific data and information, and announced an open meeting to be held on May 31, 1996. The location of the open meeting was inadvertently omitted. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

In FR Doc. 95–5117, appearing on page 8628 in the Federal Register of Tuesday, March 5, 1996, the following correction is made:

1. On page 8628, in the first column, under the ADDRESSES caption, the sentence ''The public meeting will be held in the Chen Auditorium, Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD.'' is inserted as the first sentence immediately after the ADDRESSES caption.

Dated: March 20, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–7311 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96G–0096]

The Flax Council of Canada; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Flax Council of Canada has filed a petition (GRASP 5G0416) proposing to affirm that low linolenic acid flaxseed oil is generally recognized as safe (GRAS) for use as a food oil.

DATES: Written comments by June 10, 1996.

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

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3103.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that The Flax Council of Canada, 465–167 Lombard Ave., Winnipeg, MB R3B 0T6, Canada, has filed a petition (GRASP 5G0416) proposing to affirm that low linolenic acid flaxseed oil is GRAS for use as a food oil. The petitioner proposes that solin oil be the common or usual name for low linolenic acid flaxseed oil.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before June 10, 1996, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 13, 1996.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–7312 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92G–0085]

Michael Foods, Inc.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 2G0387) proposing that the use of β-cyclodextrin as a processing aid in reducing the cholesterol content of liquid eggs be affirmed as generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 30, 1992 (57 FR 10767), FDA announced that a petition (GRASP 2G0387) had been filed by Michael Foods, Inc., 324 Park National Bank Bldg., 5353 Wayzata Blvd., Minneapolis, MN 55416. This petition proposed that the use of β-cyclodextrin as a processing aid in reducing the cholesterol content of liquid eggs be affirmed as GRAS.

Michael Foods, Inc. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 7, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–7310 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0095]

Hoffmann-La Roche, Inc., et al.; Withdrawal of Approval of 49 New Drug Applications, 9 Abbreviated Antibiotic Applications, and 36 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 49 new drug applications (NDA's), 9 abbreviated antibiotic applications (AADA's), and 36 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application no.	Drug	Applicant
NDA 3–718	Synkayvite Tablets and Injection	Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110.
NDA 3–977	Theelin	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 6–071	Berocca Injectable	Hoffman La Roche, Inc.
NDA 6–128	Sopronol Ointment	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 6–129	Sopronol Solution	Do.
NDA 6–130	Sopronol Powder	Do.
NDA 9–102	Antepar Tablets and Syrup	Burroughs Wellcome Co., 3030 Cornwallis Rd., P.O. Box 12700, Research Triangle Park, NC 27709–2700.

Application no.	Drug	Applicant
NDA 9–495	Marezine Injection	Do.
NDA 9–519	Doriden Tablets	Rhone-Poulenc Rorer Pharmaceuticals, Inc., 500 Arcola Rd., Colegeville, PA 19426–0107.
NDA 9–660	Noludar Tablets	Hoffman-La Roche, Inc.
NDA 10–209	Meti-Derm Cream	Schering Corp., 2000 Galloping Hill Rd., Kenilworth NJ 07033.
NDA 10–773	Correctol Tablets	Schering-Plough HealthCare Products, 110 Allen Rd., P.O. Box 276, Liberty Corner, NJ 07938–0276.
NDA 10–878	Visine Eye Drops	Pfizer Pharmaceuticals, 235 East 42d St., New York, NY 10017.
NDA 11–160	Thorexin Cough Medicine	The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856.
NDA 11–296	Sunbath Protective Tanning Cream	Revlon, Research Center, Inc., 121 Route 27, Edison, NJ 08818.
NDA 11–297	Sunbath Protective Tanning Lotion	Do.
NDA 11–657	Betaprone	Forest Pharmaceuticals, Inc., 909 Third Ave., New York NY 10022–4731.
NDA 11–844	Arthropan Liquid	The Purdue Frederick Co.
NDA 13–077	Xylocaine Suppositories	Astra Pharmaceutical Products, Inc., 50 Otis St., Westborough, MA 01581.
NDA 13–094	Clysodrast Evacuant Enema	Rhone-Poulenc Rorer Pharmaceuticals, Inc.
NDA 13–319	Iothalamate Sodium 80%	Mallinckrodt Medical Inc., 675 McDonnell Blvd., P.O. Box 5840, St. Louis, MO 63134.
NDA 13–638	Indoklon	OHMEDA, Inc., 110 Allen Rd., P.O. Box 804, Liberty Corner, NJ 07938.
NDA 14–359	Meprobamate Tablets	Halsey Drug Co., Inc., 245 Old Hook Rd., Westwood, NJ 07675.
NDA 14–740	Menrium Tablets	Hoffmann-La Roche, Inc.
NDA 16–144	Ethamide Tablets	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvin, CA 92713–9534.
NDA 16–219	Lemon Spree Deodorant Soap	Colgate-Palmolive Co., 909 River Rd., P.O. Box 1343, Piscataway, NJ 08855–1343.
NDA 16–264	Palmolive Gold Antibacterial Deodorant Soap	Do.
NDA 16–278	Tackle Medicated Soap	Do.
NDA 16–486	Antibacterial Deodorant Soap	Do.
NDA 16–768	Estrovus Tablets	Parke-Davis.
NDA 16–942	Halotex 1% Cream	Westwood-Squibb Pharmaceuticals, 100 Forest Ave., Buffalo, NY 14213–1091.
NDA 17–129	Cholebrine	Mallinckrodt Medical, Inc.
NDA 17–486	Heparin Injection	Akorn, Inc., P.O. Box 1220, Decatur, IL 62525.
NDA 18–144	Centrax Capsules	Parke-Davis
NDA 18–203	Liposyn 10%	Abbott Laboratories, D–389, Bldg. AP30, 200 Abbott Park Rd., Abbott Park, IL 60064–3537.
NDA 18–223	Multivitamin Additive for Injection	Do.
NDA 18–288	Hypnomidate Injection	Janssen Research Foundation, 1125 Trenton-Harbourton Rd., P.O. Box 200, Titusville, NJ 08560.
NDA 18–440	M.V.C. 9 + 3	Fujusawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
NDA 18–550	Rimadyl Tablets	Hoffmann-La Roche Inc.
NDA 18–555	Yutopar Tablets	Astra USA, Inc., P.O. Box 4500, Westborough, MA 01581–4500.
NDA 18–614	Liposyn 20%	Abbott Laboratories.
NDA 18–962	Manganese Chloride Injection	Do.
NDA 19–185	Oxytocin in 5% Dextrose Injection	Do.
NDA 19–228	Magnesium Sulfate Injection	Fujisawa USA, Inc.
NDA 19–271	Chromic Chloride Injection	Do.
NDA 19–786	Lopressor OROS	Ciba-Geigy Corp., 556 Morris Ave., Summit NJ 07901–1398.
NDA 50–502	Siseptin Injection	Schering Corp.
NDA 50–523	Vira-A	Parke-Davis.
NDA 50–532	Ilotycin Topical Solution	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis IN 46285.
AADA 60–842	Penicillin V. Potassium	Novo Nordisk Pharmaceuticals, Inc., 100 Overlook Center, suite 200, Princeton, NJ 08540–7810.
AADA 61–864	Cephradine	Apothecon Inc., P.O. Box 4500, Princeton, NJ 08543–4500.
AADA 61–976	Cephradine	Do.
AADA 62–047	Erythromycin Ethylsuccinate Oral Suspension	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144–2555.
AADA 62–171	Chloramphenicol Ophthalmic Solution	Optopics Laboratories Corp., 32 Main St., P.O. Box 210, Fairton, NJ 08320–0210.

Application no.	Drug	Applicant
AADA 62–413	Gentamicin Sulfate in 9% Sodium Chloride	Abbott Laboratories.
AADA 62–586	Erythromycin Lactobionate for Injection	Do.
AADA 62–871	Cephalexin Capsules	Yoshitomi Pharmaceutical Industries, c/o Warner Chilcott Laboratories, 182 Tabor Rd., Morris Plains, NJ 07950.
AADA 62–872	Cephalex Capsules	Do.
ANDA 70–118	Diphenhydramine Hydrochloride Cough Syrup	Morton Grove Pharmaceutical, Inc., 6451 West Main St., Morton Grove, IL 60053.
ANDA 70–770	Dexbrompheniramine Maleate and Pseudoephedrine Sulfate Extended-Release Tablets.	Geneva Pharmaceuticals, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.
ANDA 71–368	Propranolol Hydrochloride Tablets	Interpharm, Inc., Three Fairchild Ave., Plainview, NY 11803.
ANDA 71–369	Propranolol Hydrochloride Tablets	Do.
ANDA 71–370	Propranolol Hydrochloride Tablets	Do.
ANDA 71–371	Propranolol Hydrochloride Tablets	Do.
ANDA 71–819	Methylodpa and Hydrochlorothiazide Tablets	Novopharm, Ltd., c/o Granutec, Inc., 4409 Airport Dr. NW., Wilson, NC 27896.
ANDA 71–820	Methyldopa and Hydrochlorothiazide Tablets	Do.
ANDA 71–821	Methyldopa and Hydrochlorothiazide Tablets	Do.
ANDA 71–822	Mehyldopa and Hydrochlorothiazide Tablets	Do.
ANDA 74–106	Naproxen Sodium Tablets	Hamilton Pharmaceuticals, Ltd., c/o Syntex, Inc., 3401 Hillview Ave., P.O. Box 10850, Palo Alto, CA 94303.
ANDA 74–110	Naproxen Tablets	Do.
ANDA 80–059	Aminosalicylate and Aminosalicylic Acid Tablets, 846 milligrams (mg)/112 mg.	Wallace Laboratories, 301B College Road East, Princeton, NJ 08540.
ANDA 80–271	Methyltestosterone Sublingual Tablets	Rosemont Pharmaceutical Corp., 301 South Cherokee St., Denver, CO 80223.
ANDA 80–384	Procaine Hydrochloride Injection	Fujisawa USA, Inc.
ANDA 83–376	Esterified Estrogens Tablets	Hoffmann-La Roche, Inc.
ANDA 84–215	Esterified Estrogens Tablets	Do.
ANDA 84–216	Esterified Estrogens Tablets	Do.
ANDA 84–290	Potassium Chloride for Injection Concentrate	Fujisawa USA, Inc.
ANDA 85–266	Diphenoxylate Hydrochloride and Atropine Sulfate Tablets.	MD Pharmaceuticals, Inc., 3130 South Harbor Blvd., suite 320, Santa Ana, CA 92704.
ANDA 85–303	Amithriptyline Hydrochloride Tablets	Roche Products, Inc., State Road 670, Km. 2.7, P.O. Box 452, Manati PR 00674–0452.
ANDA 86–587	Phenobarbital with Belladonna Alkaloids Elixir	Halsey Drug Co., Inc.
ANDA 87–723	Diatrizoate Meglumine and Diatrizoate Sodium Injection.	Berlex Laboratories, Inc., 300 Fairfield Rd., Wayne NJ 07470–7358.
ANDA 87–724	Diatrizoate Meglumine and Diatrizoate Sodium Injection.	Do.
ANDA 87–725	Diatrizoate Sodium Injection	Do.
ANDA 87–726	Diatrizoate Meglumine Injection	Do.
ANDA 87–728	Diatrizoate Meglumine and Diatrizoate Sodium Solution.	Do.
ANDA 87–729	Diatrizoate Meglumine Injection	Do.
ANDA 87–731	Diatrizoate Meglumine Injection	Do.
ANDA 87–739	Diatrizoate Meglumine Injection	Do.
ANDA 87–768	Ipodate Sodium Capsules	Do.
ANDA 87–787	Potassium Chloride for Injection Concentrate	Fujisawa USA, Inc.
ANDA 88–739	Promethazine Hydrochloride and Codeine Phosphate Syrup.	Halsey Drug Co., Inc.
ANDA 88–868	Promethazine and Phenylephrine Hydrochlorides Syrup.	Do.
ANDA 88–870	Promethazine and Phenylephrine Hydrochlorides and Codeine Phosphate Syrup.	Do.
ANDA 88–913	Promethazine Hydrochloride and Dextromethorphan Hydrobromide Syrup.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 26, 1996.

Dated: March 7, 1996.

Janet Woodcock,

Center for Drug Evaluation and Research.

[FR Doc. 96–7309 Filed 3–26–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Proposed Collection of Public Comment; Submission for OMB Review

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice (Formerly: Remittance Advice Report) and Prior Quarter Adjustment Statement; *Form No.:* HCFA–304, HCFA–304a; *Use:* Section 1927 of the Social Security Act requires drug labelers to enter into and have in effect a rebate agreement with HCFA for States to receive funding for drugs dispensed to Medicaid recipients. 42 CFR 447.534 and 447.536 require labelers to report specific drug rebate data to States when payment is made; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 520; *Total Annual Responses:* 2,080; *Total Annual Hours Requested:* 170,560.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 20, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–7361 Filed 3–26–96; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3790–N–02]

Public Housing Drug Elimination Technical Assistance Program, Announcement of Funding Awards for FY 1995

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 announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Public Housing Drug Elimination Technical Assistance Program. This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Crime Prevention and Security Division, Office of Community Relations and Involvement, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Public Housing Drug Elimination Technical Assistance Program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

The Fiscal Year 1995 competition was announced in a NOFA published in the Federal Register on January 13, 1995 (60 FR 3324). The NOFA announced the availability of $3 million to assist in providing short-term technical assistance to public housing agencies, Indian housing authorities, resident management corporations, and incorporated resident councils that are combating drug-related crime and abuse of controlled substances in public and Indian housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. Applications were scored and selected for funding based on criteria contained in the Notice.

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 hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: March 21, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Fiscal Year 1995 Public Housing Drug Elimination Technical Assistance Program Funding Decisions

Herbert Carter, P.O. Box 215, Raleigh, NC 277020215. Provided Technical Assistance Services to: Paducah Housing Authority, Paducah, KY. Amount: 10000

Vincent Lewis, 717 D. St. NW, Suite 309, Washington, DC 20004. Provided Technical Assistance Services to: Hartford Housing Authority, Hartford, CT. Amount: 13816.2

Paul Tanner, 5618 Shorewood Rd., Jacksonville, FL 32210. Provided Technical Assistance Services to: Housing Authority of the City of Homestead, Homestead, FL. Amount: 9200

William McClure, 2740 Greenbriar, Atlanta, GA 30331. Provided Technical Assistance Services to: Indianapolis Public Housing Agency, Indianapolis, IN. Amount: 8522

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: Housing Authority of the City of East St. Louis, East St. Louis, IL. Amount: 9409

Dan Carmon, 11270 S. Idlewood Ct, New Orleans, LA 70128. Provided Technical Assistance Services to: Bogalusa Housing Authority, Bogalusa, LA. Amount: 7497

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827. Provided Technical Assistance Services to: Albany Housing Authority, Albany, NY. Amount: 12246

Severin Sorensen, P.O. Box 34469, Bethesda, MD 208131072. Provided Technical Assistance Services to: Cuyahoga Metropolitan Housing Authority Police Department, Cleveland, OH. Amount: 12451

Paul Turner, 410 Castello Road, Lafayette, CA 94549. Provided Technical Assistance Services to: Housing Authority of the City of Ogden, Ogden, UT. Amount: 9511

Rose Shaw, 518 Leahy, Pawhuska, OK 74056. Provided Technical Assistance Services to: Meadow Glenn Additon-Osage Housing Authority, Hominy, OK. Amount: 4286

Philip Fairweather, 6924 La Cienega Blvd, Ste 2, Inglewood, CA 90302. Provided

Technical Assistance Services to: Chicago Housing Authority, Chicago, IL. Amount: 13860

Graylyn Swilley, 5350 Warren Avenue, Cincinnati, OH 45212. Provided Technical Assistance Services to: Gary Housing Authority, Gary, IN. Amount: 11238

Randy Atlas, 770 Palm Bay Ln., Miami, FL 33138. Provided Technical Assistance Services to: Housing Authority of Paris, Paris, KY. Amount: 13280

Robert Fisk, 906 W. Elk St., Manistique, MI 49854. Provided Technical Assistance Services to: Flint Housing Commission, Flint, MI. Amount: 5916

Randy Atlas, 770 Palm Bay Ln., Miami, FL 33138. Provided Technical Assistance Services to: Albuquerque Housing Services, Albuquerque, NM. Amount: 12281

David Staton, 11490 Comerce Park Dr., Reston, VA 22091. Provided Technical Assistance Services to: Housing Authority of the City of Prichard, Alabama, Prichard, AL. Amount: 7811

Pamela Petersen, 4000 Harpers Ferry Drive, Tallahassee, FL 32308. Provided Technical Assistance Services to: The Housing Authority of the City of Key West, Key West, FL. Amount: 17302

Carolyn Williams, 2810 Shipley Terrace SE #202, Washington, DC 20020. Provided Technical Assistance Services to: Branch Heights Resident Council, Eutlaw, AL. Amount: 12575

Ernest Crane, 1202 St Marks Ave, New York, NY 11213, Provided Technical Assistance Services to: Sumner Houses Association, Inc., Brooklyn, NY. Amount: 7650

Jim Munro, 7335 No. Shores Dr., Navarre, FL 32566. Provided Technical Assistance Services to: Fort Walton Beach Housing Authority, Fort Walton Beach, FL. Amount: 10365

Joseph Donahue, P.O. Box 1736, Kenail, AK 99611. Provided Technical Assistance Services to: Newhalen Resident Organization, Newhalen, AK. Amount: 12250

Saundra Williams, 4300 Flat Shoals Rd. #2606, Union City, GA 30291. Provided Technical Assistance Services to: Senoia City Housing Authority, Senoia, GA. Amount: 8257

Pamela Petersen, 4000 Harpers Ferry Drive, Tallahassee, FL 32308. Provided Technical Assistance Services to: The Key West Housing Authority, Key West, FL. Amount: 11261

Lexie Williams, 1177 Dominion Court, Port Orange, FL 32119. Provided Technical Assistance Services to: Housing Authority of the City of New Bern, New Bern, NC. Amount: 8891

Roxanna Nanto, 2961 Riviera Blvd., Malaga, WA 98828. Provided Technical Assistance Services to: Othello Housing Authority, Othello, WA. Amount: 7674

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Housing Authority of the City of Mathis, Mathis, TX. Amount: 12002

Hugh Phillips, 619 Longbow Drive Albany, GA 31707.Provided Technical Assistance Services to: Housing Authority of the City of Uvalde, Uvalde, TX. Amount: 13353

Randy Atlas, 770 Palm Bay Ln., Miami, FL 33138. Provided Technical Assistance Services to: West Palm Beach Housing Authority, West Palm Beach, FL. Amount: 8256

Severin Sorensen, PO box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Housing Authority of the Town of Laurinburg, Lauirnburg, NC. Amount: 12666

Kevin Fields, 4827 Valla Rd., Louisville, KY 40213. Provided Technical Assistance Services to: Housing Authority of Taft, Taft, TX. Amount: 12626

Phillip Watson, 5525 Macarthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Franklin, Franklin, GA. Amount: 8966

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: City of Rock Island Housing Authority, Rock Island, IL. Amount: 9958

Gregory Robinson, 1350 Euclid Ave. Suite 901, Cleveland, OH 44115. Provided Technical Assistance Services to: St. Louis Housing Authority, St. Louis, MO. Amount: 12930

Randy Atlas, 770 Palm Bay Ln., Miami, FL 33138. Provided Technical Assistance Services to: Housing Authority of the County of Marin, San Rafael, CA. Amount: 15908

Robert Hahn, 1181 Via Salerno, Winter Park, FL 32790–2644. Provided Technical Assistance Services to: Ocala Housing Authority, Ocala, FL. Amount: 13499

Marshall Kandell, 3401 Agate Street, Eugene, OR 97405. Provided Technical Assistance Services to: Chicago Housing Authority, Washington, DC. Amount: 12373

David Buches, RD 1 Box 735a, Dover, DE 19901. Provided Technical Assistance Services to: Dover Resident Advisory Council, Dover, DE. Amount: 9650

Betty Jefferson, 3801 Canal Street #331, New Orleans, LA 70119. Provided Technical Assistance Services to: Capital Square Resident Management, Baton Rouge, LA. Amount: 14626

Travis Alexander, 108–t South St., Leesburg, VA 22075. Provided Technical Assistance Services to: Monroe County Housing Authority, Key West, FL. Amount: 11100

Alvin Dawson, 6242 Oram St., Irving, TX 75062. Provided Technical Assistance Services to: McKinney Housing Authority, McKinney, TX. Amount: 6641

Susan Guyette, 97 Moya Rd., Santa Fe, NM 87505. Provided Technical Assistance Services to: Colorado River Indian Housing Authority, Parker, AZ. Amount: 13580

Shirley Curry, 113 Belew Circle, Waynesboro, TN 38485. Provided Technical Assistance Services to: Sandy Park Resident Council, Tulsa, OK. Amount: 11386

Jeffrey Oshins, 271 Rosario Park Rd, Santa Barbara, CA 93105. Provided Technical Assistance Services to: Helena Housing Authority, Helena, MT. Amount: 9689.92

Rickie Lewis, P.O. Box 621, Mableton, GA 30059. Provided Technical Assistance Services to: Bankhead Courts Resident Association, Atlanta, GA. Amount: 13385

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: Housing Authority of the City of Kingsville, Kingsville, TX. Amount: 7794

Herbert Carter, P.O. Box 215, Raleigh, NC 27702–0215. Provided Technical Assistance Services to: South Carolina Regional Housing Authority, Laurens, SC. Amount: 10000

Wanda Ramseur, 218 West Broad Street, Statesville, NC 28677. Provided Technical Assistance Services to: City of Hickory Public Housing Authority, Hickory, NC. Amount: 10745

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: The Housing Authority of the City of San Benito, San Benito, TX. Amount: 8431

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Brownwood, Brownwood, TX. Amount: 9798

James Godfrey, P.O. Box 2470, Hot Springs, AR 71914. Provided Technical Assistance Services to: Housing Authority of the Sac and Fox Tribe, Reserve, KS. Amount: 8812.36

Rob Robinson, 1047 South 32nd Street, #1, Omaha, NE 68510. Provided Technical Assistance Services to: The Housing Authority of the City of High Point, High Point, NC. Amount: 7610

Anne Fallis, Rural Route 1, Box 1845, Rapid City, SD 57702. Provided Technical Assistance Services to: Crow Tribal Housing Authority, Crow Agency, MT. Amount: 8108

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Carrizo Springs, Carrizo Springs, TX. Amount: 9985

Travis Alexander, 108–t South St., Leesburg, VA 22075. Provided Technical Assistance Services to: Pasco County Housing Authority, Dade City, FL. Amount: 13416

Kent Irwin, 118 South Franklin, Muncie, IN 47305. Provided Technical Assistance Services to: Housing Authority of the City of Muncie, Muncie, IN. Amount: 10803.6

Anne Fallis, Rural Route 1, Box 1845, Rapid City, SD 57702. Provided Technical Assistance Services to: Crow Resident Organization, Crow Agency, MT. Amount: 8128

Betty Jefferson, 3801 Canal Street #331, New Orleans, LA 70119. Provided Technical Assistance Services to: Laredo Housing Authority, Laredo, TX. Amount: 11680

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Killeen Housing Authority, Killeen, TX. Amount: 12035

Travis Alexander, 108–t South St., Leesburg, VA 22075. Provided Technical Assistance Services to: Hialeah Housing Authority, Hialeah, FL. Amount: 11106

Nancy Lowe-Conno, 3406 Wild Cherry Rd., Baltimore, MD 21207. Provided Technical Assistance Services to: Wilmington Housing Authority, Wilmington, DE. Amount: 8463

Shirley Curry, 113 Belew Circle, Waynesboro, TN 38485. Provided

Technical Assistance Services to: Maryville Housing Authority, Maryville, TN. Amount: 11974

W. Sawyer Shirley, 2005 Country Park Drive, Smyrna, GA 30080. Provided Technical Assistance Services to: Housing Authority of the City of Montezuma, Montezuma, GA. Amount: 9852

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Plano Housing Authority, Plano, TX. Amount: 9774

Marla Cabage, 1309 North Broadway, Knoxville, TN 37917. Provided Technical Assistance Services to: Knoxville Tenant Council, Knoxville, TN. Amount: 13635

Linwood Timberlake, 202 11th Street, Butner, NC 27509. Provided Technical Assistance Services to: Roxboro Housing Authority, Roxboro, NC. Amount: 14647

Katherine Nelson, 2000 Fordem Avenue, Madison, WI 53704. Provided Technical Assistance Services to: City of Madison Community Development Authority, Madison, WI. Amount: 8064

Wanda Stansbury, 206 Renfrew Ave., Trenton, NJ 08618. Provided Technical Assistance Services to: Schenectady Municipal Housing Authority, Schenectady, NY. Amount: 12377

Carlos Garcia, Skills Training Inc, Grapevine, TX 76051. Provided Technical Assistance Services to: Housing Authority of San Angelo, San Angelo, TX. Amount: 5929

Harold Wright, 2551 Melaway Drive, Richmond, VA 23228. Provided Technical Assistance Services to: Housing Authority of the City of Austin, Austin, TX. Amount: 14553

Carolyn Williams, 2810 Shipley Terrace SE #202, Washington, DC 20020. Provided Technical Assistance Services to: Elyton Village Resident Council, Birmingham, AL. Amount: 12805

Carolyn Williams, 2810 Shipley Terrace SE #202, Washington, DC 20020. Provided Technical Assistance Services to: King Village Resident Council, Eutaw, AL. Amount: 12575

Carl Kellem, 6 Briar Patch Lane, Danbury, CT 06811. Provided Technical Assistance Services to: New Bedford Housing Authority, New Bedford, MA. Amount: 11880

Billy Thompson, 175 Jane Sowers Rd, Statesville, NC 28677. Provided Technical Assistance Services to: Belmont Housing Authority, Belmont, NC. Amount: 8686

Rose-Alma Jacobs, P.O. Box 221, Hogansburg, NY 13655. Provided Technical Assistance Services to: Ravenswood Tenant Association, Long Island, NY. Amount: 11476

Philip Fairweather, 6924 La Cienega Blvd, Ste 2, Inglewood, CA 90302. Provided Technical Assistance Services to: Housing Authority of the City of Los Angeles, Los Angeles, CA. Amount: 11370

Jeffrey Oshins, 271 Rosario Park Rd, Santa Barbara, CA 93105. Provided Technical Assistance Services to: San Diego Housing Commission, San Diego, CA. Amount: 12437

Severin Sorensen, PO Box 34469, Bethesda, MD 208131072. Provided Technical Assistance Services to: Cincinnati Metropolitan Housing Authority, Cincinnati, OH. Amount: 17579

Paul Turner, 410 Castello Road, Lafayette, CA 94549. Provided Technical Assistance Services to: San Francisco Housing Authority, San Francisco, CA. Amount: 9840

Ben Chan, 127 Glorietta Blvd, Orinda, CA 94563. Provided Technical Assistance Services to: Ping Yuen Residents Improvement Association, San Francisco, CA. Amount: 7753

Carolyn Kusler, 2706 Raintree Circle, Sapulpa, OK 74136. Provided Technical Assistance Services to: Housing Authority of the City of Austin (Thurmond Heights), Austin, TX. Amount: 8336

Ian Horncastle, 830 South Woodlawn Ave, Okmulgee, OK 74447. Provided Technical Assistance Services to: Housing Authority of the City of Austin (Meadowbrook), Austin, TX. Amount: 8878

Richard Martin, P.O. Box 12311, Raleigh, NC 27605. Provided Technical Assistance Services to: Housing Authority, Wilmington, NC. Amount: 9949

Curtis Jones, 6 Lindsey Street, Dorchester, MA 02124. Provided Technical Assistance Services to: Norwalk Housing Authority, Hartford, CT. Amount: 11270

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Norwalk Housing Authority, Norwalk, CT. Amount: 15116

Jacob Flores, 5756 E. Lee, Tucson, AZ 85712.Provided Technical Assistance Services to: All Indian Pueblo Housing Authority, Albuquerque, NM. Amount: 4352

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827. Provided Technical Assistance Services to: Atlanta Housing Authority, Atlanta, GA. Amount: 21251

Saundra Williams, 4300 Flat Shoals Rd., #2606, Union City, GA 30291. Provided Technical Assistance Services to: Housing Authority of the County of Douglas, Douglasville, GA. Amount: 8177

Wanda Stansbury, 206 Renfrew Ave., Trenton, NJ 08618. Provided Technical Assistance Services to: Housing Authority of the Borough of Princeton, Princeton, NJ. Amount: 8995

Wanda Ramseur, 218 West Broad Street, Statesville, NC 28677. Provided Technical Assistance Services to: City of Hickory Housing Authority, Hickory, NC. Amount: 8561

Phillip Watson, 5525 MacArthur Boulevard, #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Alamo, Alamo, TX. Amount: 9503

Vincent Lewis, 717 D St. NW, Suite 309, Washington, DC 20004. Provided Technical Assistance Services to: Housing Authority of Henderson, Henderson, KY. Amount: 12868

Bessie Singletary, Myic/Bankers Assistance, Winston Salem, NC 27103. Provided Technical Assistance Services to: S.H.E., Lexington, NC. Amount: 9821

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Housing Authority of the City of Casper, Casper, WY. Amount: 10991

Patricia Corprew, 3404 Dunkirk Ave., Norfolk, VA 23509. Provided Technical Assistance Services to: Grandy Village Tenant Management Corporation, Norfolk, VA. Amount: 6115

Sanford Horvitz, 1325 S. Colorado Blvd., B204, Denver, CO 80222. Provided Technical Assistance Services to: Aurora Housing Authority, Aurora, CO. Amount: 8950

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Portsmouth Metropolitan Housing Authority, Portsmouth, OH. Amount: 9953

Herman Wrice, Mantua Against Drugs, Philadelphia, PA 19104. Provided Technical Assistance Services to: Housing Authority of the City of Taylor, Taylor, TX. Amount: 9878

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: Housing Authority of the City of Charlotte, Charlotte, NC. Amount: 3689

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: Housing Authority of the City of High Point, High Point, NC. Amount: 6546

Maria Hankerson, 2139 Georgia Ave. S.E., Washington, DC 20001. Provided Technical Assistance Services to: Department of Public and Assisted Housing, Washington, DC. Amount: 12600

Paul Turner, 410 Castello Road, Lafayette, CA 94549. Provided Technical Assistance Services to: Hunters Point ''A'' West Tenant Assoc., San Francisco, CA. Amount: 8840

Deborah House, 1809 Fairpointe Trace, Stone Mountain, GA 30088. Provided Technical Assistance Services to: Housing Authority of the City of East Point, East Point, GA. Amount: 6770

F. Willis Caruso, 718 South Spring, Lagrange, IL 60525. Provided Technical Assistance Services to: Housing Authority of the City of Waterbury, Waterbury, CT. Amount: 10000

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Bonham Housing Authority, Bonham, TX. Amount: 11039

Robert Borghese, 21 S. 12th St. Suite 902, Philadelphia, PA 19107. Provided Technical Assistance Services to: Oakland Housing Authority, Oakland, CA. Amount: 9676

Jeffrey Oshins, 271 Rosario Park Rd., Santa Barbara, CA 93105. Provided Technical Assistance Services to: Wind River Indian Housing Authority, Fort Washakie, WY. Amount: 9422

Gennaro Vito, University of Louisville, Louisville, KY 40292. Provided Technical Assistance Services to: New Albany Housing Authority, New Albany, IN. Amount: 9085

Betty Jefferson, 3801 Canal Street #331, New Orleans, LA 70119. Provided Technical Assistance Services to: North Baton Rouge TC, Baton Rouge (ebr), LA. Amount: 11062

Alex Hartley, 1138 S. Hayworth Ave., Los Angeles, CA 90035. Provided Technical Assistance Services to: Nickerson Gardens Resident Management Corporation, Los Angeles, CA. Amount: 12474

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Waco, Waco, TX. Amount: 11795

Jackie Figler, 2639 Canton Rd., Akron, OH 44312. Provided Technical Assistance Services to: Portage Metropolitan Housing Authority, Ravenna, OH. Amount: 14421

Jeffrey Oshins, 271 Rosario Park Rd., Santa Barbara, CA 93105. Provided Technical Assistance Services to: The Housing Authority of the City of St. Petersburg Florida, St. Petersburg, FL. Amount: 11337

Herbert Carter, P.O. Box 215, Raleigh, NC 27702–0215. Provided Technical Assistance Services to: Rowan County Housing Authority, Salisbury, NC. Amount: 10776

Jeffrey Oshins, 271 Rosario Park Rd., Santa Barbara, CA 93105. Provided Technical Assistance Services to: Beeville Housing Authority, Beeville, TX. Amount: 9167

Karriem Shabazz, 3150 Borge Street, Oakton, VA 22124. Provided Technical Assistance Services to: Lynchburg Redevelopment and Housing Authority, Lynchburg, VA. Amount: 7647

Carol Deemer, 6700 South Shore Dr. #18A, Chicago, IL 60649. Provided Technical Assistance Services to: Housing Authority of Jefferson County, Mt. Vernon, IL. Amount: 11818

Jeffrey Oshins, 271 Rosario Park Rd., Santa Barbara, CA 93105. Provided Technical Assistance Services to: Housing Authority of the City of Eagle Pass, Eagle Pass, TX. Amount: 9230

Vivian Martain, 1813 Lasalle Street, Saint Louis, MO 63104. Provided Technical Assistance Services to: The Michigan City Housing Authority, Michigan City, IN. Amount: 8394

John Campbell, 319 SW Washington St., #802, Portland, OR 97204. Provided Technical Assistance Services to: Housing Authority of the City of Richmond, Richmond, CA. Amount: 9390

Robert Borghese, 21 S. 12th St. Suite 902, Philadelphia, PA 19107. Provided Technical Assistance Services to: Yankton Sioux Housing Authority, Wagner, SD. Amount: 9760

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Tullahoma Housing Authority, Tullahoma, TN. Amount: 10656

Patricia Surprenant, 418 Robin Ct., Cheshire, CT 06410. Provided Technical Assistance Services to: Montgomery Housing Authority, Montgomery, AL. Amount: 11511

Herbert Carter, P.O. Box 215, Raleigh, NC 27702–0215. Provided Technical Assistance Services to: Housing Authority of the City of New Iberia, New Iberia, LA. Amount: 9869

Renee Williams, 244 West Queen Lane, Philadelphia, PA 19144. Provided Technical Assistance Services to: Montgomery County Housing Authority, Norristown, PA. Amount: 9468

Marcus Guthrie, P.O. Box 67, Lac du Flambeau, WI 54538. Provided Technical Assistance Services to: Lac du Flambeau Chippewa Housing Authority, Lac du Flambeau, WI. Amount: 10333.6

Chuck Bean, P.O. Box 1686, Duvall, WA 98019. Provided Technical Assistance Services to: Bristol Bay Housing Authority, Dillingham, AK. Amount: 15205

Joseph Donahue, P.O. Box 1736, Kenail, AK 99611. Provided Technical Assistance Services to: New Stuyahok Resident Organization, New Stuyahok, AK. Amount: 11650

Joseph Donahue, P.O. Box 1736, Kenail, AK 99611. Provided Technical Assistance Services to: Dillingham Resident Organization, Dillingham, AK. Amount: 11650

C. Jean Bennett, 207 Valley North Blvd., Jackson, MS 39206. Provided Technical Assistance Services to: Natchez Housing Authority, Natchez, MS. Amount: 9992

Wanda Ramseur, 218 West Broad Street, Statesville, NC 28677. Provided Technical Assistance Services to: Morganton Housing Authority, Morganton, NC. Amount: 10825

Severin Sorensen, PO Box 34469, Bethesda, MD 208131072. Provided Technical Assistance Services to: Bluefield Housing Authority, Bluefield, WV. Amount: 19345

Saundra Williams, 4300 Flat Shoals Rd. #2606, Union City, GA 30291. Provided Technical Assistance Services to: Hawkinsville Housing Authority, Hawkinsville, GA. Amount: 9169

W. Sawyer Shirley, 2005 Country Park Drive, Smyrna, GA 30080. Provided Technical Assistance Services to: Housing Authority of the County of Clallam, Port Angeles, WA. Amount: 9864

Marcia Marshall, 101 College Pkwy, Arnold, MD 21012. Provided Technical Assistance Services to: Anne Arundel County Housing Authority, Glen Burnie, MD. Amount: 9970

Robert Taylor, 425 Beasley Road, #B7, Jackson, MS 39286. Provided Technical Assistance Services to: Housing Authority of the City of Columbus, Columbus, MS. Amount: 7514

Phil Watson, 5525 MacArthur Blvd. #450, Irving, TX 75038. Provided Technical Assistance Services to: Mission Housing Authority, Mission, TX. Amount: 9909

C. Jean Bennett, 207 Valley North Blvd., Jackson, MS 39206. Provided Technical Assistance Services to: Housing Authority of the City of Hazlehurst, Hazlehurst, MS. Amount: 9818

Herbert Carter, P.O. Box 215, Raleigh, NC 277020215. Provided Technical Assistance Services to: Vance County Housing Authority, Henderson, NC. Amount: 9344

Sanford Horvitz, 1325 S. Colorado Blvd, b204, Denver, CO 80222. Provided Technical Assistance Services to: Adams County Housing Authority, Commerce City, CO. Amount: 9898

Anthony Randolph, 1050 Topeka Street, Pasadena, CA 91104. Provided Technical Assistance Services to: Sacramento Housing and Redevelopment Agency, Sacramento, CA. Amount: 9898

C. Jean Bennett, 207 Valley North Blvd., Jackson, MS 39206. Provided Technical Assistance Services to: Yazoo Housing Resident Council, Inc., Yazoo City, MS. Amount: 9353

David Buches, Rd 1 Box 735a, Dover, DE 19901. Provided Technical Assistance Services to: McKean County Redevelopment and Housing Agency, Smethport, PA. Amount: 7510

Severin Sorensen, PO Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Housing Authority of the City of Asheville, Asheville, NC. Amount: 10000

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827. Provided Technical Assistance Services to: Geneva Housing Authority, Geneva, NY. Amount: 14482

Francis McDonald, 22 Kings Landing Lane, Hampton, VA 23669. Provided Technical Assistance Services to: Norfolk Redevelopment & Housing Authority, Norfolk, VA. Amount: 2658

Saundra Williams, 4300 Flat Shoals Rd. #2606, Union City, GA 30291. Provided Technical Assistance Services to: Housing Authority of the City of Acworth, Acworth, GA. Amount: 8797

Travis Alexander, 108–t South St., Leesburg, VA 22075. Provided Technical Assistance Services to: Housing Authority of the City of Key West, Key West, FL. Amount: 9266

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Russellville Housing Authority Incorporated, Russellville, AL. Amount: 11394

David Buches, Rd 1 Box 735a, Dover, DE 19901. Provided Technical Assistance Services to: Norman Housing Authority, Norman, OK. Amount: 17366

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: Housing Authority of New Orleans, New Orleans, LA. Amount: 10000

Gregory Robinson, 1350 Euclid Ave. Suite 901, Cleveland, OH 44115. Provided Technical Assistance Services to: Jackson Housing Authority, Jackson, TN. Amount: 13934

Hugh Phillips, 619 Longbow Drive, Albany, GA 31707. Provided Technical Assistance Services to: Housing Authority of the City of Baxley, Baxley, GA. Amount: 11212

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Housing Authority of Pasco and Franklin County, Pasco, WA. Amount: 10374

Gary Davis, 620 Alum Creek Drive, Columbus, OH 43205. Provided Technical Assistance Services to: Hall County Housing Authority, Grand Island, NE. Amount: 7462

Jesse Jaramillo, 2131 34th Street, Los Alamos, NM 87544. Provided Technical Assistance Services to: San Francisco Housing Authority, San Francisco, CA. Amount: 9979

William McDonough, 30 Gillett Street, #3a, Hartford, CT 06105. Provided Technical Assistance Services to: Housing Authority of New London, New London, CT. Amount: 9375

Dennis Rodriguez, 267 West 9th St., San Pedro, CA 90731. Provided Technical Assistance Services to: Pueblo Del Rio Resident Management Corporation, Los Angeles, CA. Amount: 6234

Margot Lebrasseur, 725 2nd St. N.E., Washington, DC 20002. Provided Technical Assistance Services to: Fort Belknap Housing Authority, Harlem, MT. Amount: 7197

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Starr County Housing Authority, Rio Grande, TX. Amount: 11195

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Housing Authority of the Town of Laurinburg, Laurinburg, NC. Amount: 10000

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Donna, Donna, TX. Amount: 11493

William Gailliard, 1120 Perry Hill Road, Montgomery, AL 36109. Provided Technical Assistance Services to: Gibbs Village, Montgomery, AL. Amount: 10135

Philip Fairweather, 6924 La Cienega Blvd, Ste 2, Inglewood, CA 90302. Provided Technical Assistance Services to: Albany Housing Authority, Albany, NY. Amount: 13610

Phillip Watson, 5525 MacArthur Boulevard #450, Irving, TX 75038. Provided Technical Assistance Services to: Housing Authority of the City of Port Isabel, Port Isabel, TX. Amount: 11634

Carol Deemer, 6700 South Shore Dr. #18A, Chicago, IL 60649. Provided Technical Assistance Services to: Jackson County Housing Authority, Murphysboro, IL. Amount: 11974

Sheila Wallce, 714 Lakeside Dr., Carriere, MS. Provided Technical Assistance Services to: Picayune Housing Authority, Picayune, MS. Amount: 8003

Paul Turner, 410 Castello Road, Lafayette, CA 94549. Provided Technical Assistance Services to: Yolo County Housing Authority, Woodland, CA. Amount: 13870

Paul Tanner, 5618 Shorewood Rd., Jacksonville, FL 32210. Provided Technical Assistance Services to: Chipley Housing Authority, Chiley, FL. Amount: 9314

Gwendolyn Edwards, P.O. Box 2932, Atlanta, GA 30301. Provided Technical Assistance Services to: Ceader Park, Montgomery, AL. Amount: 7335

Michael Norman, 4060 Peachtree Rd NE B181, Atlanta, GA 30360. Provided Technical Assistance Services to: Smiley Court Resident Organization, Montgomery, AL. Amount: 9082

Marlene Johnson, 2805 Dawson Street #202, Anchorage, AK 99503. Provided Technical Assistance Services to: Clarks Point Resident Organization, Clarks Point, AK. Amount: 14318

Marlene Johnson, 2805 Dawson Street #202, Anchorage, AK 99503. Provided Technical Assistance Services to: Ekwok Resident Organization, Ekwok, AK. Amount: 15406

James Kinkead, 2371 Henry Clower Blvd, Ste. C, Snellville, GA 30278. Provided Technical Assistance Services to: Rowan County Housing Authority, Salisbury, NC. Amount: 10936

Herbert Carter, P.O. Box 215, Raleigh, NC 27702–0215. Provided Technical Assistance Services to: Housing Authority of the City of Bainbridge, Bainbridge, GA. Amount: 9874

Gary Cordner, 410 Stratton Building, Richmond, KY 40475. Provided Technical Assistance Services to: Housing Authority of Cumberland, Cumberland, KY. Amount: 6711

Gwendolyn Shepherd, GMSS Learning Services, Port Orchard, WA 98366–7645. Provided Technical Assistance Services to: Housing Authority of Clackamas County, Oregon City, OR. Amount: 10000

Paul Tanner, 5618 Shorewood Rd., Jacksonville, FL 32210. Provided Technical Assistance Services to: Union County Housing Authority, Lake Butler, FL. Amount: 8227

James Godfrey, P.O. Box 2470, Hot Springs, AR 71914. Provided Technical Assistance Services to: Rome Housing Authority, Rome, GA. Amount: 10824

William Pammer, 8904 Beeler Dr., Tampa, FL 33626. Provided Technical Assistance Services to: Miller Plaza Resident Council, Las Vegas, NV. Amount: 11855

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: Alachua County Housing Authority, Gainesville, FL. Amount: 11920

Joseph Alex, P.O. Box 210546, Montgomery, AL 36121. Provided Technical Assistance Services to: Uniontown Housing Tenant Association, Uniontown, AL. Amount: 10384

Severin Sorensen, P.O. Box 34469, Bethesda, MD 20813–1072. Provided Technical Assistance Services to: New Bedford Housing Authority, New Bedford, MA. Amount: 12757

Luis Ortiz, Chile #7 St. Vista Verde, Vega Baja, PR 00763. Provided Technical Assistance Services to: Davila Freyetes Resident Council, Barceloneta, PR. Amount: 7825

Abraham Williams, 804 26th Avenue, Phenix City, AL 36869. Provided Technical Assistance Services to: City of Evergreen Housing Authority, Evergreen, AL. Amount: 5478

Sylvia Roberts, 500 South Florida Ave Ste. 600, Lakeland, FL 33804–0183. Provided Technical Assistance Services to: Winter Haven Housing Authority, Winter Haven, FL. Amount: 5928

Herman Wrice, Mantua Against Drugs, Philadelphia, PA 19104. Provided Technical Assistance Services to: Pasco County Housing Authority, Dade City, FL. Amount: 7689

Philip Fairweather, 6924 La Cienega Blvd, Ste 2, Inglewood, CA 90302. Provided Technical Assistance Services to: The Housing Authority of the City of Atlanta, Atlanta, GA. Amount: 13860

Percy Dace, P.O. Box 23556, Belleville, IL 62223. Provided Technical Assistance Services to: Springfield Housing Authority, Springfield, IL. Amount: 11000

Gary Davis, 620 Alum Creek Drive, Columbus, OH 43205. Provided Technical Assistance Services to: The Housing Authority of Martin, Martin, KY. Amount: 5282

Isaac Montoya, 3104 Edloe St. #330, Houston, TX 77027–6022. Provided Technical Assistance Services to: Rayville Housing Authority, Rayville, LA. Amount: 9604

John Campbell, 319 SW Washington St., #802, Portland, OR 97204. Provided Technical Assistance Services to: Housing Authority of the City of Salem, Salem, OR. Amount: 17481

Carlos Garcia, Skills Training Inc, Grapevine, TX 76051. Provided Technical Assistance Services to: Housing Authority of the City of Beaumont, Beaumont, TX. Amount: 6279

Robert Milan, P.O. Box 214, Lawton, OK 73502. Provided Technical Assistance Services to: Osage Indian Resident Council Association, Skiatook, OK. Amount: 10500

Mary Weathers, 9830 Willow Suite 4B, Kansas City, MO 64134. Provided Technical Assistance Services to: The Housing Authority for the City of Dallas, Dallas, TX. Amount: 7466

[FR Doc. 96–7330 Filed 3–26–96; 8: 45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for the Mitchell's Satyr Butterfly (Neonympha mitchellii mitchellii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a technical/agency draft recovery plan for the Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*). It occurs on private and public lands in southeastern Michigan and northern Indiana. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be receive on or before May 28, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Charles M. Wooley, Field Supervisor, East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823–6316, telephone (517) 351–2555. Comments and materials received are available for public inspection by appointment during normal business hours at the above address. Comments on the plan should be addressed to Mark Hodgkins (see **ADDRESSES**) .

FOR FURTHER INFORMATION CONTACT: Mark Hodgkins at the above address, or telephone (517) 351–6289.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point

where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels to reclassify to threatened or delist them, and estimate time and cost to implement the recovery measures needed. The Service revises existing recovery plans, as needed, to reflect important new biological information, significant changes in a species' status, or the accomplishment of tasks identified in the original plan.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document submitted for review is the draft Mitchell's Satyr Butterfly (*Neonympha mitchellii mitchellii*) Recovery Plan. Of the 30+ historic populations known, only 11 extant, isolated populations remain in southwestern Michigan and one in northern Indiana. The species is considered extirpated from Ohio, New Jersey, and Maryland (if it actually occurred in that state).

The Mitchell's satyr butterfly was emergency listed as endangered on June 25, 1991, due to a perceived threat posed by overcollection. On May 20, 1992, the Mitchell's satyr butterfly received long-term protection through the normal listing process. The literature reflects some variability in the description of Mitchell's satyr habitat. Known habitats are all peatlands but range along a continuum from prairie/bog fen to meadow/swamp. However, a constant attribute in all historical and active habitats is a herbaceous community which is dominated by sedges, usually *Carex stricta*, with scattered deciduous and/or coniferous shrubs, most often tamaracks, or red cedar. Mitchell's satyr habitat is most easily characterized as a sedge-dominated fen community. The greatest threat to *N. m. mitchellii* is continued loss of habitat due to development and fen alteration leading to disruption of ecological processes which create and maintain habitat.

The primary objective of this draft recovery plan is to protect an adequate number of Mitchell's satyr butterfly sites to ensure long-term viability of the species in the wild. Conditions that must be met to reclassify the Mitchell's satyr butterfly from endangered to threatened status include protection of a minimum of 16 geographically distinct, self-sustaining populations established or discovered range wide. Delisting will be considered when 25 geographically distinct, self-sustaining populations are established or discovered range wide for five consecutive years following reclassification. Also, a minimum of 15 of these sites would need the establishment of permanent protection with long-term management programs requiring some intervention.

Site protection will be accomplished through negotiating cooperative agreements and conservation easements with land owners and managers, acquiring lands from willing sellers, and using existing legislation to protect the Mitchell's satyr and their habitat. Other recovery activities will include searching for additional populations, monitoring population levels and habitat conditions, managing habitat as needed, conducting necessary studies, and conducting a general information program for the public.

The draft recovery plan is available for technical/agency review. After consideration of comments received during the review period, the recovery plan will be submitted to the Regional Director, Region 3, for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 20, 1996.

Mamie A. Parker,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 96–7373 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Federal Geographic Data Committee (FGDC); Public Meeting of the FGDC Facilities Working Group

AGENCY: Geological Survey, Interior.

ACTION: Notice of two meetings.

SUMMARY: This notice is to invite public participation in two meetings of the FGDC Facilities Working Group. The major topics for these meetings are: the standardization of definitions for Facility and Installation; development of a Facility/Installation ID standard; and development of standards for utility, building, and environmental hazard geospatial data.

TIME AND PLACE: 8 April 1996, from 1:00 p.m. until 4:00 p.m., and 13 May 1996, from 1:00 p.m. until 4:00 p.m. The meetings will be held at Headquarters U.S. Army Corps of Engineers, in room 8222D of the Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC. The Pulaski Building is located just a few blocks west of Union Station.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–5514; facsimile (703) 648–5755; Internet ''gdc@usgs.gov''.

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal Agencies engaged in geospatial activities. The FGDC Facilities Working Group specifically focuses on geospatial data issues related to facilities and facility management. A facility is an entity with location, deliberately established as a site for designated activities. A facility database might describe a factory, a military base, a college, a hospital, a power plant, a fishery, a national park, an office building, a space command center, or a prison. The database for a complex facility may describe multiple functions or missions, multiple buildings, or even a county, town, or city. The objectives of the Working Group are to: promote standards of accuracy and currentness in facilities data that are financed in whole or in part by Federal funds; exchange information on technological improvements for collecting facilities data; encourage the Federal and non-Federal communities to identify and adopt standards and specifications for facilities data; and promote the sharing of facilities data among Federal and non-Federal organizations.

Dated: March 15, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–7362 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO–350–1430–00]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0011

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons seeking to acquire title to public land under the color-of-title authority as a Class 2 claim. The BLM collects information to assure that statutory requirements for conveyance of title under the Color-of-Title Act have been met.

DATES: Comments on the proposed information collection must be received by May 28, 1996, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: !WO140@attmail.com. Please include ''Attn:1004–0011'' and your name and return address in your Internet address.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, L Street NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Vanessa R. Engle, Realty Use Group, 202–452–7776.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the Federal Register concerning a collection of information contained in published current rules to solicit comments on (a) 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; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to 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.

The Color-of-Title Act of December 22, 1928, as amended (43 U.S.C. 1068, 1068a, 1068b), provides for the issuance of a land patent (deed) to eligible individuals, groups, or corporations who believe they have a valid claim to public lands under color-of-title. The information collected on Color-of-Title Tax Levy and Payment Record Form 2540–3, is required by Departmental regulations 43 CFR 2541.2 for all applicants who initiate a Class 2 claim. These regulations were adopted on June 13, 1970 (35 FR 9592).

A claim of Class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors, or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

Any individual seeking to acquire a title to public land under the color-of-title authority must make application and provide information essential to compliance with law, regulations, and procedures. The evidence needed to determine property rights through color-of-title regulations for a Class 2 claim is proof of payment of taxes levied on the property claimed by the applicant. Without this proof of payment, the BLM cannot finalize the claim.

Form 2540–3 may be submitted in person or by mail to the proper BLM office. The following is an explanation of specific items of information requested on Color-of-Title Tax Levy and Payment Record Form 2540–3, pursuant to 43 CFR 2541.2(4)(c)(2): (1) the name of applicant is needed to identify the person/entity filing a claim; (2) the legal description of the claimed land must be listed as recorded in public records of the county concerned; (3) tax payment information including the certification of the data on tax year, payor of the tax, and the amount of tax is necessary information to legally qualify the applicant to receive a property right from the Federal government; and (4) certification from the public official administering the county tax records or a certified abstracter must be provided to determine the validity of the application.

Response is mandatory if the color-of-title claimant wishes to obtain the benefits of the statute and gain clear title to his claimed property. Failure to provide the necessary information results in the rejection of the color-of-title application. If the information on Color-of-Title Tax Levy and Payment Record Form 2540–3 was not collected, BLM would be unable to carry out the mandate of the Color-of-Title Act and the responsibilities for implementing 43 CFR 2540 and 2541. Form 2540–3 requires only the minimal information necessary to determine claim validity.

Based on its experience processing Color-of-Title applications, BLM estimates the public reporting burden for completing Color-of-Title Tax Levy and Payment Record Form 2540–3 is one hour. BLM estimates that approximately 37 Color-of-Title applications will be filed annually for a total annual burden of 37 hours.

Any interested member of the public may request and obtain, without charge, a copy of Color-of-Title Tax Levy and Payment Form 2540–3 by contacting any BLM Office or the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 21, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–7323 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–84–P

[WY–921–41–5700; WYW121598]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

March 14, 1996

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121598 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of

this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121598 effective September 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 96–7363 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–22–P

[WY–920–06–1330–01; WYW128036, WYW128037, WYW128038]

Notice of Sodium Lease Offerings by Sealed Bid; Cheyenne, WY

SUMMARY: Notice is hereby given that certain sodium resources in the lands hereinafter described, located in Sweetwater County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), as amended.

DATES: The lease sale will be held at 2:00 p.m., on Wednesday, May 1, 1996. Sealed bids must be submitted before 1:00 p.m., on Wednesday, May 1, 1996.

ADDRESSES: The lease sale will be held in the first floor conference room (Room 107) of the Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, at (307) 775–6258.

SUPPLEMENTARY INFORMATION: These offerings are being made as a result of expressions of interest filed in the Wyoming State Office. The parcels will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the parcels. The minimum bid is $200.00 per acre. No bid less than $200.00 per acre will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the Authorized Officer after the sale.

The resource to be offered consists of all the sodium in the following described lands located in Sweetwater County, Wyoming. Minable reserves are defined as beds that are a maximum of 2000 feet deep, are a minimum of 8 feet thick, and have a minimum quality greater than 85 percent trona and less than 2 percent halite.

Parcel 1 (WYW128036)

T. 18 N., R. 109 W., 6th P.M., WY,
Sec. 20: All.

Containing 640 acres.

Parcel 1 contains an estimated 18.1 million tons of minable trona in Bed 17.

Parcel 2 (WYW128037)

T. 18 N., R. 109 W., 6th P.M., WY,
Sec. 28: All.

Containing 640 acres.

Parcel 2 contains an estimated 15.0 million tons of minable trona in Bed 17 and 4.6 million tons of minable trona in Bed 15 for a total of 19.6 million tons.

Parcel 3 (WYW128038)

T. 17 N., R. 110 W., 6th P.M., WY,
Sec. 10: All;
Sec. 12: All.

Containing 1280 acres.

Parcel 3 contains minable trona in all five beds with a total of 60.2 million tons of minable trona. Bed 17 contains 2.0 million tons, Bed 15 contains 6.9 million tons, Bed 14 contains 13.3 million tons, Bed 12 contains 23.8 million tons, and Bed 11 contains 14.2 million tons.

The leases issued as a result of this offering will provide for payment of annual rentals for each acre, or fraction thereof, as follows: 25 cents for the first calendar year or fraction thereof; 50 cents for the second, third, fourth and fifth calendar years, respectively; and, one dollar for the sixth and each and every calendar year thereafter during the continuance of the leases. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which the rental was paid. The royalty rate shall be 8 percent of the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market. Bidding instructions for the offered tracts are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed sodium leases are available at the Wyoming State Office. Case file documents are also available at the office for public inspection.

Dennis R. Stenger,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 96–6805 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Solicitation of Nominations for National Maritime Heritage Grants Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Solicitation of nominations.

SUMMARY: Pursuant to 16 U.S.C. 5401, the Secretary of the Interior is soliciting nominations for members to serve on the National Maritime Heritage Grants Advisory Committee. The purpose of the Committee is to advise the Secretary on matters pertaining to the National Maritime Heritage Grants Program and the National Maritime Heritage Policy.

DATES: All nominations should be submitted on or before April 26, 1996.

ADDRESSES: All nominations should be sent to: Secretary of the Interior, U.S. Department of the Interior, 1849 C Street NW., Washington, D.C. 20240. All nominations should be accompanied by complete biographical and professional information, and include home and business address and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Kevin Foster, National Maritime Initiative, National Park Service, U.S. Department of the Interior, (202) 343–5969 or (202) 343–1244 (fax).

SUPPLEMENTARY INFORMATION: Pub. L. 103–451 (16 U.S.C. 5401) established within the Department of Interior the National Maritime Heritage Grants Program for maritime heritage preservation and education projects. It also sets forth the National Maritime Heritage Policy, calling for preservation of historic maritime resources through a partnership with Federal, State, and local governments, and private entities.

In addition, the Act established the National Maritime Heritage Grants Advisory Committee. The Committee is responsible for reviewing proposals to the National Maritime Heritage Grants Program and making funding recommendations to the Secretary. The Committee identifies and advises the Secretary regarding priorities for achieving the objectives set forth in the National Maritime Heritage Policy. The Committee also reviews the Secretary's annual report to Congress on the Grants Program, and performs any other duties the Secretary considers appropriate.

Pub. L. 103–451 stipulates that the Committee will consist of 13 members appointed by the Secretary who are representative of various sectors of the maritime community who are knowledgeable and experienced in maritime heritage and preservation. To the extent practicable, membership

should reflect regional geographic balance and include a representative from each of the fields of:

1. small craft preservation
2. large vessel preservation
3. sail training
4. preservation architecture
5. underwater archaeology
6. lighthouse preservation
7. maritime education
8. military naval history
9. maritime museums or historical societies
10. maritime arts and crafts
11. maritime heritage tourism
12. maritime recreational resources management

The Committee will also include a member of the general public.

Through this notice, the Secretary is soliciting nominations for any of the appointments from interested organizations or individuals.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 96–7371 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–383]

Certain Hardware Logic Emulation Systems and Components Thereof; Prehearing Conference

Notice is hereby given that a prehearing conference in this matter will commence at 8:30 a.m. on Thursday, April 11, 1996, in Courtroom B (Room 111), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: March 21, 1996

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 96–7413 Filed 3–26–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Reserach and Production Act of 1993—Research, Development and Production of Adsorbent for Air Separation (Air Products and Chemicals, Inc.)

Notice is hereby given that, on February 5, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Air Products and Chemicals, Inc. filed notifications of a cooperative joint venture 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 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 identifies of the parties are Air Products and Chemicals, Inc., Allentown, PA and L'Air Liquide, Societe Anonyme Pour L'Etude et L'Exploitation Des Procedes Georges Claude, Paris, FRANCE. The objective of the joint venture is to research, develop and arrange for and share in the production of new adsorbents for the separation of air to recover oxygen and/or nitrogen.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–7365 Filed 3–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for Open Systems International (COS)

Notice is hereby given that, on February 23, 1996, 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 Cooperation for Open Systems International (''COS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission reflecting changes in the membership of COS. 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. Effective December 31, 1995, the following companies ceased membership in COS: Ameritech, Chicago, IL; AT&T, Holmdel, NJ; Bell Atlantic, Arlington, NJ; Computer Sciences Corporation, Herndon, VA; Digital Equipment Corporation, Littleton, MA; Defense Information Systems Agency, Reston, VA; Motorola, Arlington Heights, IL; National Institute of Standards and Technology, Gaithersburg, IL; Northern Telecom, Inc., Morristown, NJ; NYNEX Science & Technology, Inc., White Plains, NY; Southwestern Bell Technology Resources, Austin, TX; Unisys Corporation, St. Paul, MN; and 3COM Corporation, Santa Clara, CA.

No other changes have been made in either the membership or planned activity of COS. Membership in this group research project remains open, and COS intends to file additional written notification disclosing all changes in membership.

On May 14, 1986, COS 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 June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on October 17, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on February 20, 1996 (61 Fed. Reg. 6388).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–7366 Filed 3–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'')

Notice is hereby given that, on February 15, 1996, 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 Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that the Aramco Services Company, Houston, TX, has become a member of PERF.

No other changes have been made in either the membership or planned activity of PERF. Membership in PERF remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF 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 March 14, 1986, (51 FR 8903).

The last notification was filed with the Department on March 1, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on April 27, 1995, (60 FR 20751). A supplemental filing of a change in the

wording of the Charter of PERF filed with the Department on October 25, 1995, has not been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–7368 Filed 3–26–96; 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. 93–24

Notice is hereby given that, on February 26, 1996, 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. 93–24, titled ''Biodegradation and Metabolism of Methyl Tertiary Butyl Ether and Other Tertiary Ethers,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to PERF Project No. 93–24 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 identities of the current parties participating in PERF Project No. 93–24 are: Amoco Corporation, Chicago, IL; ELF Aquitaine Inc., Washington, D.C.; Union Oil Company of California (Unocal), Brea, CA.

The nature and objective of the research program performed in accordance with PERF Project No 93–24 is to assess biodegradation and metabolism of methyl tertiary butyl ether (MTBE) and other tertiary ethers.

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 in September, 1996. The participants intend to file additional written notifications disclosing all changes in its membership.

Information about participating in PERF Project No. 93–24 may be obtained by contacting Ms. Minoo Javanmardian, Amoco Corporation, Naperville, IL.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–7369 Filed 3–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on October 25, 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 Petroleum Environmental Research Forum (''PERF'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the statement of the nature and objectives of the joint venture. 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 notifications stated that the wording of the Charter of PERF Article II, paragraphs A and B shall read as follows:

A. To provide a stimulus to and mechanism for cooperative research and development of technology related to any aspect of health, environment, safety, waste reduction, and system integrity for the petroleum industry.

B. To provide a forum for the presentation and consideration of proposals for industry projects related to any aspect of health, environment, safety, waste reduction, and system integrity for funding by Members of the organization and non-Members alike.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF 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 March 14, 1986, (51 FR 8903).

The last notification of change in membership was filed with the Department on March 1, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on April 27, 1995, (60 FR 20751).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–7367 Filed 3–26–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 9, 1995, High Standard Products, 1100 W. Florence Avenue, #8, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Heroin	I
Normorphine	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 28, 1996.

Dated: March 15, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–7415 Filed 3–26–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Sunshine Act Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L.

92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 10, 1996, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–3215 A/B, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavalee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 21st day of March, 1996.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 96–7412 Filed 3–26–96; 8:45 am]

BILLING CODE 4510–28–M

Mine Safety and Health Administration

Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces the date, time, place, and agenda summary for the second meeting of the Mine Safety and Health Administration's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone 703–235–1910.

SUPPLEMENTARY INFORMATION: A public meeting of the advisory committee will be held as follows:

(1) April 11, 1996, from 8:00 a.m. to 6:30 p.m.

(2) April 12, 1996, from 8:00 a.m. to 5:00 p.m. The meeting will be held on both days at the DoubleTree Hotel—Pittsburgh (Somerset Room) located at 1000 Penn Avenue, Pittsburgh, Pennsylvania 15222; phone 412–281–3700.

The Secretary of Labor established this advisory committee (60 FR 5947) to develop recommendations for improved standards or other appropriate actions addressing: permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal dust levels and the role of the miner in that monitoring; and the adequacy of operator sampling programs to determine the actual levels of dust concentrations to which miners are exposed. The Advisory Committee is chartered through September 30, 1996 (60 FR 55284), but must complete its deliberations by August 19, 1996.

The agenda for the second meeting will include discussions on the control of the workplace environment (worker exposure). Specific topics for discussion will include: (1) The current state of dust control technology for underground and surface coal mines and its effectiveness; (2) new developments in control technology and mining systems; (3) the hierarchy of controls and its application in underground and surface coal mines; (4) the design of mine ventilation plans for effective dust control and the means for verifying plan effectiveness; (5) the monitoring of compliance with plan requirements; (6) means of upgrading ventilation plan provisions; (7) the role of the miner, operator, and MSHA; and (8) education and training needs relative to the control of the workplace environment.

The public is invited to attend. The chairperson will provide an hour near the end of each day's meeting to allow interested persons to make comments. Official records of the meeting will be available for public inspection at the above address.

Dated: March 22, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–7384 Filed 3–22–96; 12:17 pm]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

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: 10 CFR Part 35, ''Medical Use of Byproduct Material.''
2. Current OMB Approval Number 3150–0010.
3. How often the collection is required: Required reports are collected and evaluated on a continuing basis as needed due to a change in programs or as events occur.
4. Who is required or asked to report: Physicians and medical institutions who are applicants for, or holders of, an NRC license authorizing the administration of byproduct material or its radiation to humans for medical use.
5. The number of annual respondents: 1,982 NRC licensees and 4,955 Agreement State licensees.
6. The number of hours needed annually to complete the requirement or request: 376,407 hours for NRC licensees and 942,820 hours for Agreement State licensees.
7. Abstract: 10 CFR Part 35, ''Medical Use of Byproduct Material,'' contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical use. The information in the required reports and records is used by the NRC to ensure that the health and safety of the public is protected, and that the licensee possession and use of byproduct material is in compliance with license and regulatory requirements. The revision is a net increase adjustment in burden resulting from an increase in the number of affected licensees, a reevaluation of the time required to perform individual activities and the number of times those activities are performed, and an addition of burden associated with three sections, two of which are a result of rulemaking, and one which was inadvertently omitted during the last evaluation of burden.

Submit, by (insert date 60 days after publication in the Federal Register), 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 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. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209 or, within the Washington, DC area, at 202–634–3273.

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, Maryland, this 21st day of March, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–7407 Filed 3–26–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–9 (50–267)]

Notice of Issuance of Amendment to Materials License SNM–2504; Public Service Company of Colorado; Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 2 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSCo) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By applications dated July 21 and December 12, 1995, PSC requested amendments to its ISFSI license to (1) incorporate organizational changes, (2) delete reference to the FSV 10 CFR Part 50 ''possession only'' license, and (3) revise the radioactive materials and possession limits to accurately reflect the materials stored at the ISFSI.

This amendment 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.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 21st day of March 1996.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–7414 Filed 3–26–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–266 and 50–30]

Wisconsin Electric Power Company; Point Beach Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses and Technical Specifications for the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin (Facility Operating License Nos. DPR–24 and DPR–27, respectively, issued to Wisconsin Electric Power Company, the licensee).

Environmental Assessment

Identification of the Proposed Action

The proposed action would reflect the change in the name of the licensee from Wisconsin Electric Power Company to Wisconsin Energy Company.

The proposed action is in accordance with the licensee's application for amendment of the facility operating license dated October 23, 1995.

The Need for the Proposed Action

The proposed action is needed to properly reflect corporate administrative changes in the license and Technical Specifications.

Environmental Impacts of the Proposed Action

The proposed action is administrative in nature only and will have no effect on the operation or maintenance of the facility whatsoever. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no

significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Point Beach.

Agencies and Persons Consulted

In accordance with its stated policy, on March 11, 1996, the staff consulted with the Wisconsin State official, Ms. Sarah Jenkins, of the Public Service Commission of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 23, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 20th day of March 1996.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–7408 Filed 3–26–96; 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 March 4, 1996, through March 15, 1996. The last biweekly notice was published on March 13, 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 April 26, 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.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: February 1, 1996

Description of amendments request: The proposed amendment would (1) revise Technical Specifications (TS) Sections 3/4.1.1.1, 6.9.1.9, and 6.9.1.10 to relocate the shutdown margin (reactor trip breakers open) to the Core Operating Limits Report (COLR); (2) revise TS 3/4.3.2 (Tables 3.3-3 and 3.3-4), to specify an additional restriction for the allowed low pressurizer pressure trip setpoint when reducing reactor coolant system (RCS) pressure in Mode 3; (3) revise TS Section 2.2.1 (Table 2.2-1) to make it consistent with the footnote in TS Tables 3.3-3 and 3.3-4; and (4) revise TS Sections 3/4.5.2 and 3/4.5.3 to specify an additional restriction to require that two emergency core cooling system (ECCS) subsystems be operable in Mode 3 whenever the RCS cold leg temperature is equal to or above 485 degrees F. In addition, the Table of Contents and the Bases would be revised to be consistent with these changes.

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 do not significantly increase the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed changes to TS Tables 2.2-1, 3.3-3, and 3.3-4 to add additional restrictions to the pressurizer pressure - low trip setpoint requirements are more conservative than the current Technical Specifications and will reflect the updated Mode 3 steam line break safety analyses assumptions. The proposed changes to TS sections 3/4.5.2 and 3/4.5.3 to add additional restrictions to the requirement to have two ECCS Subsystems operable are also more conservative than the current Technical Specifications and will reflect the updated Mode 3 steam line break safety analyses assumptions. Since these changes are more restrictive, they would not contribute to the initiation of any accident, nor would they increase the consequences of an accident, but

they would enhance the plant response to a steam line break in Mode 3 to reduce consequences. The proposed changes to relocate the shutdown margin - reactor trip breakers open to the COLR will have no effect on the initiation or consequences of an accident. The shutdown margin-reactor trip breakers open, which would be determined using NRC approved analytical methods, as required by the proposed changes, would ensure that the probability and consequences of an accident would not increase. The changes to the titles of TS 3/4.5.2 and 3/4.5.3, and to the Table of Contents, are editorial and have no effect on the operation of the plant or on any structures, systems or components.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not create the possibility of an accident of a new or different kind. The proposed changes to TS Tables 2.2-1, 3.3-3, and 3.3-4, and TS section 3/4.5.2 and 3/4.5.3, to add additional restrictions to the pressurizer pressure - low trip setpoint requirement and add additional restrictions to the requirement to have two ECCS Subsystems operable are more conservative than the current Technical Specifications and will reflect the updated Mode 3 steam line break safety analyses assumptions. Since these changes are more restrictive, and therefore bounded by the current TS, they would not contribute to the initiation of any kind of new or different accident. The proposed changes to relocate the shutdown margin -reactor trip breakers open to the COLR will have no effect on the possibility of a new or different kind of accident. The shutdown margin-reactor trip breakers open, which would be determined using NRC approved analytical methods as required by the proposed changes, would ensure that there would be no possibility of a new or different kind of accident from any accident previously evaluated. The changes to the titles of TS 3/4.5.2 and 3/4.5.3, and to the Table of Contents, are editorial and have no effect on the operation of the plant or on any structures, systems or components.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS changes do not involve a reduction in any margin of safety. The proposed changes to TS Tables 2.2-1, 3.3-3, and 3.3-4, and TS section 3/4.5.2 and 3/4.5.3, to add additional restrictions to the pressurizer pressure - low trip setpoint requirement and add additional restrictions to the requirement to have two ECCS Subsystems operable are more conservative than the current Technical Specifications and will reflect the updated Mode 3 steam line break safety analyses assumptions. Since these changes are more restrictive, they do not involve a reduction in any margin of safety as currently established by the existing TS. The proposed changes to relocate the shutdown margin - reactor trip breakers open to the COLR will have no effect on any margin of safety. The shutdown margin - reactor trip breakers open would be determined using NRC approved analytical methods as required by the proposed changes, thus ensuring that there would be no reduction in any margin of safety. The changes to the titles of TS 3/4.5.2 and 3/4.5.3, and to the Table of Contents, are editorial and have no effect on the operation of the plant or on any structures, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 15, 1996

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7 to add operability requirements for the Keowee Hydro units during periods of commercial power generation. These requirements are based on lake level and power level of the Keowee Hydro units. Also, two surveillance requirements would be added to TS 4.6 to (1) address periodic testing of the circuitry that was added by the modification approved in NRC's SER dated August 15, 1995, and (2) add a load rejection surveillance to ensure that the response of the Keowee Hydro units is bounded by the design criteria used to develop the Keowee operating restrictions.

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 not] involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the change proposed within this amendment request. The probability of any Design Basis Accident (DBA) is not significantly increased by this change. In addition, the consequences of the accidents are within the bounds of the FSAR analyses.

The design basis of the auxiliary electrical systems is to supply the required engineered safeguards (ES) loads of one unit and the safe shutdown loads of the other two units. The systems are arranged so that no single failure will jeopardize plant safety. The addition of the operability requirement and surveillances for the Keowee Hydro units will ensure that the electrical systems can meet their design basis.

(2) [Does not] create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Addition of the operability requirement and surveillances will not create a new or different kind of accident. The addition of the circuitry which is covered by the operability requirement and surveillances has been reviewed and approved by the NRC. Therefore, operation of ONS [Oconee Nuclear Station] in accordance with this Technical Specification amendment will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) [Does not] involve a significant reduction in a margin of safety:

The design basis of auxiliary electrical systems is to supply the required ES loads of one Unit and safe shutdown loads of the other two units. The ability of the Keowee Hydro units to provide emergency power following an accident during a period of Keowee Hydro commercial power generation was reviewed and approved by the NRC in [an] SER dated August 15, 1995. Therefore, there will be no significant reduction in 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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 20, 1996

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 3.1.5, 3.1.10, and 4.1. The TS changes would: (1) reduce the frequency for the concentrated boric acid storage tank boron concentration surveillance, (2) delete the chemical and radiochemical surveillance requirements for the reactor

coolant for $Sr^{\cong 189}$ and $Sr^{\cong 190}$, gross beta activity, gross alpha activity, dissolved gas concentration in the reactor coolant, and gross beta activity in the steam generator feedwater, and (3) relocate the surveillance requirements for tritium, chloride, fluoride and oxygen to the Selected Licensee Commitments (SLC) Manual. The proposed changes would also delete some temperature and pressure requirements on control rod operation.

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. The licensee has determined 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:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the proposed amendment request. The probability of any Design Basis Accident (DBA) is not significantly increased by the proposed amendment due to the fact that the identified cause in the FSAR accidents is not impacted. In addition, the consequences of the accidents are within the bounds of the FSAR analyses since the proposed amendment does not change the accident analysis methods or assumptions described in the FSAR.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed amendment revises and eliminates several of the RCS [Reactor Coolant System] chemistry Technical Specification surveillance requirements. The changes in the surveillance requirements do not alter the plant safety features or the method of operation at ONS [Oconee Nuclear Station]. Therefore, operation of ONS in accordance with the proposed Technical Specification will not create any failure modes not bounded by previously evaluated accidents.

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not impact the mitigation of any of the accidents analyzed in the FSAR. Therefore, there is not a significant reduction in the margin of safety associated with the proposed amendment.

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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 22, 1996

Description of amendment request: The licensee has proposed to increase the safety function lift setpoint tolerances for the safety and relief valves that are listed in Surveillance Requirement 3.4.4.1 (Page 3.4-10) of the Technical Specifications TSs) for the Grand Gulf Nuclear Station, Unit 1. The tolerances would be increased from the current plus/minus 1 percent of the safety function (i.e., safety relief valve) lift setpoint to plus/minus 3 percent.

The frequency of verifying these setpoints would not be changed by this amendment request. Also, the other surveillance requirements in the TSs on these valves and the number of these valves required to be operable are not being changed by this amendment request.

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 (NSHC) in Attachment 2 to its application of February 22, 1996.

In its application, the licensee stated that it has used the NRC staff's safety evaluation report (SER), NEDC 31753-P-A, issued in the NRC letter of March 8, 1993, which evaluated General Electric (GE) topical report NEDC-31753P, ''BWROG [BWR Owners' Group] In-Service Pressure Relief Technical Specification Revision Licensing Topical Report,'' dated February 1990.

The licensee's NSHC analysis is presented below:

Entergy Operations, Inc. is proposing that the Operating License for Grand Gulf Nuclear Station (GGNS) be amended to increase the tolerance of the safety function lift setpoints [from plus/minus 1%] to plus/minus 3%. The GGNS Inservice Testing (IST) program controls the frequency of safety relief valve (S/RV) testing as required by the GGNS Operating License; therefore, this proposal will also incorporate changes [concerning the setpoint tolerances] to applicable IST procedures. GGNS will incorporate the recommendations of the NEDC-31753-P-A [NRC staff's] SER, by resetting the safety function [S/RV] lift setpoints for all tested valves to within plus/minus 1% of the design lift setpoint and increasing the test sample size by two valves for each valve found outside the plus/minus 3% safety function lift setpoint. S/RV test sample population will be determined based upon the currently licensed ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code.

The commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10CFR50.92(c). A proposed amendment to an operating license involves no significant hazards if the 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.

Entergy Operations, Inc. has evaluated the no significant hazards considerations in its request for a license amendment. In accordance with 10CFR50.91(a), Entergy Operations, Inc. is providing the following analysis of the proposed amendment against the three standards in 10CFR50.92(c):

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The GGNS safety design bases for the S/RVs are:

) Prevent overpressurization of the nuclear system that could lead to failure of the reactor coolant pressure boundary,

) Provide automatic depressurization for small breaks in the nuclear system,

) Permit verification of operability,

) Withstand adverse combinations of loadings and forces during abnormal, accident, or special event conditions.

The most limiting vessel overpressurization event is a closure of all main steam isolation valves with a high flux scram. This event was analyzed for GGNS using the minimum number of S/RVs required by the GGNS Operating License. The safety function lift setpoint tolerance used in the analysis bounds the proposed plus/minus 3% setpoint tolerance. The analysis indicates that the S/RVs are capable of maintaining adequate margin below the Operating License Reactor Coolant System Pressure of 1325 psig.

Anticipated operational transients can also challenge the operation of the S/RVs, for instance, Generator Load Reject without Bypass. Analyses have been performed on the limiting events that bound other pressure transient events using safety function limit setpoint tolerances that bound the proposed plus/minus 3% tolerance request. Fuel operating limits are based on the results of these analyses; therefore, adequate fuel thermal margin is maintained.

Plant transients and events that require the use of automatic depressurization and the low-low set feature utilize the relief mode of S/RV operation. This proposed change does not affect the relief mode of S/RV operation.

The verification of valve operability will still be performed in accordance with the GGNS Inservice Testing Program, and S/RV safety mode operability will be verified prior to reinstallation. Analysis of the loads placed on each S/RV sub-system (discharge piping, spargers and associated components) verifies that adequate margin exists to ensure that the

overpressurization system can perform its designed function.

The negative tolerance of the safety function lift setpoint remains above the highest setpoint of the S/RV relief mode, and therefore normal vessel pressure. This margin provides reasonable assurance that inadvertent opening of an S/RV will not occur during power operations.

GGNS will replace each S/RV removed for IST program testing with an S/RV that has been reset to within plus/minus 1% of the designed safety function lift setpoint. During each refueling outage, at least six of the installed S/RVs will be tested for safety lift setpoint in accordance with the current IST program plant procedures. This sample population is in agreement with the current ASME Boiler and Pressure Vessel Code requirements for the GGNS IST program, and is more restrictive than the ANSI/ASME OM-1-1981 requirement upon which the setpoint tolerance was based. For S/RV setpoint testing ([the] as-found [setpoint]), additional valves will be tested if the as-found setpoint is outside plus/minus 3% of its designed safety function lift setpoint. Sample expansion will be consistent with the NEDC 31753-P-A SER requirement of two additional valves per valve failure.

The GGNS UFSAR currently requires at least fifty percent of the installed valves to be removed and tested during each refueling outage. GGNS FSAR Questions & Responses ι 211.49 discusses the bases for this requirement. The concern regarded the performance of S/RVs installed in operating plants at the time of GGNS construction and licensing, and that new plants should have significantly better performing S/RVs. The fifty percent requirement provides a very conservative margin of testing to demonstrate that no common cause of S/RV failure occurs within any one operating cycle. The minimum testing of six valves proposed for each outage, with additional testing for each failure from the initial test population, provides reasonable assurance that no common cause failure is occurring without early detection. [The minimum testing of six valves is in agreement with the current ASME Code requirements and is consistent with the current industry practices that was accepted in the NRC staff's safety evaluation report, NEDC 31753-P-A.]

One of the major factors in the requirement of additional testing population beyond ASME Boiler and Pressure Vessel Code is many of the older plants were experiencing failures with multiple stage pilot operated S/RVs. The safety function of this type of S/RV requires operation of a pilot valve that is susceptible to excessive leakage and corrosive bonding to cylinder walls; thereby preventing proper safety function operation. The GGNS Dikkers S/RVs are direct acting, and do not require the operation of a pilot valve for the safety function. The Dikkers S/RV Instruction Manual recommends ''to replace part of the installed valves each maintenance stop (refueling outage)'', and does not prescribe any particular [number of valves to be tested].

Therefore, no significant increase in the probability or consequences of an accident previously evaluated results from this proposed change.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The plant specific analyses verify that each S/RV will still perform the intended function of preventing overpressurization of the nuclear system. The vessel will have adequate margin below the Operating License Reactor Coolant System Pressure of 1325 psig, and plant system response will not deviate from the expected sequence of events. Each system, structure, and component that communicates with the reactor vessel has been verified to be within its design and operational margin, and no unanticipated plant transients will occur as a result of the safety lift function setpoint tolerance change.

The negative tolerance of the safety function lift setpoint remains above the highest setpoint of the S/RV relief mode, and therefore normal vessel pressure. This margin provides reasonable assurance that inadvertent opening of an S/RV will not occur during power operations.

This proposed change does not add any new systems, structures or supports, nor does it introduce new S/RV operating modes.

Therefore, this change would not create the possibility of a new or different kind of accident from any previously analyzed.

c. This change would not involve a significant reduction in the margin of safety.

The increase in the S/RV safety function lift tolerance has been analyzed for bounding limiting events and accident conditions. [The safety function lift setpoint tolerance used in the analysis bounds the proposed plus/minus 3% setpoint tolerance.] No condition exists that reduces the margin of safety on the reactor coolant pressure boundary or any system, structure or component that is required to operate during vessel overpressurization events. Fuel operating limits are based on the results of these analyses; therefore, adequate fuel thermal margin is maintained.

[The negative tolerance of the safety function lift setpoint remains above the highest setpoint of the S/RV relief mode, and therefore normal vessel pressure. This margin provides reasonable assurance that inadvertent opening of an S/RV will not occur during power operations.]

Therefore, this change would not involve a significant reduction in the margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

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: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 22, 1996

Description of amendment request: The amendment proposes to delete a specification which requires a thorough inspection of the Emergency Diesel Generator (EDG) every 24 months during shutdown. In addition this Technical Specification proposes to delete the phrase ''in any thirty day period'' from a specification concerning Allowed Outage time (AOT).

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:

GPU Nuclear has determined that this [technical specification change request] TSCR poses no significant hazard as defined by the NRC in 10 CFR 50.92.

1. State the basis for the determination that the proposed activity will or will not increase the probability of occurrence of the consequences of an accident.

The proposed activity deletes the requirement to inspect EDGs during shut down from the Technical Specifications. It further modifies the operability of a single EDG for a limited and defined period of time. These changes do not affect the design or performance of the EDGs or their ability to perform their design function. Analysis using PRA techniques indicates the changes do not significantly increase the probability or consequences of an accident.

2. State the basis for the determination that the activity does or does not create a possibility of an accident or malfunction of a different type than any previously identified in the SAR.

The EDGs are not the source of any accident described in the SAR. These changes do not modify the design or performance of the EDGs and do not affect plant functions or actions. Therefore, the proposed change does not create the possibility of an accident or malfunction of a different type than those previously identified.

3. State the basis for the determination that the margin of safety is not reduced. The proposed changes are designed to improve EDG reliability and availability during shutdown periods by providing flexibility in the scheduling and performance of maintenance. The surveillance intervals are unchanged and operability requirements are only modified to an acceptable degree. The proposed activity does not alter the basis of

any technical specification that is related to the establishment or maintenance of a nuclear safety margin. Therefore, the margin of safety is not significantly reduced by this action.

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: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 23, 1996

Description of amendment request: The proposed change to the Technical Specifications would allow the implementation of 10 CFR 50, Appendix J, Option B.

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:

GPU Nuclear has determined that this TSCR [technical specification change request] involves no significant hazards considerations as defined by NRC in 10 CFR 50.92.

The major changes from the existing Oyster Creek Technical Specifications requested in accordance with the Option B requirements:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety as previously evaluated in the Safety Analysis Report.

The proposed change implements Option B of 10 CFR 50, Appendix J on performance based containment leakage testing. The proposed change does not involve a change to the plant design or operation. Therefore, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any of the analyzed accidents or malfunctions. The proposed change does request an allowable extension of containment testing. Therefore, a hypothetical leak could remain undetected for a greater period of time. This slight increase in risk has been determined to be insignificant as:

Type A Testing

NUREG 1493 determined that the effect of containment leakage on overall accident risk is small as risk is dominated by accident sequences that result in the failure or bypass of the containment. Industry wide PCILRTs have demonstrated that only a small fraction of the leaks discovered during testing exceeded acceptance criteria, and that the leak rate has been only marginally above the acceptable limit. Only 3% of all leaks can be detected only by PCILRT, therefore, only 3% of the theoretical leaks are affected by the extension to the Type A test interval. Experience at Oyster Creek agrees with the industry wide data in that the majority of the detected leakage from the primary containment is found through Type B and C testing.

NUREG 1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, demonstrates that increasing the Type A leakage test intervals would have a minimal impact on public risk.

Type B and C Testing

Penetrations are designed to ensure reliability of the containment isolation function. Type B penetrations use a double passive seal (e.g. o-ring, gasket) and Type C penetrations use a double isolation valve design to ensure reliability of the isolation function. Because valves perform the isolation function actively, they are more likely to fail on demand (e.g. failure to completely close on demand). To address this failure mode, Type C valves are subjected to increased design constraints and testing to ensure both acceptable leak rates and stroke times. The proposed change does not alter the installation, operation, operating environment, or testing method of these valves. Therefore, the proposed change does not introduce any new component failure modes, nor does it affect the probability of occurrence of any existing evaluated failure mode.

The failure of any single penetration barrier (isolation valve or passive seal) does not cause penetration failure. Therefore, a double failure would have to occur to cause a failure of the penetration and affect containment. Additionally, the proposed change does not change the acceptance criteria for acceptable leakage testing.

The proposed change does not alter plant design or operation, nor does it alter the allowable maximum leakage rate limit. Thus, the proposed change does not affect the probability of occurrence nor the consequences of any evaluated accident or malfunction of equipment important to safety.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of an accident or malfunction different from any accident or malfunction previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change only involves the reduction in Type A, B and C test frequencies, and the Type A test pressure.

Type A Testing

The only changes proposed to the Type A testing are to frequency and test pressure. As the proposed test pressure is grater than the existing test pressure, no new type of accident or malfunction is created, and the increase in pressure provides an additional margin of safety. The increase in pressure provides an additional margin of safety. The increase in surveillance interval cannot introduce any new type of accident or malfunction.

The PCILRT is presently performed at 20 psig. Performance of the PCILRT at P_a (35 PSIG) will provide a more direct leak rate for analysis.P_a is the design pressure of the torus (the drywell design pressure is 44 psig, but the torus is non isolable form the drywell. Therefore, P_a will not create the possibility of the failure of the torus due to overpressurization. No new accident modes can be created by extending the test intervals. No safety related functions or components are altered as a result of this change. Therefore, no new accident or malfunction different form those evaluated in the Safety Analysis Report can result due to the increase in test pressure or increase in surveillance interval.

Type B and C Testing

The proposed change only deals with the frequency of performing Type B and C testing. It does not change what components are tested or the method of testing. There is no proposed change to the design or operation of the plant. Therefore, no new accident or malfunction different form those evaluated in the Safety Analysis Report can result due to the increase in test pressure or increase in surveillance interval.

3. Operation of the facility in accordance with the proposed amendment would not decrease the margin of safety as defined in the bases of the Technical Specifications.

Type A Testing

Except for the method of defining the test frequency and pressure at which the PCILRT is performed, the methods for performing the actual test are not changed. However, the proposed change can increase the probability that an increase in leakage could go undetected for an extended period of time. NUREG 1493 has determined that under several different accident scenarios, the increased risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

Type B and C Testing

The proposed change only affects the frequency of Type B and C testing. The methods for performing the actual test are not changed. The design or operation of Type B and C components are not changed. The proposed change will result in a longer interval between tests of good performing Type B and C components.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a, which is defined by the Oyster Creek Technical Specifications to be 1.0 percent by weight of the containment air at 35 psig per 24 hours. The limitation on

containment leakage rate is designed to ensure the total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a). The margin of safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 L_a acceptance criteria. The L_a value is not being modified by this proposed Technical Specification change request.

Therefore, the margin of safety as defined in the bases for the Technical Specification will not be reduced.

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: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

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 amendment requests: February 22, 1996 (AEP:NRC:0659AA)

Description of amendment requests: The proposed amendments would revise the technical specifications to remove the requirement that the Operations Superintendent must hold or have held a Senior Operator License at Cook Nuclear Plant, or a similar reactor. In addition, a mid-level operations manager will only be required to hold a Senior Operator License if the Operations Superintendent does not hold one.

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:

Per 10 CFR 50.92, this proposed change does not involve a significant hazards consideration because the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

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.

Criterion 1

The amendment request does not involve a significant increase in the probability or consequences of [an] accident previously evaluated because the proposed change to the Technical Specification does not affect the assumptions, parameters, or results of any UFSAR [updated final safety analysis report] accident analysis. The proposed amendment does not modify any existing equipment. It is concluded that the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed change does not involve physical changes to the plant or changes in plant operating configuration. The proposed change updates the requirements for the Operations Superintendent. Thus, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed change updates the requirements for Operations Superintendent. 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 requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: March 12, 1996 (AEP:NRC:1248)

Description of amendment request: The proposed amendment would remove the technical specifications related to shutdown and control rod position indication while in modes 3, 4, and 5. The change would make the Unit 2 technical specifications consistent with the Unit 1 technical specifications and the Standard Technical Specifications.

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:

Per 10 CFR 50.92, this proposed change does not involve a significant hazards consideration because the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

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.

Criterion 1

The boron concentration in the reactor coolant system will be high enough to assure adequate SDM in modes 3, 4, and 5. The calculation to obtain the required boron concentration takes into account the position of the rods. Shutdown margin is assumed as an initial condition in the safety analysis. The safety analysis establishes a SDM that ensures specified acceptable fuel design limits are not exceeded. As long as the SDM is satisfied, no change in the probability or consequences of an accident previously evaluated will result from the proposed deletion of the ''position indicator - shutdown'' specification. It is noted that this change is consistent with the new ISTS approved by the NRC as NUREG-1431, Rev. 1.

Criterion 2

The ability to insert the control and shutdown rods provided by the rod control system is not affected by the OPERABILITY status of the ARPI system. As mentioned previously, the reactor coolant system boron concentration will be high enough to assure adequate SDM is maintained. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The margin of safety requirements are not affected by the removal of this T/S. The required SDM which is an initial condition in the safety analysis, is unaffected since the reactor coolant system boron concentration is increased to address the potential ''all rods out'' configuration. Based on these considerations, it is concluded that 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 location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: November 29, 1995

Description of amendment request: The proposed amendment would

modify the Technical Specifications to remove the requirement for additional pressure relief by a residual heat removal (RHR) spring relief valve during low temperature overpressure protection (LTOP) conditions.

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 to delete Technical Specification 3.4.D.3b has been evaluated against the standards of 10 CFR 50.92 and has been determined not to involve a significant hazards consideration. This proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously analyzed. The Power Operative Relief Valves (PORVs) remain operable to mitigate any LTOP event. Thus, this change does not result in an increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Removing the RHR spring relief valve as an additional relief requirement does not create the possibility of a new or different kind of accident since the proposal involves neither a hardware modification nor the creation of a unique operating condition.

3. Involve a significant reduction in a margin of safety. Removing the RHR spring relief valve as an additional requirement does not change the results of any of the FSAR Chapter 14 events. The PORVs remain operable to maintain 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: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011NRC Deputy Director: John Zwolinski

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: November 29, 1995

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.14 to decrease the maximum steam generator (SG) primary-to-secondary leakage rate from 0.15 gpm to 0.10 gpm and would modify TS 4.10 by revising the requirements for unscheduled SG tube inspections that are performed on each SG following a primary-to-secondary tube leak.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. A steam generator leakage assumption greater than the proposed 0.10 gpm/SG limit has been used in the FSAR [Final Safety Analysis Report] Chapter 14 safety analyses. Thus, the FSAR Chapter 14 safety analyses remain bounding. Assuring that an adequate leakage limit exists that initiates corrective actions in a timely manner is important to ensuring a steam generator tube rupture event does not take place. This change modifies the steam generator post-leakage testing requirements to focus inspections on leaking tubes and areas likely to produce similar leakage, in lieu of an expanded test campaign of all three steam generators. Without this change, Technical Specifications require inspection of 3% of the tubes in each steam generator. By inspecting the critical areas of the affected steam generator and possibly expanding inspections to the critical areas of the remaining steam generators, the probability and/or consequences of previously evaluated accidents (e.g., steam generator tube rupture) are not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not involve a modification to existing hardware at the plant. The decrease in the maximum allowable steam generator primary leakage rate tends to provide additional time for operator action to take place which, if timely enough, would avoid the consequences of a tube rupture event. The proposed inspection campaign requires inspection of the critical area and may be expanded to the other steam generators to ensure that additional tubes will not fail due to similar causes. This modified inspection campaign does not introduce the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The FSAR Chapter 14 safety analyses assume a higher steam generator leakage rate and therefore remain conservative. The proposed reduction in the allowable leakage provides a greater margin of safety since it is more conservative than the present value. This change modifies inspection requirements of Technical Specifications and does not impact the plant design or equipment. The modified inspection requirements following a plant shutdown due to tube leakage concentrate steam generator tube inspections in those areas believed to be most susceptible to flaws. For these reasons, we believe the proposed changes increase the margin of safety by inspecting the critical areas of the steam generator(s) in lieu of additional random inspections.

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 request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011NRC Deputy Director: John Zwolinski

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: November 8, 1995

Description of amendment request: The amendment request would revise the Technical Specifications (TS) for the jet pumps to be consistent with the limiting conditions for operation and surveillance requirements in the Standard Technical Specifications for General Electric Plants (NUREG-1433).

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 an [significant hazards consideration] SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The new LCO [Limiting Condition for Operation] does not diminish the existing requirement that all jet pumps must be operable, nor does it affect the time available to achieve cold shutdown should a pump become inoperable. The new LCO does eliminate the ability to continue to operate with the indication (but not the function) of a single jet pump inoperable. This does not increase the possibility of an unnecessary plant shutdown due to inoperable instrumentation since sufficient flexibility exists in the surveillance requirement so that operability of the jet pumps can be verified. This change eliminates the LCO that allowed continued operation with conditions that could potentially mask an inoperable pump. The new LCO is more limiting in ensuring that the plant is operated in a condition for which accidents were analyzed.

The new surveillance requirement provides a more accurate method of ensuring

the jet pumps remain operable. The new surveillance criteria are more sensitive to jet pump failures and the degradation of the jet pumps prior to failure.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The new LCO and surveillance does not change the manner in which the plant is operated, nor does it reduce the operability requirements of any jet pump, Therefore, no new or different kind of accident can be created by the new specification. The surveillances that will be performed do not require any new hardware or plant evolutions. Therefore, the proposed change to the LCO and surveillance cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The margin of safety that currently exists is not diminished by this change. The requirement to place the reactor in cold shutdown within 24 hours should a jet pump become inoperable is maintained. The LCO which allowed continued operation with indication for one pump inoperable has been eliminated.

The new surveillance requirement continues to demonstrate the operability of the jet pumps and during operation, continues to be performed at the same interval as in the current technical specifications. The note (which allows the surveillance to be deferred until four hours after the associated recirculation loop is in operation and 24 hours after exceeding 25% of rated thermal power) does not significantly affect the margin of safety. The time that the unit would be operating in these conditions would be small, and the stress placed on the pump at less than 25% power is lower.

Based on the above, this change does 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: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: November 3, 1995

Description of amendment request: The proposed amendment will extend the allowed outage time from 48 hours to 7 days for an emergency core cooling system train that is declared inoperable as a result of an inoperable low pressure safety injection subsystem.

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:

Pursuant to 10CFR50.92, Northeast Nuclear Energy Company (NNECO) has reviewed the proposed change to extend the allowed outage time (AOT) for an inoperable low pressure safety injection (LPSI) subsystem from the existing limit of 48 hours to 7 days. In addition, the change to modify the completion time for the Action Statement and the criteria for the Surveillance Requirements were also reviewed. NNECO concludes that these changes do not involve a significant hazards consideration (SHC) since the proposed change satisfies the criteria in 10CFR50.92(c). That is, the proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed amendments for Millstone Unit No. 2 will extend the action completion AOT for a single inoperable LPSI train from 48 hours to 7 days. A LPSI subsystem is designed as a part of each emergency core cooling system (ECCS) train to supplement safety injection tank inventory during the early stages of mitigating a design basis accident (DBA). As such, components of the LPSI subsystem are not accident initiators, and an extended AOT to restore operability of an inoperable LPSI subsystem would not increase the probability of occurrence of accidents previously analyzed.

The safety analyses for Millstone Unit No. 2 demonstrates that ECCS performance acceptance criteria are satisfied with only one of the two redundant ECCS trains operating during the postulated DBA. The proposed technical specification revisions involve the AOT for a single inoperable LPSI subsystem, and do not change the conditions assumed for the minimum amount of operating equipment needed for accident mitigation. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

In addition, CE NPSD-995 recognizes that when an ECCS train is inoperable due to a LPSI subsystem being unavailable, due either to being declared inoperable (by failing a surveillance requirement) or is intentionally taken out-of-service (for corrective or preventive maintenance), the core damage frequency (CDF) during power operation increases. The results of the PRA presented in CE NPSD-995 show that the proposed increase in the ECCS AOT (due to LPSI unavailability) from 48 hours to 7 days does not cause a significant increase in the overall CDF of Millstone Unit No. 2.

The analyses indicate that continued plant operation with a single LPSI subsystem out-of-service may result in a small increase in ''at power risk;'' however, that risk increase will be negligibly small and controlled effectively via the Maintenance Rule and the risk monitor program that minimizes the outage time and prevents entering into an unacceptable risk configuration. In addition, the proposed AOT extension for the LPSI subsystem is evaluated as having negligible impact on the large early radiological release probability for Combustion Engineering pressurized water reactors in the event of a design basis accident.

Therefore, operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the technical specifications. The changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. Therefore, operation of Millstone Unit No. 2 in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The margin of safety associated with the ECCS train is established by acceptance criteria for system performance defined in 10CFR50.46. The proposed amendment will not change this acceptance criteria nor the operability requirements for equipment that is used to achieve such performance as demonstrated in the Millstone Unit No. 2 safety analyses. Moreover, an integrated assessment of the risk impact of extending the AOT for a single inoperable LPSI train has concluded that the risk contribution is small. Therefore, operation of Millstone Unit No. 2 in accordance with its 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: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 12, 1995

Description of amendment request: The amendment would revise and reformat Technical Specification (TS) 6.3.1 to add the requirement that the Assistant Operations Manager shall hold a senior reactor operator (SRO) license if the Operations Manager does not hold an SRO license for Millstone Unit 3. Also the footnote would be deleted from TS 6.3.1 that previously granted a one-time three year exception to the qualification requirements for the Operations Manager and an exception for the Assistant Operations Manager to hold a license instead of the Operations Manager.

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 an [significant hazards consideration] SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change affects an administrative control, which was based on the guidance of ANSI N18.1-1971. ANSI N18.1-1971 recommended that the Operations Manager hold an SRO license. The current guidance in Section 4.2.2 of ANSI/ANS 3.1-1987 recommends, as one option, that the Operations Manager have held a license for a similar unit and the Operations Middle Manager hold an SRO license. While the Operations Middle Manager position does not exist at Millstone Unit No. 3, [Northeast Nuclear Energy Company] NNECO has created the position of Assistant Operations Manager. The individual in this position would meet the requirements for, and would have responsibilities as recommended in, ANSI/ANS 3.1-1987 for the Operations Middle Manager position.

Therefore, the proposed change requests an exception to ANSI N18.1-1971 to allow use of ANSI/ANS 3.1-1987 in a limited circumstance. Specifically, the proposed revision to Technical Specification 6.3.1 would require the Operations Manager to either hold an SRO license at Millstone Unit No. 3 or have held an SRO at a [pressurized water reactor] PWR.

If the Operations Manager does not hold an SRO license at Millstone Unit No. 3, the specification will require the Assistant Operations Manager to hold, and continue to hold, an SRO license. The proposed change includes the requirement for the Operations Manager to have held a license for a similar unit (a PWR) in accordance with Section 4.2.2 of ANSI/ANS 3.1-1987. For those areas of knowledge that require an SRO license, the Assistant Operations Manager will provide the technical guidance normally provided by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component, nor does it change the way plant systems are operated. It does not reduce the knowledge, qualifications, or skills of licensed operators, and does not affect the way the Operations Department is managed by the Operations Manager. The Operations Manager will continue to maintain the effective performance of his personnel and ensure the plant is operated safely and in accordance with the requirements of the operating license. Additionally, the Control Room Operators will continue to be supervised by the licensed Shift Supervisors.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held an SRO license, the Operations Manager has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators. In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of his position. Thus, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operations Manager will be a knowledgeable and qualified individual to have held an SRO license at a PWR. Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change involves an administrative control that is not related to the margin of safety. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. The Control Room Operators will continue to be supervised by personnel who hold an SRO license. Thus, the 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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 21, 1995

Description of amendment request: The licensee proposes to change Technical Specification Section 1.33 and Bases Sections 3/4.3.3.9 and 3/4.3.3.10, and 3/4.11.2.1. The changes clarify the definition of source check to include a source check from a light emitting diode (LED), as well as from ionizing radiation.

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:

... NNECO concludes that these changes do not involve a significant hazards consideration since the proposed changes satisfy the criteria in 10CFR50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the definition of source check clarifies the source check for the liquid and gaseous effluent radiation monitors. These monitors do not provide a safety function and only serve to provide radiological information to plant operators, therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the definition of source check have no effect on the ability of the monitors to perform their designed function. The clarification to the surveillance do not involve any physical modifications to any equipment, structures, or components. The monitors already have the internal LEDs which were originally used to perform the source check. The proposed changes have no impact on design basis accidents, and the changes will not modify plant response or create a new or unanalyzed event.

3. Involve a significant reduction in the margin of safety.

The proposed changes to the definition of source check do not have any impact on the protective boundaries and, therefore, have no impact on the safety limits for these boundaries. The instrumentation associated with these changes do not provide a safety function and only serve to provide radiological information to plant operators. The instrumentation has no affect on the operation of any safety-related equipment. As such, these changes have no impact on 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: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 15, 1996

Description of amendment request: The amendment changes the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, by creating Technical Specification Section 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' which refers 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 changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The adoption of 10 CFR 50, Appendix J Option B will not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes to the TS [Technical Specifications] reflect the use of the performance-based containment leakage-testing program. The USNRC has approved the use of a performance-based option for containment leakage testing programs when it amended 10 CFR 50, Appendix J (60 FR 49495). For adoption of the revised regulation, licensees are required to incorporate into their TS, by general reference, the USNRC regulatory guide or other plant-specific implementing document used to develop their performance-based leakage testing program. A new Administrative Control subsection (5.5.12, ''Primary Containment Leakage Rate Testing Program'') has been added that requires the establishment and maintenance of a Primary Containment Leakage Rate Testing Program. The TS will still require the performance of a periodic general visual inspection of the containment to ensure early detection of any structural deterioration of the containment that may occur.

As concluded in NUREG-1493, given the insensitivity of risk to containment leakage rate and the small fraction of leakage paths detected solely by ILRT [Integrated Leak Rate Test] testing, increasing the interval between ILRTs is possible with minimal impact on public risk. Additionally, performance-based alternatives to current LLRT [Local Leak Rate Test] requirements are feasible without significant risk impacts. Additionally, these changes will not alter any safety limits which ensure the integrity of fuel barriers, and will not result in a significant increase to onsite or offsite dose.

No physical changes are being made to the plant, nor are there any changes being made in the operation of the plant as a result of these changes which could involve a significant increase in the probability or consequences of any accident previously evaluated. Additionally, these changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients.

2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The adoption of 10 CFR 50, Appendix J Option B will not create the possibility of a new or different type of accident from any previously evaluated. These changes to the PBAPS, Units 2 and 3 TS will not involve any changes to plant systems, structures or components (SCCs) which could act as new accident initiators. These changes will not impact the manner in which SSCs are tested such that a new or different type of accident from any previously evaluated could be created.

3) The proposed changes do not result in a significant reduction in the margin of safety.

No margins of safety are reduced as a result of the proposed adoption of 10 CFR 50, Appendix J Option B. As stated previously, the USNRC has approved the use of this performance-based option for containment leakage testing programs when it amended 10 CFR 50, Appendix J (60 FR 49495). These changes will not impact core limits or any other parameters that are used in the mitigation of a UFSAR [Updated Final Safety Analysis Report] design-basis accident or transient. Additionally, these changes do not introduce any hardware changes, and will not alter the intended operation of plant structures, systems or components utilized in the mitigation of UFSAR design-basis accidents or transients. These changes will not introduce any new failure modes of plant equipment not previously evaluated.

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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: January 26, 1996

Description of amendment request: The proposed amendment removes three pressure relief valves from Technical Specification Table 3.6.3-1, ''Primary Containment Isolation Valves,'' since these valves are no longer needed to support the steam condensing mode of the residual heat removal (RHR) system and are being removed from the plant.

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. Involve a significant increase in the probability or consequences of an accident previously evaluated.

With the prior deletion of the steam condensing mode of RHR and the isolation of the high and low pressure interfaces, the three pressure relief valves that are being removed from the plant have no active function. Their passive function of maintaining system or containment integrity will be fulfilled by blind flanges. Also, the RHR and RCIC [reactor core isolation cooling] piping are provided with overpressure protection from other pressure relief valves. Therefore, the removal of these pressure relief valves does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The pressure relief valves that are being removed had two primary functions. First,

they provided overpressure protection for the RHR and RCIC piping during the steam condensing mode of RHR. Since the steam condensing mode has been deleted from the plant, these valves no longer have that function. Also, overpressure protection of the RHR and RCIC piping is provided by other existing pressure relief valves. Second, these valves maintained system or containment integrity. When the pressure relief valves are removed from the plant, they will be replaced with blind flanges or equivalent that will maintain system or containment integrity. Therefore, the removal of the three pressure relief valves does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since the steam condensing mode of RHR has been eliminated, the three pressure relief valves have no active function. Their passive function of maintaining system or containment integrity will be fulfilled by blind flanges or equivalent. Also, overpressure protection of RHR and RCIC piping is provided by other existing pressure relief valves. Therefore, the removal of the three pressure relief valves 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.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 25, 1996

Description of amendment request: The amendment proposes to revise the allowed out-of-service times for single inoperable Emergency Diesel Generators (EDGs) to accommodate on-line maintenance of the EDGs. In addition, two line item changes are proposed: (1) to improve safety by reducing EDG testing at power; and (2) to revise the ac power requirements during cold shutdown or refueling modes to make the James A. FitzPatrick (JAF) Technical Specifications consistent with the Standard Technical Specifications.

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

a. EMERGENCY DIESEL GENERATOR LCO [Limiting Conditions for Operation] AT POWER

The proposed changes to the Technical Specifications will allow longer Allowed Out of Service Times [AOTs] to perform necessary repair and maintenance on individual Emergency Diesel Generators while at power. This extended AOT will enhance scheduling of preventive maintenance of individual EDGs without significantly increasing the probability or consequences of an accident previously evaluated. The risk evaluations contained in the JAF quantitative analyses of the EDGs determined that the probability of an accident by increasing the AOT for an individual EDG from 7 days to 14 days is non-risk-significant. The primary reason for this low relative risk is due to the designed redundancy and capability to respond to an accident when a single diesel generator is out of service. LOCA [loss-of-coolant accident] Analyses that assume the worst case line break while an EDG is out of service indicate the plant can be safely shut down with the remaining EDGs. Even if another EDG should fail during the AOT, at least one Core Spray and one Residual Heat Removal (RHR) Low Pressure Coolant Injection pump can provide the required flow to bring the plant to safe shut down. Furthermore, long term suppression pool and reactor shutdown cooling is provided by any one of the three remaining RHR pumps for a single EDG out of service or by two remaining RHR pumps assuming an additional EDG failure during the AOT.

Increasing the EDG AOT does not involve physical alteration of any plant equipment and does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT for a single EDG.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. EMERGENCY DIESEL GENERATOR LCO DURING PLANT SHUTDOWN

Changing the number of EDGs required during plant shutdown does not involve physical alteration of any plant equipment and does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the change in the LCO during shutdown.

c. EMERGENCY DIESEL GENERATOR SURVEILLANCE AT POWER OPERATION

The proposed change to the Technical Specification will reduce the required number of tests to be performed when an EDG or EDG System is inoperable. This proposed change to TS requirements addresses the concern of excessive testing that could result in EDG wear which is counter-productive to safety in terms of equipment degradation and availability. This change is consistent with Generic Letter 93-05 guidance for implementing such recommendations. The proposed Technical Specifications will not result in a change to the design or operation of the facility, therefore, this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

a. EMERGENCY DIESEL GENERATOR LCO AT POWER

Extending the AOT for an individual EDG does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for JAF plant.

b. EMERGENCY DIESEL GENERATOR LCO DURING PLANT SHUTDOWN

Changing the number of EDGs required during shutdown does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for JAF plant.

c. EMERGENCY DIESEL GENERATOR SURVEILLANCE AT POWER OPERATION

The proposed change does not change design, operation or the testing process. The nature of this change precludes the possibility of a new or different kind of accident. The proposed change to complete the required action does not involve any hardware changes, nor changes to the operation of the equipment nor does it change the ability of the equipment to perform its intended function. Performing the testing on an extended time cannot initiate any type of accident.

3. Involve a significant reduction in the margin of safety.

a. EMERGENCY DIESEL GENERATOR LCO AT POWER

As discussed above, the JAF quantitative evaluation determined that the change in risk associated with extending the AOT for a single EDG is non-risk-significant. In addition, the design provides adequate redundancy for safe shut down during the AOT for a single EDG out of service. This is supported by the LOCA analyses including analyses for long term suppression pool and reactor shutdown cooling.

b. EMERGENCY DIESEL GENERATOR LCO DURING PLANT SHUTDOWN

The margin of safety is not affected by changing the number of EDGs required during shutdown. One offsite power source or one EDG ensure the availability of the

required power to recover from postulated accident events during shutdown. When the required number of operable systems is not met, all work that could potentially initiate a postulated accident event during shutdown is suspended.

c. EMERGENCY DIESEL GENERATOR SURVEILLANCE AT POWER OPERATION

The proposed change to Technical Specifications reduces testing at reactor power. The overall effect is a net gain in plant safety by avoiding the potential for unnecessary wear that could degrade the EDGs at power. Implementation of these changes is consistent with the guidance provided by the NRC in Generic Letter 93-05. The proposed change to the EDG testing requirements does not reduce the ability of the equipment to perform its intended safety function.

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 request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 30, 1996

Description of amendment request: The proposed Technical Specifications change will delete the requirement that oxygen concentrations for both normal and transient conditions not exceed saturation when the reactor coolant is below 250 degrees F. The Technical Specifications change will also eliminate the surveillance requirement for reactor coolant chemistry sampling of chloride, fluoride, and oxygen concentration during maintenance activities when fuel is removed from the reactor vessel and the Reactor Coolant System (RCS) is drained below the reactor vessel flange regardless of whether the upper internal and/or vessel heat are in place or not. Administrative result of the changes being made, capitalize Technical Specifications defined terms to maintain consistency within the Technical Specifications, and the word ''degrees'' is spelled-out when referring to the Fahrenheit temperature, rather than using the symbol.

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:

Specifically, operation of Surry Power Station in accordance with the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the RCS and the RHR [Residual Heat Removal] System are drained when the RCS inventory is reduced below the reactor vessel flange for maintenance or refueling activities, the concentrations of chlorides and fluorides will not change. During these maintenance or refueling activities, only controlled makeup to the RCS is planned, and any planned or unplanned makeup to the RCS would be detected by available level indication. Sampling for chloride and fluoride concentrations in the RCS will be performed prior to draining the system. Sampling of the reactor coolant for chloride and fluoride concentrations will resume when the RCS is filled. The chloride and fluoride concentrations will be known and will be maintained consistent with the Technical Specification Limiting Condition for Operation and Action Statements. Also, when the RCS inventory is drained below the reactor vessel flange, the RCS is vented and open to the containment building atmosphere with the reactor coolant liquid considered oxygen saturated. Technical Specification 3.1.F.4 allows normal and off-normal ''saturated'' oxygen concentrations when reactor coolant temperature is below 250 degrees F. Consequently, sampling the reactor coolant for oxygen concentration under these conditions is not required and the Technical Specification Table 4.1-2B specified sampling frequency of five (5) times per week is not necessary since the oxygen concentration continues to remain in compliance with the Technical Specification limit, measures are available and action can be taken to correct the condition prior to any deleterious effect.

Surry Technical Specifications 3.1.F.1 prohibits reactor coolant temperature from exceeding 250 degrees F unless chloride, fluoride, and oxygen concentrations are within specified limits. Therefore a significant increase in the probability or consequences of an accident previously evaluated does not exist.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The materials that are exposed to reactor coolant are corrosion resistant. They were chosen for specific applications within the system and for their compatibility with the reactor coolant. The chemical composition of the reactor coolant will be maintained within the specifications given within Technical Specification 3.1.F, Updated Final Safety Analysis Report Table 4.2-2, and Technical Specification Table 4.1-2B. Because of the time dependent nature of any adverse affects from chloride, fluoride, and oxygen concentrations in excess of the Technical Specifications limits, measures are available and can be taken to correct the condition while the reactor is in a safe shutdown condition, prior to any deleterious effect. No hardware modifications are involved. System configuration and plant operations are not being changed. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

(3) Involve a significant reduction in the margin of safety.

This change does not involve a significant reduction in the margin of safety since the chloride and fluoride concentrations are maintained within their specified values prior to RCS drain down and following refill. The time period during which the RCS inventory is reduced below the reactor vessel flange and fuel is removed from the vessel, is short and insignificant in terms of the parameters necessary to initiate a corrosion concern. Existing Technical Specifications Action Statements and Allowed Technical Specification values for normal and off-normal concentrations of chlorides and fluorides are not being changed. No hardware modifications are involved. System configuration and plant operations are not being changed. Surry Technical Specification 3.1.F.1 remains unaffected by this change and continues to prohibit reactor coolant temperature from exceeding 250 degrees F unless chloride, fluoride, and oxygen concentrations are within specified limits.

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 request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: Eugene V. Imbro

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued

involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: February 29, 1996

Description of amendment request: The proposed amendment would include the addition of Technical Specification 3.10.8 which would allow a one-time only extension of the standby diesel generator (SDG) allowed outage time for a cumulative 21 days on ''A'' train SDG. In addition, it would also allow a one-time only extension of the allowed outage time on ''A'' train essential cooling water loop for a cumulative 7 days. This one-time only change would become effective on April 10, 1996, and expire on May 15, 1996.Date of individual notice in the Federal Register: March 8, 1996 (61 FR 9502)

Expiration date of individual notice: April 8, 1996

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 1, 1995, as supplemented by letters dated June 22, August 28, November 22, and December 19, 1995, and January 4, January 8 (two letters), and January 23, 1996

Description of amendment request: The proposed amendment would provide a special test exception that would allow an extension of the standby diesel generator (SDG) allowed outage time for a cumulative 21 days on each SDG once per fuel cycle, and it would also allow an extension of the essential cooling water (ECW) loop allowed outage time for a cumulative 7 days on each ECW loop once per fuel cycle. These extended allowed outage times will be used to perform required inspections and maintenance on the SDGs and the ECW system during power operation.

Date of individual notice in the Federal Register: February 8, 1996 (61 FR 4805)

Expiration date of individual notice: March 11, 1996

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: March 1, 1996 (supersedes December 11, 1995, application)

Description of amendment request: The proposed amendment would revise Technical Specification Section 4.7, ''Surveillance Requirements for Primary Containment Automatic Isolation Valves.'' Specifically, the proposed amendment would revise the replacement frequency of the seat seals for the drywell and suppression chamber purge and vent valves from every 5 years to every six operating cycles.

Date of individual notice in the Federal Register: March 8, 1996 (61 FR 9504)

Expiration date of individual notice: April 8, 1996

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

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.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 7, 1995, as supplemented by letter dated January 17, 1996.

Brief description of amendments: These amendments adopt the improved Standard Technical Specifications (NUREG-1432) format and content of Section 5.0, ''Design Features,'' as modified by approved changes to the improved Standard Technical Specifications.

Date of issuance: March 6, 1996

Effective date: March 6, 1996, to be implemented within 45 days of the date of issuance.

Amendment Nos.: Unit 1 - Amendment No. 104; Unit 2 - Amendment No. 93; Unit 3 - Amendment No. 76

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 20, 1995 (60 FR 65673) The January 17, 1996, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 16, 1996

Brief description of amendment: The amendment allows a one-time extension for the performance of the trip actuating device operational test for one of the safety injection manual initiation switches listed in Technical Specification Table 4.3-2, Item 1a.Date of issuance: March 11, 1996

Effective date: March 11, 1996

Amendment No. 63

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (61 FR 7125). 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 March 27, 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 amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated March 11, 1996

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 11, 1996

Brief description of amendments: The amendments revise the action statements and allowed outage time for inoperability of one channel and both channels of source range neutron flux instrumentation in Shutdown Modes 3, 4, and 5.

Date of issuance: March 15, 1996

Effective date: March 15, 1996

Amendment Nos.: 80, 80, 72, and 72

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3509) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, 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.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 14, 1995, as supplemented January 4, 1996 and February 29, 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.

Date of issuance: March 11, 1996 Effective date: Immediately, to be implemented no later than June 30, 1996.

Amendment Nos.: 110 and 95

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 7, 1995 (60 FR 62896) The January 4, 1996, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 20, 1995, as supplemented December 18 and December 22, 1995.

Brief description of amendment: The amendment allows a one-time surveillance interval extension for certain 18-month surveillances listed in new Technical Specification Tables 4.0.2-1 and 4.0.2-2. Date of issuance: March 1, 1996

Effective date:

March 1, 1996, with full implementation within 90 days.

Amendment No.: 106

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 27, 1995 (60 FR 58400). The December 18, 1995, letter corrected a typographical error on one of the proposed TS pages and provided a corrected Table of Contents page to reflect the addition of the new Tables. The December 22, 1995, letter provided additional information on the licensee's review of historical plant drift data. This information was within the scope of the original application and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

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: November 10, 1995

Brief description of amendments: The amendments revise the Technical Specifications for containment systems to reflect the adoption of the requirements of 10 CFR Part 50, Appendix J, Option B, and the implementation of a performance-based containment leak-rate testing program at the Edwin I. Hatch Nuclear Plant, Units 1 and 2.

Date of issuance: March 6, 1996

Effective date: As of the date of issuance to be implemented within 90 days

Amendment Nos.: Unit 1 - 200 - Unit 2 - 141

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 20, 1995 (60 FR 65679) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 5, 1995

Brief description of amendment: The amendment revises the submittal date for the Annual Exposure Data Report bringing Oyster Creek into conference with 10 CFR 20.2206 and relaxes an overly restrictive administrative requirement.

Date of Issuance: March 4, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 183

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1629). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 4, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 14, 1995

Brief description of amendment: The amendment modifies Technical Specification 3.4.2, ''Flow Control Valves (FCVs),'' by deleting Surveillance Requirement (SR) 3.4.2.2, which required periodic verification that the average rate of movement of each reactor recirculation system FCV was limited to less than or equal to 11% per second in the opening and closing directions. Due to a plant modification, the requirement is not applicable.

Date of issuance: March 11, 1996

Effective date: March 11, 1996

Amendment No.: 103

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

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: November 10, 1995 (AEP:NRC:0896X). This application superseded a request dated June 15, 1995 (AEP:NRC:0896V).

Brief description of amendments: The amendments change the 18-month emergency diesel generator surveillance test from a 24-hour run to an 8-hour run and add voltage and frequency measurement and power factor monitoring.

Date of issuance: March 11, 1996

Effective date: March 11, 1996, with full implementation within 45 days

Amendment Nos.: Unit 1 - 207, Unit 2 - 191

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 20, 1995 (60 FR 65682) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 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.

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: June 20, 1995, as supplemented December 19, 1995.

Brief description of amendments: The amendments relocate the fire protection program elements from the Technical Specifications and incorporate, by reference, the NRC-approved Fire Protection Program and major commitments, including the fire hazards analysis, into the Updated Final Safety Analysis Report. In addition, the amendments revise the operating licenses to include the NRC's standard fire protection license condition.

Date of issuance: March 11, 1996

Effective date: March 11, 1996, with full implementation within 180 days

Amendment Nos.: Unit 1 - 208, Unit 2 - 192

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47620). The December 19, 1995, supplement clarified the license conditions by providing specific approval dates for previous fire protection safety evaluations. 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 March 11, 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, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 29, 1995

Brief description of amendment: The amendment revises the Technical Specifications to extend the surveillance schedule from 18 months to each refueling interval (nominally 24 months) for specifications 4.6.4.2, 4.7.1.2.1.c, 4.7.3.b, 4.7.4.b,and 4.7.10.e. It also deletes specification 4.6.4.2.a and the phrase ''during shutdown'' from these specifications.Date of issuance: March 4, 1996

Effective date: As of the date of issuance, to be implemented within 90 days.

Amendment No.: 127

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 27, 1995 (60 FR 58402) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 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.

Pacific Gas and Electric Company, Docket No. 50-275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: January 18, 1996

Brief description of amendment: The amendment revises the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit No. 1. TS 3.8.1.1, ''Electrical Power Systems - A.C. Sources - Operating,'' is revised to allow operation of Unit 1 in Mode 3 (Hot Standby) during installation of a replacement non-vital auxiliary transformer 11, for a one time

extension of up to 48 hours beyond the 72 hours allowed by TS 3.8.1.1, Action Statement (a).

Date of issuance: March 8, 1996

Effective date: March 8, 1996

Amendment No.: Unit 1 - Amendment No. 111

Facility Operating License No. DPR-80: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1996 (61 FR 3737) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

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 application for amendments: December 27, 1995

Brief description of amendments: The amendments revised 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; their associated Bases; and adds Specification 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, rather than paraphrasing the requirements of the regulation. These changes will support the implementation of the performance based testing of Option B to Appendix J, for Type A, B, and C containment leakage rate testing and the appropriate rescheduling of testing.

Date of issuance: March 1, 1996

Effective date: March 1, 1996

Amendment Nos.: Unit 1 - Amendment No. 110; Unit 2 - Amendment No. 109

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3502) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 13, 1994, as supplemented December 6, 1995

Brief description of amendment: The proposed changes revise the Quality Assurance audit frequencies in the Hope Creek Technical Specifications. These revisions will permit an audit frequency based on performance and transfer subsequent control over the audit program to the Updated Final Safety Analysis Report.

Date of issuance: March 11, 1996

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 95

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 8, 1994 (59 FR 29633) The December 6, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor the original Federal Register notice.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 13, 1994, as supplemented December 6, 1995.

Brief description of amendments: The proposed changes revise the Quality Assurance audit frequencies in the Salem Unit Nos. 1 and 2 Technical Specifications. These revisions will permit an audit frequency based on performance and transfer subsequent control over the audit program to the Updated Final Safety Analysis Report.

Date of issuance: March 11, 1996

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment Nos. 181 and 162

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 8, 1994 (59 FR 29633) The December 6, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor the original Federal Register notice.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 1996No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 8, 1995 (TS 93-09)

Brief description of amendments: The amendments revise the setpoints and time delays for the auxiliary feedwater loss-of-power and the 6.9-kilovolt shutdown board loss-of-voltage and degraded voltage instruments.

Date of issuance: March 1, 1996

Effective date: March 1, 1996

Amendment Nos.: 219 and 209

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: January 3, 1996 (61 FR 181) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1996.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 4, 1996 (TS 95-22)

Brief description of amendments: The amendments change the surveillance test frequency specified for the functional tests of the containment, fuel storage pool, and control room radiation monitors from monthly to quarterly.

Date of issuance: March 4, 1996

Effective date: March 4, 1996

Amendment Nos.: 220 and 210

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3503)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Macrh 4, 1996.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: January 16, 1996, and supplement dated March 1, 1996

Brief description of amendment: This amendment approves that part of the request that defers the drywell bypass leakage test during the current refueling outage. The remainder of the licensee's request is still under NRC staff review.

Date of issuance: March 8, 1996

Effective date: March 8, 1996

Amendment No. 82

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 2, 1996 (61 FR 3951) The March 1, 1996, supplemental letter was clarifying in nature and did not affect the initital no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 9, 1994, as supplemented by letters dated September 13, 1995, and February 9, 1996.

Brief description of amendment: The amendment revises Technical Specifications (TS) 4.3.2.2, TS 4.7.1.2.1, and the Bases for TS 3/4 7.1.2 to decrease the frequency of auxiliary feedwater pump testing, remove inconsistencies in testing requirements for the turbine-driven auxiliary feedwater pump, and clarify performance parameters in the TS Bases.

Date of issuance: March 11, 1996

Effective date: March 11, 1996, to be implemented within 30 days from the date of issuance.

Amendment No.: 108

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1995 (60 FR 6314). The September 13, 1995, and February 9, 1996, supplemental letters provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 19, 1995

Brief description of amendments: The amendments revised the maximum allowable power range neutron flux high setpoints for operation with inoperable main steam safety valves.

Date of issuance: March 6, 1996

Effective date: March 6, 1996

Amendment Nos.: 199 and 180

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 25, 1995 (60 FR 54724) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1996No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 22, 1995

Brief description of amendment: The amendment replaces the Technical Specification (TS) requirements associated with the boron dilution mitigation system (BDMS) with alarms, indicators, procedures and controls to allow proper resolution of potential boron dilution events.

Date of issuance: March 1, 1996

Effective date: March 1, 1996, to be implemented prior to the startup from the eighth refueling outage.

Amendment No.: 96

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3503) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1996.No significant hazards consideration comments received: No. 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

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 20, 1995, as supplemented by letter dated February 8, 1996.

Brief description of amendment: The amendment revises the Technical Specifications to reflect the approval of the use of 10 CFR Part 50, Appendix J, Option B for the Wolf Creek Generating Station containment leakage rate test program.

Date of issuance: March 1, 1996

Effective date: March 1, 1996, to be implemented prior to startup from the eighth refueling outage.

Amendment No.: 97

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3504) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1996.No significant hazards consideration comments received: No.

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

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 13, 1995

Brief description of amendment: The amendment revises the minimum and maximum flow requirements for the centrifugal charging pumps (CCPs) and safety injection pumps (SIPs) specified in Technical Specification (TS) Surveillance Requirement 4.5.2.h. Specifically, the amendment (1) decreases the minimum limits on the sum of the injection line flow rates,

excluding the highest flow rate, from 346 gallons per minute (gpm) to 330 gpm for the CCPs and from 459 gpm to 450 gpm for the SIPs, and (2) revises the maximum pump flow rate for the SIPs from 665 to 670 gpm, but retains the CCPs maximum pump flow rate at its current value of 556 gpm.Date of issuance: March 5, 1996

Effective date: March 5, 1996, to be implemented prior to startup from the eighth refueling outage.

Amendment No.: 98

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1639) The February 5, 1996, supplemental letter provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1996.No significant hazards consideration comments received: No. 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

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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 room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 26, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 6, 1996

Brief description of amendment: This amendment revises TS 3/4 5.2, ECCS SUBSYSTEMS - T_{avg} greater than or equal to 280°F by modifying Surveillance Requirement 4.5.2.b to defer venting of the Emergency Core Cooling System flow path which does not have manual venting capability until the tenth refueling outage.

Date of issuance: March 7, 1996

Effective date: March 7, 1996

Amendment No: 208

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 7, 1996.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Dated at Rockville, Maryland, this 20th day of March 1996.

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/II,Office of Nuclear Reactor Regulation

[Doc. 96–7259 Filed 3–26–96; 8:45 am]

BILLING CODE 7590–01–F

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 11Ab2–1 and Form SIP

SEC File No. 270–23

OMB Control No. 3235–0043

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment.

Rule 11Ab2–1 and Form SIP establish the procedures by which a Securities Information Processor (''SIP'') files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclussive SIPs are required to register with the Commission. An exclusive SIP is a SIP which engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or

publication, any information with respect to (i) transactions or quotations on or effective or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The Federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation (''SIAC'') and the National Association of Securities Dealers, Inc. (NASD). SIAC and NASD are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 205489.

Dated: March 19, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7393 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

New:

Tell Us How We're Doing! an Investor Questionnaire

SEC File No. 270–406

OMB Control No. 3235-new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval on the following questionnaire:

The Commission has proposed use of a questionnaire, titled ''Tell Us How We're Doing! an Investor Questionnaire,'' to be sent to persons who have utilized the services of the Commission's Office of Investor Education and Assistance (''OIEA'').

The questionnaire will be sent to each of the approximately 20,000 persons who request assistance or information from OIEA. The questionnaire consists of eight questions concerning the quality of service provided by OIEA. Most questions can be answered by checking a box on the questionnaire.

It is estimated that eight percent (8%) of the questionnaires, approximately 1,600, will be returned to OIEA, based on OIEA experience with similar types of questionnaires. It is also estimated that fifteen (15) minutes will be required to fill out a questionnaire, resulting in an aggregate burden of 400 hours.

The retention period of the questionnaires will be three years. Provision of the information requested is voluntary and responses will be kept confidential.

Members of the public should be aware that unless a currently valid Office of Management and Budget control number is displayed, an agency may not sponsor or conduct or require responses to an information collection.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 18, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7394 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21836; 812–9786]

Access Capital Strategies Community Investment Fund, Inc., et al.; Notice of Application

March 20, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Access Capital Strategies Community Investment Fund, Inc. (''Strategies'') and Access Capital Strategies Corp. (''Access''), on behalf of themselves and any future business development companies that are advised by Access or entities controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with Access (''Future Funds'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) and rule 17d–1 authorizing certain transactions otherwise prohibited under section 57(a)(4).

SUMMARY OF APPLICATION: Applicants seek an order that would permit two existing portfolios of Strategies and any Future Fund to enter into certain co-investment transactions.

FILING DATES: The application was filed on September 28, 1995, and amended on December 27, 1995 and March 15, 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 April 15, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C 20549. Applicants, c/o Access Capital Strategies Corp., 124 Mt. Auburn Street, Suite 200N, Cambridge, Massachusetts 02138.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, 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. Applicants seek an order under section (6(c) and rule 17d–1 authorizing two portfolios of Strategies, the Bank Portfolio and the Institutional Investor Portfolio (the ''Portfolios''), and the Future Funds (collectively with the Portfolios, the ''Funds'') to purchase securities or otherwise effect transactions jointly with another Fund in transactions that are otherwise prohibited by section 57(a)(4). Each Portfolio is a Maryland corporation that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The investment objective of each Portfolio is to invest in geographically specific private placement debt securities and to earn a total return over the life of the Portfolio greater than that of the Access Benchmark, a blend of selected fixed-income indices designed by Mellon Bond Associates, a wholly-owned subsidiary of Mellon Bank Corporation.

2. Access, a newly formed corporation that has registered as an investment adviser under the Investment Advisers Act of 1940, is an indirect, wholly-owned subsidiary of Mellon Bank, N.A. Access serves as investment adviser to each Portfolio. As compensation for its services, Access will receive an annual management fee based upon a percentage of the assets of each Portfolio.

3. Each Portfolio has an eight-member board of directors (''Board of Directors''), five of whom are not affiliated persons of Access or interested persons of any Fund (the ''Independent Directors''). The Board of Directors of each Portfolio will provide overall guidance and supervision with respect to the operations of the Portfolio, and will perform all duties the Act imposes on the boards of directors of BDCs organized in corporate form. The Independent Directors will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on the disinterested directors of a BDC organized in corporate form. None of the Independent Directors of the Bank Portfolio will serve as an Independent Director of the Institutional Investor Portfolio, although one or more of the Independent Directors of the Portfolios may serve as Independent Directors of one or more Future Funds.

4. Applicants propose to allow each Fund to purchase securities jointly with one or more other Funds in transactions that are otherwise prohibited by section 57(a)(4) or rule 17d–1 under the Act (''Co-Investment Transactions''). Before undertaking a Co-Investment Transaction, Access will make a written investment presentation respecting the proposed transaction to the Board of Directors of each Fund based on such considerations and circumstances as Access deems appropriate, including the consistency of the proposed transaction with the investment objectives and policies of each Fund. The presentation will include the name of each Fund that has funds available for investment and the amount of the proposed investment. There will be no consideration paid to Access (or its controlling persons) directly or indirectly, including any type of brokerage commission, in connection with a Co-Investment Transaction, although Access will continue to receive its normal advisory compensation with respect to each Fund.

5. Each Fund will make its own decision on whether or not to participate in a Co-Investment Transaction, and no Fund will be able to impose an investment decision on the other Funds. Prior to engaging in a Co-Investment Transaction, a required majority (as defined in section 57(o) of the Act) (''Required Majority'') of the directors of each Fund shall conclude that the terms of the proposed transaction, as presented to them by Access, are reasonable and fair to the shareholders of their respective Fund and do not involve overreaching of the Fund or its shareholders on the part of any person concerned.

6. Where the aggregate amount recommended for a Fund and that sought by other Funds is greater than the amount available for investment, the amount available for purchase by a Fund shall be determined on a *pro rata* basis determined by dividing the net assets of the fund by the sum of the net assets of the fund and each other Fund seeking to make the investment. Each Fund may determine not to take its full allocation or decline to participate when a Required Majority of the directors of the Fund determines that to do so would not be in the best interests of the Fund. Any such excess investment opportunity will be made available to other Funds that have determined to participate in the Co-Investment transaction in the same proportions as their participation in the transaction. All follow-on investments (additional investments in the same entity) will be treated in the same manner as the initial Co-Investment Transaction, except that the denominator in the fraction will consist solely of the net assets for those Funds that chose to participate in the initial transaction.

7. A Co-Investment Transaction will be effected for each participating Fund on the same terms and conditions. For such co-investment assets, each Fund will be offered the opportunity to sell, exchange, or otherwise dispose of such investments in the same manner and at the same time. A Required Majority of the directors of a Fund may either accept all or part or none of such offer, depending on their determination of the best interests of each Fund. A decision by a Fund not to participate in a Co-Investment Transaction, to take less or more than its full allocation, or not to sell, exchange of otherwise dispose of a co-investment asset in the same manner and at the same time as the other Funds electing to participate, shall include a finding by a Required Majority of its directors that such decision is fair and reasonable to the fund and its shareholder's and not the result of overreaching on the part of any party concerned.

8. Applicants believe that the ability to participate in Co-Investment Transactions would be advantageous for each Fund because it would enlarge the scope of each Fund's co-investment opportunities and permit such transactions to be effected at better prices and on more favorable terms than if only one Fund has Been able to participate in any given transaction. If the requested order were not granted, the Funds would have to seek the participation of other community investing entities or forego the opportunity. Applicants also anticipate that the availability of one or more of the Funds as an investing partner in a Co-Investment Transaction would significantly alleviate the cost of searching for such an alternative investing partner, as well as the risk that the alternative community investing entity would appropriate for itself the entire investment opportunity.

Applicants' Legal Analysis

1. Section 57(a)(4) prohibits certain affiliated persons of a BDC specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC. Section 57(b)(2) extends the prohibitions of section 57(a) to persons under common control with a BDC. Applicants believe that the Funds may be prohibited from engaging

[1] Each Future Fund will elect to be regulated as a BDC under the Act.

in joint transactions because they share a common investment adviser.

2. Section 57(i) provides that the rules and regulations of the SEC under sections 17(a) and (d) applicable to registered closed-end investment companies shall apply to transactions subject to sections 57(a) and (d) in the absence of rules under these sections. No rules with respect to joint transactions have been adopted under sections 57(a) and (d). Rule 17d-1 prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction after considering whether the participation of the investment company is consistent with the provision, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that all Funds will participate in the proposed Co-Investment Transactions on the same terms. In addition, applicants state that the procedure for allocating investment opportunities will ensure that the Funds will be treated fairly. Moreover, applicants assert that the approval of these transactions by a Required majority of the directors will ensure that no overreaching will occur. Applicants therefore believe that the requested exemption for Co-Investment Transactions meets the standards for granting exemptive relief under rule 17d–1.

4. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Applicants submit that it would be impractical to attempt to obtain separate exemptive relief under section 57(a)(4) and rule 17d–1 for each Co-Investment Transaction as it arises. Applicants therefore represent that failure to obtain prospective, generic exemptive relief would severely hamper the Funds' ability to participate meaningfully in community investing and, thus, to achieve their investment objectives. Accordingly, applicants believe that the terms of the relief requested with respect to the proposed Co-Investment Transactions are consistent with the standards of section 6(c).

Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

1. (a) To the extent that a Fund is considering new investments, Access will review investment opportunities on behalf of the Fund, including investments being considered on behalf of other Funds. Access will determine whether a particular investment is eligible for investment by any Fund.

(b) If access deems an investment eligible for investment by any Fund, Access will determine what it considers to be an appropriate amount that the Fund should invest in the particular investment. Where the aggregate amount recommended for the Fund and that sought by other Funds is greater than the amount available for investment, the amount available for purchase by the Fund shall be determined on a *pro rata* basis calculated by dividing the net assets of the Fund by the sum of the net assets of each Fund seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b), Access will distribute information concerning the proposed Co-Investment Transaction to the Board of Directors of each participating Fund. Such information will include the name of each Fund that proposes to make the investment and the amount of each proposed investment.

(d) The Board of Directors of each participating Fund will review the information regarding Access's preliminary determination. A fund will only engage in a Co-Investment Transaction if a Required Majority of the directors of the Fund conclude, prior to the acquisition of the investment, that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned;

(ii) the transaction is consistent with the interests of the shareholders of the Fund and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Securities Exchange Act of 1934, and its report to shareholders;

(iii) the investments by one or more of the other Funds would not disadvantage the Fund, and that participation by the Fund would not be on a basis different from or less advantageous than that of the other Funds; and

(iv) the proposed Co-Investment Transaction will not benefit Access or any affiliated person thereof (other than the Funds) except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) A Fund has the right to decline to participate in a particular Co-Investment Transaction or may purchase less than its full allocation.

2. No Fund will make an investment for its portfolio if a Fund, Access, or a person controlling, controlled by, or under common control with Access is an existing investor in such issuer.

3. All Co-Investment Transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the settlement date will be the same.

4. If one or more Funds elect to sell, exchange, or otherwise dispose of an interest in a particular security that is also held by another Fund, notice of the proposed disposition will be given to the other Funds at the earliest practical time, and such Funds will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions. Access will formulate a recommendation as to participation by such Fund in such a disposition, and provide a written recommendation to the Board of Directors of such Fund. A Fund will participate in any such disposition if a Required Majority of its directors determines that it is in the best interest of the investing Fund. Each Fund will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Fund desires to make a follow-on investment in a particular issuer whose securities are held by any other Fund, or to exercise rights to purchase securities of such an issuer, Access will notify the other Fund of the proposed transaction at the earliest practical time. Access will formulate a recommendation as to the proposed participation by the other Fund in a follow-on investment, and provide the recommendation to the other Fund's Board of Directors along with notice of the total amount of the follow-on investment. The other Fund's directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Fund is not based on the amount of its initial investment, the relative amount of investment by each Fund participating in a follow-on investment will be based on a ratio derived by comparing the remaining funds available for investment by each such Fund with the

total amount of the follow-on investment. A Fund will participate in such investment to the extent that a Required Majority of its directors determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth herein.

6. The Board of Directors of the Funds will be provided quarterly for review all information concerning Co-Investment Transactions made by the Funds, including Co-Investment Transactions in which one or more Funds declined to participate, so that they may determine whether all Co-Investment Transactions made during the preceding quarter, including those Co-Investment Transactions they declined, compiled with the conditions set forth above.

7. Each Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Co-Investment Transactions permitted under these conditions had been approved by Required Majority of its directors under section 57(f).

8. No Fund will engage in a Co-Investment Transactions with another Fund that has a common Independent Director.

9. No person other than a Fund shall participate in a Co-Investment Transaction unless a separate exemptive order with respect to such transaction has been obtained.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7345 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36997]

EDGAR Phase-in Complete on May 6, 1996

March 21, 1996.

The Division of Corporation Finance today is publishing a notice to all domestic registrants whose filings are subject to its review to remind them that the phase-in to mandated electronic filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system will be complete on May 6, 1996. Beginning on that date, all domestic registrants not previously phased in, and third parties filing with respect to such registrants, will become subject to mandated electronic filing requirements, as outlined in Regulation S–T (17 CFR Part 232). This applies to companies assigned to Group CF–10, as well as to those that previously have not been assigned a phase-in group. Beginning May 6, registration statements for initial public offerings also must be filed electronically, unless the filing is made at one of the Commission's regional offices.

Domestic registrants that will be phased in May 6 may begin filing electronically before that date if they wish, once they have filed a Form ID with the Commission and received EDGAR access and identification codes. It is no longer necessary for them to contact the staff to request a change in their phase-in group. Registrants may begin testing on the system once access codes have been issued. Early compliance with electronic filing requirements is encouraged once registrants become comfortable with the system.

Once a company becomes a mandated electronic filer, all filings made with respect to it by third parties (for example, Schedules 13D and 13G) must be made electronically. Third parties will not be required to file electronically with respect to companies whose phase-in date is May 6 until that date. If third parties wish to file electronically, however, they may do so at any time, whether or not the subject company has begun to make its own filings via EDGAR. Persons filing Forms 3, 4 and 5 pursuant to Section 16 of the Securities Exchange Act of 1934, and those filing Forms 144 pursuant to Rule 144 of the Securities Act of 1933, may file these documents in paper or electronic format, since electronic filing of these forms will continue to be optional after May 6.

Foreign private issuers and foreign governments will not be required to file electronically (unless acting as a third party filer with respect to an electronic domestic company or engaging in a business transaction with a phased-in domestic company), but they may choose to do so. Such entities can gain access to the EDGAR system by filing a Form ID to receive EDGAR access and identification codes. EDGAR currently recognizes many of the types of forms that may be filed by foreign registrants, but some form types, such as those associated with the multijurisdictional disclosure system, are not yet available; as a consequence, filings not supported by EDGAR must be made in paper. The EDGAR system will be enhanced in the future to allow electronic filing of these documents.

As is true with all rules promulgated by the Commission, persons making filings with the Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission has attempted to contact registrants in this last phase-in group by furnishing a copy of the current version of the EDGAR Filer Manual and EDGARLink software (with mailing having taken place the week of March 11), registrants will not be relieved of their electronic filing obligations in the absence of such notification.

FOR FURTHER INFORMATION CONTACT: Sylvia J. Reis, Assistant Director, CF EDGAR Policy, Division of Corporation Finance, at (202) 942–2940.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7336 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 25, 1996.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 26, 1996, at 12:00 noon, will be: Institution of injunctive action.

Commissioner Wallman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

March 25, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7536 Filed 3-25–96; 11:41 am]

BILLING CODE 8010–01-M

[Release No. 34–36990; International Series Release No. 952; File No. SR–Amex–95–44]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Equity Linked Term Notes on Non-U.S. Securities

March 20, 1996.

I. Introduction

On November 9, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend Section 107B of the Amex Company Guide to provide alternate criteria for the listing and trading of hybrid debt securities whose value is linked to the performance of a non-U.S. company which is traded in the U.S. market as sponsored American Depositary Shares ordinary shares or otherwise.

Notice of the proposal was published for comment and appeared in the Federal Register on December 7, 1995.[3] The Exchange filed with the Commission Amendment No. 1 to the proposed rule change on January 5, 1996.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Background

On May 20, 1993 and December 13, 1993, the Commission approved amendments to Section 107 of the Amex Company Guide to provide for the listing and trading of Equity Linked Term Notes (''ELNs'').[5] ELNs are intermediate term (two to seven years), non-convertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. and non-U.S. companies.

In August 1994, the Exchange amended Section 107B of the Amex Company Guide to permit the listing and trading of ELNs linked to actively traded non-U.S. companies which are traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise (''non-U.S. securities''), provided that (1) the Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security trades; the trading volume of the non-U.S. security in the U.S. market represents at least 50% of the world-wide trading volume in the non-U.S. security (''50% Test''); and (2) the ELNs issuance does not exceed (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security for the six-months prior to the listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market. No ELN may be listed if the U.S. market for the underlying security accounted for less than 30% of the worldwide trading volume for the security and related securities during the prior six months.[6]

III. Description of the Proposal

The Exchange proposes to amend its ELNs on non-U.S. security listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; (2) adding new criteria for the listing of ELNs on non-U.S. securities, based on the daily trading volume in the U.S.; and (3) revising the current restrictions on the size of ELN issuances linked to non-U.S. securities to reflect the amendments to the listing criteria noted above.[7] Specifically, the Exchange proposes to revise the 50% Test so that trading in non-U.S. securities and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. market volume for the purpose of determining whether the 50% Test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% Test.

Additionally, the Exchange proposes to add an alternate set of criteria under which the Exchange may list ELNs on non-U.S. securities (''20% Test + Daily Trading Volume Standards''). The new standard will permit the Exchange to list ELNs on non-U.S. securities if all of the following conditions are satisfied: (1) The combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for an ELN listing;[8] (2) the average daily trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for an ELN listing is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six months preceding the date of selection of the non-U.S. security for an ELN listing.

Moreover, the Exchange proposes to amend the size limitations of ELN issuances linked to non-U.S. securities. Specifically, the Exchange proposes to require that the size of ELN issuances linked to non-U.S. securities will be limited to 2% of the total shares of the underlying security for the underlying security outstanding provided at least 20% of the worldwide trading volume for the security for the six-months prior to the listing occurred in the U.S. market. Additionally, under the proposed rule change, the 30% floor would be lowered to 20% [9] so that an ELN would be permitted on a non-U.S. security if U.S. trading volume accounted for at least 20% of the world-wide trading volume during the six months prior to listing.[10] As noted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36538 (November 30, 1995), 60 FR 62914.

[4] The Exchange submitted Amendment No. 1 to the Commission to make certain technical changes, as further described herein, to the listing standards regarding Equity Linked Term Notes on non-U.S. securities. *See* Letter from Claire McGrath, Special Counsel, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated January 5, 1996 (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release Nos. 32345 (May 20, 1993), 58 FR 30833 (May 27, 1993), and 33328 (December 13, 1993), 58 FR 66041 (December 20, 1993).

[6] *See* Securities Exchange Act Release No. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994).

[7] *See* Amendment No. 1, *supra* note 4.

[8] The calculation for the 20% Test + Daily Trading Volume Standard does not include foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 1, *supra* note 4.

[9] As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement are not included in the calculation for purposes of determining the size of eligible ELN issuances. *See* Amendment No. 1, *supra* note 4.

[10] The other size limitations in Amex's rule remains unchanged. Accordingly, the size of ELN issuances linked to non-U.S. securities will be limited to 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the

Continued

above, the current rule requires at least 30% of the trading volume to occur in the U.S. to issue an ELN linked to up to 2% of the outstanding shares of a non-U.S. security.[11]

The Exchange believes that the proposed rule change is appropriate in that it limits the listing of ELNs linked to non-U.S. securities to those that have both a significant amount of U.S. market trading volume and a substantial volume of trading covered by a comprehensive/effective surveillance sharing agreement, which provides reasonable assurances that the underlying non-U.S. securities are deliverable upon exercise of the ELNs, and gives the Exchange the ability to inquire into potential trading problems or irregularities in a market place that serves as a significant price discovery market for the non-U.S. security.

The Exchange also believes that the proposed amendment will benefit investors by expanding the number of non-U.S. securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange believes that it is appropriate to now include additional non-U.S. securities within the existing ELNs regulatory framework because of the significant level of U.S. investor interest in both U.S. and non-U.S. highly capitalized and actively traded reporting companies.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and percent the mechanism of a free and open market and a national market system.

IV. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] Specifically, the Commission finds that the Exchange's proposal to provide alternate criteria for the listing and trading of ELNs on non-U.S. securities strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed amendments to the listing standards for ELNs on non-U.S. securities will benefit investors by effectively increasing the number of available ELNs-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security ELNs and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with ELNs on non-U.S. securities to additional non-U.S. securities and provide market participants with opportunities to trade a greater number of ELNs on non-U.S. securities without compromising the effectiveness of the Exchange's listing standards for such securities.

Currently, the 50% Test allows the Exchange to list ELNs on a non-U.S. security in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market during the six month period preceding the selection of the non-U.S. security for ELN listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities.

The Commission has previously concluded that the 50% Test helps to ensure that the relevant pricing market for non-U.S. securities underlying ELNs occurs in the U.S. market.[13] In such cases, the Commission has previously found that the U.S. market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying non-U.S. security ELN market. Because the U.S. self-regulatory organizations which comprise the U.S. market for non-U.S. securities are members of the Intermarket Surveillance Group,[14] the Commission has concluded that there exists an effective surveillance sharing agreement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the non-U.S. security ELNs or their underlying securities.

The Exchange proposes to modify the 50% Test to include in the U.S. market volume calculation, the trading volume in non-U.S. securities and other related non-U.S. securities that occurs in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the ELN Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that list the non-U.S. security underlying the Exchange's ELNs in order to adequately investigate any potential abuse or manipulation.

Additionally, the Commission finds that the proposed 20% Test + Daily

six-months prior to listing occurred in the U.S. market, or 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market.

[11] This 30% requirement is also currently the minimum volume that must have occurred in the U.S. market in order for the Exchange to list an ELN linked to any non-U.S. security.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release Nos. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR–Amex–93–46); 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (SR–CBOE–94–04); 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR–NASD–94–49); 34985 (November 18, 1994), 59 FR 60860 (November 28, 1994) (SR–NYSE–94–37); and 35479 (March 13, 1995), 60 FR 14993 (March 21, 1995) (SR–Phlx–95–09) (''ELN Approval Orders'').

[14] The Intermarket Surveillance Group (''ISG'') was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. (''NASD''); the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.,* the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

Trading Volume Standard is consistent with the Act and with the ELN Approval Orders. As noted above, the 20% Test + Daily Trading Volume Standard will allow the Exchange to list ELNs on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for ELNs trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities; [15] (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the 50% Test by limiting the actual listing of ELNs on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the ELN. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the Exchange believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for ELNs issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain an ELNs listing. The Commission believes that it is appropriate to adjust the limitations on the size of the ELNs issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume, the issuance will be limited to 2% of the total outstanding shares of the underlying security. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate ELNs trading. In this regard, the Commission believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

The Commission notes that other existing ELNs listing requirements relating to the protection of investors will continue to apply. Among other things, these rules set forth issuer standards as well as minimum market capitalization and trading volume requirements that must be met prior to listing an ELN.[16]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 to the proposal makes certain technical clarifications, and revises paragraph (f) of Section 107B of the Amex Company Guide to reflect the amendments to the listing criteria in paragraph (e) as set forth herein. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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 principal office of the Exchange. All submissions should refer to SR–Amex–95–44 and should be submitted by April 17, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–Amex–95–44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7341 Filed 3–26–96; 8:45 am]

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[15] *See supra* note 8. The Commission notes that the 20% Test + Daily Trading Volume Standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of ELNs only on non-U.S. securities that have active and liquid markets in the U.S.

[16] The Commission recently approved the Exchange's proposed rule change amending some of the initial listing standards regarding such structured notes. The Exchange's amended initial listing standards require, among other things, that the linked stock underlying the Exchange-listed ELNs either: (i) has a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares. *See* Securities Exchange Act Release No. 36989 (March 20, 1996).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–36989; File No. AR–Amex–95–48]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Revised Listing Standards for Equity Linked Notes

March 20, 1996.

On December 5, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the trading volume requirement for securities underlying Equity Linked Notes (''ELNs'').

Notice of the proposed rule change was published for comment and appeared in the Federal Register on December 20, 1995.[3] No comments were received on the proposal. This order approves the proposal.

I. Description of the Proposal

On May 20, 1993 and December 13, 1993, the SEC approved amendments to Section 107 of the Amex Company Guide (''Section 107'') to provide for the

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36578 (Dec. 13, 1995).

listing and trading of ELNs.[4] ELNs are intermediate term, nonconvertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. common stock or non-convertible preferred stock (''linked security''). In order to list an ELNs product, Section 107B currently requires the linked security to meet one of the following criteria:

Market Capitalization and Annual Trading Volume

$3 billion and 2.5 million shares.
$1.5 billion and 20 million shares.
$500 million and 80 million shares.

Amex now proposes to amend Section 107(B) to provide for greater flexibility in the listing criteria for ELNs. The proposed rule change will lower the trading volume requirements criteria for underlying linked stocks meeting the capitalization requirements of $1.5 billion and $500 million. Under the revised criteria, a linked stock with market capitalization of $1.5 billion would now need an annual trading volume of 10 million shares, as opposed to the current trading volume requirement of 20 million shares. Securities with a market capitalization in excess of $500 million also would be eligible for ELNs listing if they have annual trading volume of 15 million shares, as opposed to the 80 million shares under the current rule.[5] The proposal will also delete the current provision of the rule that allows the Exchange to list ELNs that do not meet the market capitalization and trading volume criteria if the Division of Market Regulation of the SEC concurs.

The Exchange believes these revisions strike an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the markets for the underlying linked security since the requirements will continue to ensure that the linked security has a large minimum market capitalization and a significant amount of trading volume over the preceding twelve months. The Exchange will continue to require that the issuer have a minimum tangible net worth of $150 million and that the total issue price of the ELNs combined with all of the issuer's other listed ELNs shall not be greater than 25% of the issuer's tangible net worth at the time of issuance.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission finds that the proposal to reduce the trading volume requirement for eligible linked securities will expand the number of securities that can be linked on ELNs while maintaining the requirement that the linked security be an actively traded, highly capitalized common stock or ADR. While the proposal reduces the trading volume criteria for securities with market capitalizations in the $1.5 billion and $500 million tiers to 10 million and 15 million shares, respectively (from 20 and 80 million shares, respectively), the Commission nevertheless believes that, together, the applicable capitalization and new trading volume requirements will continue to help ensure that ELNs are only issued on highly liquid securities of broadly capitalized companies. Accordingly, the Commission believes that these requirements will continue to help reduce the likelihood of any adverse market impact on the securities underlying ELNs.

Finally, the Commission notes that the Exchange has deleted the provision that allows it to list ELNs on securities not meeting the market capitalization and trading volume criteria if the Division of Market Regulation of the SEC concurs. The revised criteria will expand the number of securities eligible for ELNs trading. The increased flexibility in the ELNs listing criteria should effectively reduce or eliminate the need for additional discretion in this area, in addition to providing issuers and the Exchange with specific and clear guidance on the applicable listing criteria for a security to be eligible to underlie an ELN.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–95–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7395 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36992; File No. SR–CBOE–96–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on the CBOE PC Index

March 20, 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 March 7, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 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 CBOE proposes to provide for the listing and trading on the Exchange of options on the CBOE PC Index (''CBOE PC Index'' or ''Index''), a narrow-based, equal weighted index comprised of eight of the largest personal computer manufacturing companies.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in

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[4] *See* Securities Exchange Act Release Nos. 32345 (May 20, 1993) and 33328 (Dec. 13, 1993).

[5] Under the rule, as amended by this proposal, ELNs could be listed where the linked security met any of the following criteria:

Market capitalization and Annual Trading Volume

$3 billion and 2.5 million shares.

$1.5 billion and 10 million shares.

$500 million and 15 million shares.

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR § 200.30–3(a)(12) (1994).

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 permit the Exchange to list and trade cash-settled, European-style stock index options on the CBOE PC Index, an equal-weighted index consisting of stocks of eight of the largest personal computer manufacturing companies. CBOE represents that each of these stocks are actively traded and believes that options on the Index will provide investors with a low-cost means to participate in the performance of the domestic PC industry or a means to hedge the risk of investments in that industry. The Exchange believes that the small number of Index components should facilitate replication of the Index for hedging purposes.

Index Design

As noted above, the CBOE PC Index consists of eight components, all of which trade on the New York Stock Exchange (''NYSE'') or Nasdaq.[1] In addition, the Exchange represents that all eight underlying component securities currently meet the Exchange's listing criteria for equity options contained in Exchange Rule 5.3 and are the subject of options trading on U.S. options exchanges.

As of February 6, 1996, the capitalization of the components ranged from a low of $363 million (AST Research) to a high of $65.26 billion (IBM). The total capitalization as of that date was $135.5 billion; the mean capitalization was $16.9 billion; and the median capitalization was $3.34 billion. Because the Index is equal-weighted, each component accounts for 12.5% of the weight of the Index.

Calculation

The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds. The updated Index values will be displayed by the Consolidated Tap Association and over the facilities of the Options Price Reporting Authority (''OPRA''). If a component is not currently being traded on its primary market, the most recent price at which the share traded on such market will be used in the Index calculation. The value of the Index at the close on February 1, 1996 was 127.65.

The Index is equal-weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 3, 1995 when the Index was set to 100.000. Specifically, each of the component securities is initially represented in equal-dollar amounts, with the level of the Index equal to the combined market value of the assigned number of shares for each of the Index components divided by the current Index divisor. The Index divisor is adjusted to maintain continuity in the Index at the time of certain types of changes. Changes which may result in divisor changes include, but are not limited to, quarterly re-balancing, special dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

Maintenance

The Index will be maintained by CBOE and will be re-balanced after the close of business on Expiration Fridays on the March Quarterly Cycle. The Index will be reviewed regularly and CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the PC markets generally. If it becomes necessary to replace a component, every effort will be made to add a component that preserves the character of the Index. If no replacement is available, or if CBOE determines to decrease the number of component stocks, it will submit a proposed rule change pursuant to Section 19(b) of the Act prior to opening any new series of Index options for trading. Absent prior Commission approval, CBOE will not increase to more than ten the number of component stocks in the Index. Finally, if at any time any of the components are not options eligible, the Exchange will submit a rule change pursuant to Section 19(b) of the Act prior to opening any new series of Index options for trading.

Index Option Trading

The Exchange proposes to base trading in options on the CBOE PC Index on the full value of that Index. The Exchange may list full-value long-term index option series (''LEAPS ®''), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Exercise and Settlement

CBOE PC Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to CBOE PC Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to CBOE PC Index options. Index option contracts based on the CBOE PC Index will be subject to a position limit of 9,000 contracts on the same side of the market.[2] Ten reduced-value options will equal one full-value contract for such purposes.

CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of options on the Index and has also been informed that OPRA has the capacity to support such new series.[3]

Surveillance

The surveillance procedures currently used to monitor the trading of options on other Exchange-listed indexes will be used to monitor the trading of options on the CBOE PC Index. The Exchange has access to trading activity in the underlying securities, all of which trade on either the NYSE or Nasdaq, via the Intermarket Surveillance Group Agreement.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the CBOE PC Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability invest in options based on an additional index.

[1] The components of the Index are: Apple Computer, AST Research, Compaq Computer, Dell Computer, Gateway 2000, Hewlett Packard, International Business Machines, and Micron Electronics.

[2] CBOE recently increased its position limit tiers applicable to narrow-based index options from 5,000, 7,500, and 10,500 contracts on the same side of the market to 6,000, 9,000, and 12,000 contracts, respectively.

[3] *See* Letter from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated February 21, 1996.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–11 and should be submitted by April 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7342 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36995; International Release No. 954: File No. SR–CBOE 95–71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Criteria for Equity Linked Term Notes (''ELNs'')

March 20, 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 December 20, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On January 18, 1996, CBOE filed Amendment No. 1 (''Amendment No. 1'') to the proposed rule change to clarify issues relating to the issuance of ELNs on non-U.S. companies that trade in the U.S. market as sponsored American Depositary Receipts, ordinary shares, or otherwise.[1] This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the listing criteria for equity linked term notes. The text of the proposed rule change is available at the Office of the Secretary of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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. CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated January 17, 1996.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ELNs are intermediate-term (*i.e.*, two to seven years), non-convertible hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock, non-convertible preferred stock, or certain sponsored American Depositary Receipts (''ADRs''). ELNs may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. ELNs also may be subject to a ''cap'' on the maximum principal amount to be repaid to holders upon maturity, or, conversely, they may feature a ''floor'' on the minimum principal amount paid to holders upon maturity. A specific issue of ELNs, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of ELNs might offer lower semi-annual payments based upon a floating interest rate with a minimum floor for the repayment of principal of 75% of the issuance price. The flexibility available to an issuer of ELNs permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

The CBOE's proposal would modify the listing standards applicable to the underlying linked security. Paragraph (e) of Rule 31.5.I specifies that a common stock or a non-convertible preferred stock may be considered for listing on the Exchange if the underlying stock meets one of three alternative criteria for market capitalization and trading volume. Lower levels of market capitalization require a higher trading volume for the Exchange to consider listing an ELN on that security. The Exchange believes that two of the three trading volume levels could be reduced without compromising investor protection.

Specifically, the Exchange is proposing that the Exchange be permitted to list an ELN on a security with a market capitalization of at least $1.5 billion if that security has trading volume in U.S. markets of at least 10 million shares during the 12 month period preceding the listing. Currently, paragraph (e) requires trading volume of 20 million shares for such securities. In

addition, the Exchange is proposing that it be permitted to list an ELN on a security with a market capitalization of at least $500 million if that security has a trading volume in U.S. markets of at least 15 million shares during the 12 month period preceding the listing. Currently, paragraph (e) requires trading volume of 80 million shares for such securities. This reduction in the trading volume levels would enable the Exchange to list ELNs on a wider range of securities and provide investors a new opportunity to participate in the market performance of these securities.

Paragraph (e) would also be revised to specify that the Exchange will file a rule change with the Commission pursuant to Section 19(b) of the Act (rather than merely obtaining concurrence of SEC staff) if it desires to list an ELN on an underlying security that does not meet the market capitalization or trading volume criteria set forth in the rule.

Second, CBOE proposes to amend the ELNs listing standard governing which non-U.S. securities are eligible to be linked to ELNs. Presently, under paragraph (h) of Rule 31.5.I, the Exchange may list ELNs on actively traded non-U.S. securities which are traded in the U.S. market as sponsored ADRs or otherwise, provided that: (1) The Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security is traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or (2) the combined trading volume of the non-U.S. security and other related non-U.S. securities (as defined below) occurring in the U.S. market represents (on a share equivalent basis with respect to any ADRs) (''U.S. Trading Volume'') at least 50% of the combined worldwide trading volume in the non-U.S. security during the six month period preceding the date of listing (''50% Test'').

This paragraph (h) would be revised in three respects. First, the Exchange proposes to revise the manner in which the 50% test is calculated such that trading in the non-U.S. security and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive, effective surveillance sharing agreement would be added to the U.S. market volume for the purpose of determining whether the 50% test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% test. This change is consistent with the change to the listing criteria for options on ADRs. This change would also be reflected in Interpretation .01 to Rule 31.5.I.

CBOE also proposes to add an alternative set of criteria to paragraph (h) of Rule 31.5.I in order to add a third alternative set of criteria under which the Exchange may list an ELN on a non-U.S. security. This new standard, referred to as the 20% Test + Daily Trading Volume Standard (''20% Test + Daily Trading Volume Standard'') would permit the Exchange to list an ELN on a non-U.S. security if each of the following three conditions were satisfied: (1) The combined trading worldwide volume of the non-U.S. security in the U.S. market represents (on a share equivalent basis with respect to ADRs) at least 20% of the combined worldwide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for ELN trading; [2] (2) the average trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for ELN trading is at least 100,000 shares per day; [3] and (3) the trading volume for the non-U.S. security in the U.S. is at least 60,000 shares per day for a majority of the trading days for the six months preceding the date of selection of the non-U.S. security for ELN trading.[4]

As with the 50% Test, the Daily Trading Volume Standard will allow the listing of ELNs on non-U.S. securities in the absence of a comprehensive, effective surveillance sharing agreement between the Exchange and the primary exchange on which the non-U.S. security is traded (in the case of an ADR, the home country where the security underlying the ADR is traded). The Exchange believes the Daily Trading Volume Standard is justified because it will enable the Exchange to list ELNs on non-U.S. securities that are widely followed by U.S. investors but that do not meet the 50% Test. Although the Daily Trading Volume Standard reduces from 50% to 20% the percentage of worldwide trading that must occur in the U.S. market, it also requires the non-U.S. security to meet certain trading levels in the U.S. market. The Exchange believes the Daily Trading Volume Standard's requirement of observable, high trading volume should ameliorate regulatory concerns regarding investor protection. In addition, it should be noted that the Daily Trading Volume Standard is the same standard approved by the Commission in determining on which ADRs the Exchange may list options, except that CBOE believes the standard for ELNs is actually stricter because it requires the 20% test to be met over a longer period (six months instead of three).[5]

Finally, the Exchange proposes to amend paragraph (g) to Rule 31.5.I in order to clarify the limitation on the number of ELNs that may be linked to a particular security. Specifically, the issuance of ELNs relating to any underlying non-U.S. security may not exceed 2% of the total shares outstanding worldwide if at least 20% of the worldwide trading volume occurs in the U.S. market during the six-month period preceding the date of listing.[6] The Exchange notes that this change is consistent with the Daily Trading Volume Standard requirement contained in paragraph (h) that requires at least 20% of the combined worldwide trading volume in the non-U.S. security to occur in U.S. markets.[7] This change would also be reflected in Interpretation .04 to the Rule.

Because this new listing standard would enable the Exchange to list ELNs on widely followed non-U.S. securities without comprising investor protection concerns, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] The calculation for the 20% Test + Daily Trading Volume Standard does not include foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 1.

[3] *See* Amendment No. 1.

[4] *Id.*

[5] *See also* note 2, *supra.*

[6] The other size limitations in CBOE's rule remains unchanged. Accordingly, the size of ELN issuances linked to non-U.S. securities will be limited to 3% of the total shares of the underlying security outstanding provided, however, at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market.

[7] As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement are not included in the calculation for purposes of determining the size of eligible ELN issuances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[8] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission finds that the proposal to reduce the trading volume requirement for eligible linked securities will expand the number of securities that can be linked to ELNs while maintaining the requirement that the linked security be an actively traded, highly capitalized common stock or ADR. While the proposal reduces the trading volume criteria for securities with market capitalizations in the $1.5 billion and $500 million tiers to 10 million and 15 million shares, respectively (from 20 and 80 million shares, respectively), the Commission nevertheless believes that, together, the applicable capitalization and new trading volume requirements will continue to help ensure that ELNs are only issued on highly liquid securities of broadly capitalized companies. Accordingly, the Commission believes that these requirements will continue to help reduce the likelihood of any adverse market impact on the securities underlying ELNs.

The Commission notes that the Exchange has deleted the provision that allows it to list ELNs on securities not meeting the market capitalization and trading volume criteria if the Division of Market Regulation of the SEC concurs.[9] The revised criteria will expand the number of securities eligible for ELNs trading. The increased flexibility in the ELNs listing criteria should effectively reduce or eliminate the need for additional discretion in this area, in addition to providing issuers and the Exchange with specific and clear guidance on the applicable listing criteria for a security to be eligible to underlie an ELN.

The Commission also believes that the additional proposed amendments to the listing standards for ELNs on non-U.S. securities will benefit investors by effectively increasing the number of available ELNs-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security ELNs and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with ELNs on non-U.S. securities without compromising the effectiveness of the Exchange's listing standards for such securities.

Currently, the 50% Test allows the Exchange to list ELNs on a non-U.S. security in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market during the six month period preceding the selection of the non-U.S. security for ELN listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities.

The Commission has previously concluded that the 50% Test helps to ensure that the relevant pricing market for non-U.S. securities underlying ELNs occurs in the U.S. market.[10] In such cases, the Commission has previously found that the U.S. market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying non-U.S. security ELN market. Because the U.S. self-regulatory organizations which comprise the U.S. market for non-U.S. securities are members of the Intermarket Surveillance Group,[11] the Commission has concluded that there exists an effective surveillance sharing agreement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the non-U.S. security ELNs or their underlying securities.

The Exchange proposes to modify the 50% Test to include in the U.S. market volume calculation the trading volume in non-U.S. securities and other related non-U.S. securities that occur in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the ELN Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that list the non-U.S. security underlying the Exchange's ELNs in order to adequately investigate any potential abuse or manipulation.

Additionally, the Commission finds that the proposed 20% Test + Daily Trading Volume Standard is consistent with the Act and with the ELN Approval Orders. As noted above, the 20% Test + Daily Trading Volume Standard will allow the Exchange to list ELNs on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for ELNs trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] As noted above, CBOE has replaced this section with a provision stating it would have to file a Section 19(b) rule change if it desires to list an ELN on an underlying security that does not meet these standards.

[10] *See* Securities Exchange Act Release Nos. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR–Amex–93–46); 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (SR–CBOE–94–04); 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR–NASD–94–49); 34985 (November 18, 1994), 59 FR 60860 (November 28, 1994) (SR–NYSE–94–37); and 35479 (March 13, 1995), 60 FR 14993 (March 21, 1995) (SR–Phlx–95–09) (''ELN Approval Orders'').

[11] The Intermarket Surveillance Group (''ISG'') was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: The American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

trading volume in the non-U.S. security and other related non-U.S. securities;[12] (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the 50% Test by limiting the actual listing of ELNs on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the ELN. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the Exchange believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for ELNs issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain an ELNs listing. The Commission believes that it is appropriate to adjust the limitations on the size of the ELNs issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume, the issuance will be limited to 2% of the total outstanding shares of the underlying security. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate ELNs trading. In this regard, the Commission believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

[12] The Commission notes that the 20% Test + Daily Trading Volume Standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of ELNs only on non-U.S. securities that have active and liquid markets in the U.S.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow CBOE to implement these changes to its ELNs Listing Standards without delay. The proposal will provide the Exchange with increased flexibility in the listing of ELNs products on both U.S. and non-U.S. securities without compromising investor protection concerns. In addition, the CBOE proposal is substantially similar to, and is being approved concurrently with, two American Stock Exchange proposals relating to ELNs listing standards, both of which were subject to the full notice and comment period.[13] The Commission notes that no comment letters were received on these Amex proposals. Accordingly, the Commission does not believe the CBOE proposal, as amended, raises any new or unique regulatory issues. For these reasons, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 17, 1996.

[13] *See* Securities Exchange Act Release Nos. 36538 (Nov. 30, 1995) (notice of filing of SR–Amex–95–44) and 36578 (Dec. 13, 1995) (notice of filing of SR–Amex–95–48).

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–95–71) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7396 Filed 3–26–96; 8:45 am]

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[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–36994; International Release No. 953; File No. SR–NASD–96–01]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Criteria for Selected Equity Linked Debt Securities (''SEEDS'')

March 20, 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 4, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. On February 1, 1996, the NASD filed Amendment No. 1 (''Amendment No. 1'') to the proposed rule change to revise the trading volume requirement for securities underlying an issuance of SEEDS and to clarify issues relating to the issuance of SEEDS on non-U.S. companies that trade in the U.S. market as sponsored American Depositary Receipts (''ADRs''), ordinary shares, or otherwise.[1] This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the listing standards for Selected Equity-Linked Debt Securities (''SEEDS'')[2] found in Section 2(f) of Part III to Schedule D to the NASD By-Laws

[1] Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated January 29, 1996.

[2] ''SEEDS'' and ''Selected Equity-Linked Debt Securities'' are service marks of The Nasdaq Stock Market, Inc.

(''Schedule D''). Specifically, the NASD proposes to amend Section 2(f)(3)(A) of Part III to Schedule D to increase the number of securities eligible to underlie or be ''linked'' to SEEDS. The NASD also proposes to amend Schedule D to provide alternative criteria for the listing and trading of SEEDS linked to the performance of non-U.S. companies that trade in the U.S. market as ADRs, ordinary shares, or otherwise.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SEEDS are intermediate-term (*i.e.*, two to seven years), non-convertible hybrid securities, the value of which is based at least in part, on the value of another issuer's common stock, non-convertible preferred stock, or certain sponsored ADRs.[3] SEEDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. SEEDS also may be subject to a ''cap'' on the maximum principal amount to be repaid to holders upon maturity, or, conversely, they may feature a ''floor'' on the minimum principal amount paid to holders upon maturity. A specific issue of SEEDS, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of SEEDS might offer lower semi-annual payments based upon a floating interest rate with a minimum floor for the repayment of principal of 75% of the issuance price. The flexibility available to an issuer of SEEDS permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

There are four components to the NASD's listing standards for SEEDS: (1) Standards applicable to issuers of SEEDS;[4] (2) standards applicable to the SEEDS offerings themselves;[5] (3) standards applicable to the underlying linked security;[6] and (4) limitations on the size of a particular SEEDS offering.[7]

The NASD's instant rule proposal would modify the listing standards applicable to the underlying linked security. First, the NASD proposes to amend the trading volume criteria for securities eligible to be linked to SEEDS found in Section 2(f)(3)(A) of Part III to Schedule D. Currently, in order for a security to be eligible to be linked to a SEEDS, the linked security must, among other things, meet one of the following criteria: (a) Have a market capitalization of at least $3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS; (b) have a market capitalization of at least $1.5 billion and a trading volume in the United States of at least 20 million shares in the one-year period preceding the listing of the SEEDS; or (c) have a market capitalization of at least $500 million and a trading volume in the United States of at least 80 million shares in the one-year period preceding the listing of the SEEDS.

Under the proposal, the trading volume criteria for SEEDS-linked securities would be lowered such that a security could underlie a SEEDS if it: (a) had a market capitalization of at least $3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS; (b) had a market capitalization of at least $1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or (c) had a market capitalization of at least $500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

The NASD believes this proposed trading volume criteria for SEEDS-linked securities will provide qualified issuers greater flexibility to list SEEDS on the Nasdaq National Market. The NASD also notes that its proposal would delete a provision in the SEEDS listing standards that permits the NASD, with the concurrence of the staff of the Division of Market Regulation of the Commission, to list a particular SEEDS issue notwithstanding the fact that the underlying linked security does not meet the market capitalization and trading volume requirements noted above. With the increased flexibility that the proposed trading volume criteria will provide issuers, the NASD believes it no longer will be necessary to retain this provision of the SEEDS listing standards.

Second, the NASD proposes to modify the SEEDS listing standard governing which non-U.S. companies are eligible to be linked to SEEDS. Presently, under Section 2(f)(3)(C) of Part III to Schedule D, SEEDS may be linked to actively traded non-U.S. companies which are traded in the U.S. market as sponsored ADRs, ordinary shares, or otherwise, provided that: (1) the NASD has a comprehensive surveillance sharing agreement in place with the primary foreign exchange on which the non-U.S. security trades; or (2) the trading volume of the non-U.S. security in the U.S. market represents at least 50% of the world-wide trading volume in the non-U.S. security (''50% Test''). Under the proposal, the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test would be modified and a new criteria for the listing of SEEDS on non-U.S. securities would be added. Specifically, the NASD proposes to revise the 50% Test so that trading in non-U.S. securities and other related non-U.S. securities in any market with which the NASD has a comprehensive

[3] *See* Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994).

[4] An issuer of a SEEDS must be an entity that is listed on the Nasdaq National Market or the NYSE, or an affiliate of a company listed on the Nasdaq National Market or the NYSE. Each issuer of a SEEDS must also have a net worth of $150 million. In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Nasdaq National Market or a national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

[5] Each issuance of a SEEDS must have: (1) a minimum public distribution of one million SEEDS; (2) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in $1,000 denominations, there must be a minimum of 100 holders; (3) a minimum market value of $4 million; and (4) a term of two to seven years (although a SEEDS on an ADR cannot have a term longer than three years).

[6] The securities linked to SEEDS must: (1) meet certain market capitalization and trading volume requirements, as discussed below; (2) be a U.S. reporting company under the Securities Exchange Act of 1934 (''Act''); (3) be traded on Nasdaq or a national securities exchange; and (4) be subject to last sale reporting. In addition, as discussed below, SEEDS may also be linked to certain non-U.S. companies.

[7] SEEDS linked to a U.S. security may not exceed five percent of the total shares outstanding of such underlying security, absent approval by the SEC. Depending on the percentage of world-wide trading volume in the U.S. market, a SEEDS linked to a non-U.S. security or sponsored ADR may not exceed two, three, or five percent of the total shares outstanding of the non-U.S. security, as discussed below.

surveillance sharing agreement in place will be added to U.S. market volume for the purpose of determining whether the 50% Test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% Test.

The NASD also proposes to add an alternative set of criteria to Section 2(f)(3)(C) to expand the number of non-U.S. securities upon which Nasdaq may list SEEDS. This new standard will be referred to as the 20% Test + Daily Trading Volume Standard (''20% Test + Daily Trading Volume Standard'') and will permit Nasdaq to list SEEDS on non-U.S. securities if all of the following conditions are satisfied: (1) The combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing;[8] (2) the average daily trading volume for the non-U.S. security in the U.S. market over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

The NASD also proposes to amend Section 2(f)(4) in order to clarify the limitation on the number of SEEDS that may be linked to a particular security. Specifically, the issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed 2% of the total shares outstanding worldwide if at least 20% of the worldwide trading volume occurs in the U.S. market during the six-month period preceding the date of designation.[9] The NASD notes that this change is consistent with the 20% Test + Daily Trading Volume Standard requirement contained in Section 2(f)(3)(C) that requires at least 20% of the combined worldwide trading volume in the non-U.S. security to occur in U.S. markets.[10]

The NASD believes that the alternate criteria for non-U.S. securities is appropriate because it will ensure that non-U.S. securities linked to SEEDS will have a significant amount of U.S. market trading volume and a substantial volume of trading covered by a comprehensive surveillance sharing agreement, which gives the NASD the ability to inquire into potential trading problems or irregularities in a marketplace that serves as a significant price discovery market for the non-U.S. security. Thus, the proposed requirement of observable, high trading volume should ameliorate any regulatory concern regarding investor protection and, at the same time, allow investors to trade SEEDS linked to more non-U.S. securities.

The NASD also believes that the proposal will benefit investors by expanding the number of non-U.S. securities that may be linked to SEEDS, thereby providing investors with enhanced investment flexibility. The NASD believes that it is appropriate to now include additional non-U.S. securities within the existing regulatory framework for SEEDS because of the significant level of U.S. investor interest in non-U.S. companies that are highly capitalized and actively traded.

For the foregoing reasons, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. In sum, the NASD believes the proposal strikes an appropriate balance between the NASD's need to adapt and respond to innovations in the securities markets and the NASD's concomitant need to ensure the protection of investors and the maintenance of fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Section 15A(b)(6).[11] In particular, the Commission believes the proposal is consistent with the Section 15A(b)(6) requirements that the rules of a registered securities association be designed to promote just and equitable principles of trade and not to permit unfair discrimination among issuers.

The Commission finds that the proposal to reduce the trading volume requirement for eligible linked securities will expand the number of securities that can be linked to SEEDS while maintaining the requirement that the linked security be an actively traded, highly capitalized common stock, non-convertible preferred stock or ADR. While the proposal reduces the trading volume criteria for securities with market capitalizations in the $1.5 billion and $500 million tiers to 10 million and 15 million shares, respectively (from 20 and 80 million shares, respectively), the Commission nevertheless believes that, together, the applicable capitalization and new trading volume requirements will continue to help ensure that SEEDS are only issued on highly liquid securities of broadly capitalized companies. Accordingly, the Commission believes that the market capitalization and trading volume requirements will continue to help reduce the likelihood of any adverse market impact on the securities underlying SEEDS.

The Commission notes that the NASD has deleted the provision that allows it to list SEEDS on securities not meeting these criteria if the Division of Market Regulation of the SEC concurs. The revised criteria will expand the number of securities eligible for SEEDS trading. The increased flexibility in the SEEDS listing criteria should effectively reduce

[8] *See* Amendment No. 1. The calculation for the 20% Test + Daily Trading Volume Standard does not include foreign markets with which the NASD has in place a comprehensive surveillance sharing agreement.

[9] The other size limitations in the NASD's rule remains unchanged. Accordingly, the size of SEEDS issuances linked to non-U.S. securities will be limited to 3% of the total shares of the underlying security outstanding provided, however, at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market.

[10] As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the NASD has in place a comprehensive surveillance sharing agreement are not included in the calculation for purposes of determining the size of eligible SEEDS issuances.

[11] 15 U.S.C. 78o–3(b)(6) (1988).

or eliminate the need for additional discretion in this area, in addition to providing issuers and the NASD with specific and clear guidance on the applicable listing criteria for a security to underlie a SEEDS.

The Commission also believes that the additional proposed amendments to the listing standards for SEEDS on non-U.S. securities will benefit investors by effectively increasing the number of available SEEDS-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security SEEDS and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with SEEDS on non-U.S. securities without compromising the effectiveness of the NASD's listing standards for such securities.

Currently, the 50% Test allows the NASD to list SEEDS on a non-U.S. security in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market during the six month period preceding the selection of the non-U.S. security for SEEDS listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities.

The Commission has previously concluded that the 50% Test helps to ensure that the relevant pricing market for non-U.S. securities underlying SEEDS (or other similar equity linked debt securities) occurs in the U.S. market.[12] In such cases, the Commission has previously found that the U.S. market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying non-U.S. security equity-linked market. Because the U.S. self-regulatory organizations which comprise the U.S. market for non-U.S. securities are members of the Intermarket Surveillance Group,[13] the Commission has concluded that there exists an effective surveillance sharing agreement to permit the NASD to adequately investigate any potential manipulations of the non-U.S. security SEEDS or their underlying securities.

The NASD proposes to modify the 50% Test to include in the U.S. market volume calculation the trading volume in non-U.S. securities and other related non-U.S. securities that occurs in any market with which the NASD has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the ELN Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the NASD has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that the list the non-U.S. security underlying the NASD's SEEDS in order to adequately investigate any potential abuse or manipulation.

Additionally, the Commission finds that the proposed 20% Test + Daily Trading Volume Standard is consistent with the Act and with the ELN Approval Orders. As noted above, the 20% Test + Daily Trading Volume Standard will allow the NASD to list SEEDS on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for SEEDS trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities;[14] (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the 50% Test by limiting the actual listing of SEEDS on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the SEEDS. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the NASD believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for SEEDS issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain a SEEDS listing. The Commission believes that it is appropriate to adjust the limitations on the size of the SEEDS issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume, the issuance will be limited to 2% of the total outstanding shares of the underlying security. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate SEEDS trading. In this regard, the Commission believes that these

[12] *See* Securities Exchange Act Release Nos. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR–Amex–93–46); 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (SR–CBOE–94–04); 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR–NASD–94–49); 34985 (November 18, 1994), 59 FR 60860 (November 28, 1994) (SR–NYSE–94–37); and 35479 (March 13, 1995), 60 FR 14993 (March 21, 1995) (SR–Phlx–95–09) (''ELN Approval Orders'').

[13] The Intermarket Surveillance Group (''ISG'') was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the NASD; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information and for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members of 1980.

[14] The U.S. notes that the 20% Test + Daily Trading Volume standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of SEEDS only on non-U.S. securities that have active and liquid markets in the U.S.

restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow the NASD to implement these changes to its SEEDS Listing Standards without delay. The proposal will provide the NASD with increased flexibility in the listing of SEEDS products on both U.S. and non-U.S. securities without compromising investor protection concerns. In addition, the NASD proposal is substantially similar to, and is being approved concurrently with, two American Stock Exchange proposals relating to equity linked notes listing standards, both of which were subject to the full notice and comment period.[15] The Commission notes that no comment letters were received on these Amex proposals. Accordingly, the Commission does not believe the NASD proposal, as amended, raises any new or unique regulatory issues. For these reasons, the Commission believes there is good cause, consistent with Sections 15A(b)(6)[16] and 19(b)(2)[17] of the Act, to approve the proposed rule change and Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number of the caption above and should be submitted by April 17, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–96–01) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7397 Filed 3–26–96; 8:45 am]

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[15] *See* Securities Exchange Act Release Nos. 36538 (Nov. 30, 1995) (notice of filing of SR–Amex–95–44) and 36578 (Dec. 13, 1995) (notice of filing of SR–Amex–95–48).

[16] 15 U.S.C. 78o–3(b)(6) (1988).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 15 U.S.C. 78s(b)(2) (1988)

[19] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–36993; File No. SR–NYSE–95–39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Revised Listing Standards for Equity Linked Derivative Securities (''ELDs'')

March 20, 1996.

On November 29, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the trading volume requirements for linked securities underlying ELDs issuances.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on December 20, 1995.[3] No comments were received on the proposal. This order approves the proposal.

I. Description of the Proposal

ELDs are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.[4] The purpose of the proposed rule change is to amend the trading volume criteria for the linked security, that is, the security on which the value of the ELDs is based. Currently, under Section 703.21 of the Listed Company Manual, in order to list an ELDs product, the linked security must meet one of the following criteria:

Market Capitalization and Annual Trading Volume

$3 billion and 2.5 million shares.
$1.5 billion and 20 million shares.
$500 million and 80 million shares.

The NYSE now proposes to amend Section 703.21 to provide for greater flexibility in the listing criteria for ELDs. The proposed rule change will lower the trading volume requirements criteria for underlying linked stocks meeting the capitalization requirements of $1.5 billion and $500 million. Under the revised criteria, a linked stock with market capitalization of $1.5 billion would now need an annual trading volume of 10 million shares, as opposed to the current trading volume requirement of 20 million shares. Securities with a market capitalization in excess of $500 million also would be eligible for ELDs listing if they have annual trading volume of 15 million shares, as opposed to the 80 million shares under the current rule.[5]

The Exchange believes the new criteria will provide it with greater flexibility to list these types of securities. The rule change will also delete the current provision of the rule that allows the Exchange to list ELDs that do not meet these criteria if the Division of Market Regulation of the SEC concurs. With the increased flexibility that the new numerical listing criteria will supply, it will no longer be necessary to conduct such a case-by-case review of ELDs listing.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair dicrimination between customers, issuers, brokers, and dealers.

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36581 (Dec. 13, 1995).

[4] *See* Securities Exchange Act Release No. 33468 (Jan. 13, 1994). These listing standards were subsequently revised in Securities Exchange Act Release Nos. 33841 (March 31, 1994) and 34985 (Nov. 18, 1995).

[5] Under the rule, as amended by this proposal, ELDs could be listed where the linked security met any of the following criteria:

Market Capitalization and Annual Trading Volume

$3 billion and 2.5 million shares.
$1.5 billion and 10 million shares.
$500 million and 15 million shares.

[6] 15 U.S.C. 78f(b)(5) (1982).

The Commission finds that the proposal to reduce the trading volume requirement for eligible linked securities will expand the number of securities that ELDs can be linked to while maintaining the requirement that the linked security be an actively traded, highly capitalized common stock or ADR. While the proposal reduces the trading volume criteria for securities with market capitalizations in the $1.5 billion and $500 million tiers to 10 million and 15 million shares, respectively (from 20 and 80 million shares, respectively), the Commission nevertheless believes that, together, the applicable capitalization and new trading volume requirements will continue to help ensure that ELDs are only issued on highly liquid securities of broadly capitalized companies. Accordingly, the Commission believes that these requirements will continue to help reduce the likelihood of any adverse market impact on the securities underlying ELDs.

Finally, the Commission notes that the Exchange has deleted the provision that allows it to list ELDs on securities not meeting the market capitalization and trading volume criteria if the Division of Market Regulation of the SEC concurs. The revised criteria will expand the number of securities eligible for ELDs trading. The increased flexibility in the listing criteria should effectively reduce or eliminate the need for additional discretion in this area, in addition to providing issuers and the Exchange with specific and clear guidance on the applicable listing criteria for a security to be eligible to underlie an ELD.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–95–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7343 Filed 3–26–96; 8:45 am]

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[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36988; File No. SR–OCC–95–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Clarifying Rules Regarding the Unavailability of Current Index Values

March 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 24, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–18) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On March 19, 1996, OCC amended the proposed rule change to make a technical correction and to incorporate changes made to its rules in a recently approved proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify the respective rights and responsibilities of OCC and the options exchanges [3] (''exchanges'') in the event that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would ordinarily be determined or in the event that the current index value is unreported or otherwise unavailable for purposes of calculating the exercise settlement amount. The proposed rule change also makes certain technical changes in OCC's by-laws and rules governing index options and Flexibly Structured Index Options Denominated in a Foreign Currency (''FX Index Options'').[4]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (March 19, 1996).

[3] The exchanges include the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange.

[4] For a complete description of FX Index Options, refer to Securities Exchange Act Release No. 35149 (January 3, 1995), 60 FR 158 [File No. SR–OCC–94–08] (order approving proposed rule change).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 15, 1994, technical difficulties delayed the opening of the National Association of Securities Dealers Automated Quote System (''NASDAQ'') until 11:55 a.m., Eastern Time, which was nearly 2½ hours after the time trading normally begins. However, prior to the delayed opening, transactions in NASDAQ listed securities occurred through the telephone and the Instinet on-line trading system. Prices reported in connection with those transactions (''preopening prices'') were transmitted to certain designated reporting authorities, and some or all of those reporting authorities used those prices in calculating values for certain stock index options settling at the opening.

An issue arose that day as to whether the exchanges would be able to provide OCC with settlement values for those index options settling on the opening of the market whose component securities included NASDAQ listed issues. The exchanges were concerned that they would be unable to provide OCC with settlement values prior to OCC's exercise processing cut-off time.[6]

While the NASDAQ incident was resolved without significant impact, the incident prompted OCC to take a closer look at its rules respecting the unavailability of current index values and to consider more fully what steps should be taken in such a situation. OCC determined that certain technical

[5] The Commission has modified the text of the summaries submitted by OCC.

[6] The designated reporting authorities were able to calculate and report the settlement values for the affected series to the exchanges, and the exchanges reported those settlement values to OCC in time for OCC to conduct its normal expiration processing. Although the exchanges reported the settlement values somewhat later than usual, OCC clearing member reports were not delayed, and there were no significant impact on OCC's processing.

changes should be made to its rules to clarify the respective rights and responsibilities of OCC and the exchanges with respect to the reporting of current index values and the determination of settlement values.

OCC is proposing to amend Article XVII, Section 4 of its by-laws, which empowers OCC to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable, to make it clear that OCC has the authority to fix an exercise settlement amount whenever the primary market for securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.,* the value used for exercise settlement purposes) ordinarily would be determined. OCC believes this authority is implicit in the language of the present by-law because in such circumstances the current index value would generally be ''unreported or otherwise unavailable;'' however, the proposed rule change will make OCC's authority explicit.[7]

In addition, the proposed change assigns the responsibility for fixing exercise settlement amounts to a panel consisting of OCC's Chairman and two designated representatives of each exchange on which the affected series is open for trading, one of whom shall be such exchange's representative on OCC's Securities Committee. This procedure to assign the decision-making responsibility to an exchange-controlled panel conforms with the procedures used in making determinations with respect to adjustments made pursuant to Article VI, Section 11.[8] The proposed change authorizes the panel to fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest including, without limitation, fixing the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported.

Identical changes also are being made to Article XXIII, Section 5, which governs the fixing of exercise settlement amounts for FX Index Options. Under these proposed changes, the situation contemplated by the last two sentences of the definition of ''expiration date'' in Article XXIII, Section 1.E.(3) (*i.e.,* where the primary market for underlying securities representing a substantial part of the value of an index is closed on an expiration date) will be explicitly covered by Article XXIII, Section 5; therefore, the last two sentences of Article XXIII, Section 1.E.(3) will be deleted.

The remainder of the proposed changes to the by-laws are technical changes that are being made primarily for the purpose of conforming those by-laws to changes approved in SR–OCC–94–08.[9]

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of transactions in index options and FX Index Options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe 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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–18 and should be submitted by April 17, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7344 Filed 3–26–96; 8:45 am]

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[7] During the NASDAQ event, OCC stood ready to exercise this authority had it become necessary. However, questions arose as to how OCC would have determined the prices to fix exercise settlement amounts. OCC's proposed changes to Article XVII, Section 4 are intended to address those issues.

[8] Section 11 of Article VI sets forth the procedures by which adjustments are made to options.

[9] *Supra* note 2.

[10] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36998; File No. SR–Phlx–95–77]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 Relating to the Rules of the Allocation, Evaluation and Securities Committee

March 21, 1996.

I. Introduction

On December 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to update its By-Laws and rules relating to the Allocation, Evaluation and Securities Committee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36752 (Jan. 22, 1996), 61 FR 2557 (Jan. 26, 1996). No comments were received on the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

On March 11, 1996, the Exchange submitted Amendment Nos. 1 [3] and 2 [4] to the proposed rule change. This order approves the proposed rule change, including Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of Proposal

The Exchange proposes to update the Exchange's by-Laws and 500 Series of rules relating to the Allocation, Evaluation and Securities Committee (''Committee''). Specifically, Rules 500, 501, 505, 506, 508, 511 and 515 are being amended in addition to By-Law Article X, Section 10–7.

Composition of Allocation, Evaluation and Securities Committee

Currently, Phlx By-Laws require the committee to consist of not less than nine members, but do not specify a maximum member requirement. Moreover, Phlx By-Laws require that at least but not more than the minimum number of its members required to constitute a majority of all its members be composed of persons who conduct a public securities business. The balance of the Committee is to be composed of persons who are active on the equity trading floor as specialists or floor brokers and also persons who are active on the options trading floor as specialists, registered options traders or floor brokers.

The Exchange proposes to amend By-Law Article X, Section 10–7 and Phlx Rule 500 to revise the Committee size and structure. The By-Law section would continue to require a minimum of nine members on the Committee, but would be amended so that a quorum will always be five members. The Committee would be composed of members from the core committee and the allocation panel. The core committee members are to serve a three-year term and may not serve for more than two consecutive terms. Members of the allocation panel are to serve for a one-year term. Amended Phlx Rule 500 would specify the compositions of the Committee, core committee, and the allocation panel.

Under new Phlx Rule 500(b), the Committee is to consist of the five member core committee and four members of the allocation panel appointed for each meeting on a rotating alphabetical basis. In situations where none of such nine members have particular knowledge of an issue being discussed, the Chairman of the Committee is required to invite extra members of the allocation panel with the relevant knowledge or expertise. Moreover, any member of the core committee and the allocation panel may attend and vote at any meeting of the Committee. Finally, at every meeting in which specialist privileges are to be allocated, at least one core committee member who conducts a public securities business and one other core committee member must be in attendance and not be recused from voting.

Amended Phlx Rule 500(a) would require that the core committee be composed of three persons who conduct a public securities business, one person who is active on the equity trading floor as a specialist or floor broker and one person who is active on the options trading floor as a specialist, registered options trader, or floor broker. Rule 500(a) would also require that the allocation panel be composed of six persons who conduct a public securities business, five persons who are active on the equity trading floor as a specialist or floor broker, five persons who are active on the options trading floor as a specialist, registered options trader or floor broker, and four persons who are active on the foreign currency options trading floor as a specialist, registered options trader or floor broker. The six members of the allocation panel who conduct a public securities business would be divided equally between options and equity persons.

Specialist Appointment

Currently, under Phlx Rule 501, an application to become a specialist unit must include the unit's plan to respond to extraordinary circumstances such as the temporary or permanent loss of the head or key assistant specialist or the sudden influx of order flow in the assigned issue. The Exchange is proposing to amend this rule to require instead that an application specify the unit's back up arrangements endorsed by the parties providing such support. Moreover, amended Phlx Rule 501(b) would require an application for an individual to act as a specialist to include an account of the abilities and background of the applicant. Finally, amended Phlx Rule 501(d) would require that the specialist unit notify promptly the Exchange staff and the Committee in writing of any change in registration information and any material change in the application for any assigned issue once an applicant is approved by the Committee as a specialist unit.

Allocation, Reallocation and Transfer of Issues

Currently, the equity book or options class may be registered in either the name of the unit, the individual acting as specialist, or jointly in the name of the unit and the specialist (''Registrant''). There is no requirement in the rules that the Registrant be an Exchange member or approved specialist.

The Exchange is proposing to amend Phlx Rule 505 to require specifically that all Registrants be Exchange members and approved specialists. Moreover, the Exchange proposes to require equity books or options classes that are subject to a lease to be registered in the name of the Registrant and the name of the unit performing specialist duties be noted on the registration form.

Allocation Application

Currently, Phlx Rule 506 states that applicants for allocation of securities may make and the Committee may request personal appearances. The Exchange proposes to amend Rule 506 so that the Committee would request personal appearances when there are five or more applicants for an allocation. The amended rule, however, would provide that the failure to appear would not disqualify an applicant.

Currently, under Phlx Rule 508, a specialist does not have to seek Committee approval when it proposes to transfer all of its specialist privileges, but it must do so to transfer less than all of its privileges. The Exchange proposes to amend Rule 508 to require all proposed transfers and leases of specialist privileges be subject to prior Committee approval.

The Exchange also proposes to add Commentary .01 to Rule 508 to impose a 45-day moratorium on trading floor location moves when option specialist privileges are transferred except that the Options Committee may shorten this time period if necessary.

[3] *See* letter from Michele Weisbaum, Associate General Counsel, to Glen Barrentine, Senior Counsel, SEC, dated March 7, 1996. Amendment No. 1 amends Rule 500(a) to require that the six public members of the allocation panel be evenly divided between options and equity persons and adds new Commentary .01 to Rule 500 to require the Committee chairman to appoint extra panelists with relevant expertise if the alphabetically chosen allocation panel members and core committee members do not have such knowledge. Amendment No. 1 also withdraws portions of the filing to be reproposed in a related filing pending with the Commission (SR–Phlx–95–91) and adds a reference to the Foreign Currency Options Committee in paragraph (c) to By-Law Article X, Section 10–7.

[4] *See* letter from Michelle Weisbaum, Associated General Counsel, to Jennifer Choi, Attorney, Division of Market-Regulation, SEC, dated March 8, 1996. Amendment No. 2 submits in this filing an amendment to Phlx Rule 515(b) that was originally submitted in File No. SR–Phlx–95–91. Amended Phlx Rule 515(b) would refer to the new allocation reviews to be conducted within 90 days.

Specialist Performance Evaluation [5]

Under Phlx Rule 511 as proposed to be amended, the Committee, in addition to allocating new equity books and options classes and reallocating existing equity books and options classes, would approve transfers of existing equity books and options classes to applicants based on the results of the evaluations conducted pursuant to Rule 515 and other such factors as the Committee deems appropriate. As a result, Phlx Rule 511 as proposed to be amended would apply the criteria currently set forth in the rule for making allocation and reallocation decisions to transfer decisions. The Exchange is also proposing to include among the factors that the Committee may consider in making such decisions the order flow commitments, any prior transfers of specialist privileges by the applicant and the reasons therefore.

Currently, Rule 511(b) provides that all allocations are to be made initially on a temporary basis for a period up to 60 days within which time the Committee may conduct a special review. The Exchange proposes to increase the temporary allocation period to a period up to 90 days. At present, Phlx Rule 511 also provides for the Committee to conduct two kinds of reviews of specialist units; routine quarterly reviews and transfers and material changes reviews. Rule 511(c), as proposed to be amended, would continue to provide for routine quarterly reviews and proposed Rule 511(d)(2) would continue to provide for a special review in the event of a transfer or material change. In addition, proposed Rule 511(d)(1) would provide for a new special review after a new allocation.

New Phlx Rule 511(d)(2) would require the Committee to commence a specialist review pursuant to Rule 515 within 60 days after a transfer (including a lease) of one or more equity books or options classes has become effective or when there has been a material change in the specialist unit. Moreover, in cases where a transfer has been effected, the Exchange proposes that the Committee would evaluate the performance of the Registrant and if the new unit's performance is below minimum standards, the unit would be given 30 days in which to improve its performance prior to beginning reallocation proceedings.

For new allocations, new Phlx Rule 511(d)(1) would require the Committee to commence special reviews within 90 days after one or more equity books or options classes have been allocated. The new allocations reviews would take into account whether the Registrant is complying with the commitments that it made either orally at an appearance before the Committee or on its written application. If the Committee determines that the Registrant has not complied with any of the commitments that it made when applying for the equity book or options class including, but not limited to commitments regarding capital, personnel, order flow, and PACE, the Registrant would be afforded 30 days in which to comply with such commitments and if it does not do so, the Committee would institute proceedings to determine whether to remove and reallocate one or more securities.

Specialist Evaluations

The Exchange proposes to amend Phlx Rule 515(b) to refer to the new allocation reviews to be conducted within 90 days after the Committee has allocated a security. This amendment is intended to make Rule 515(b) consistent with amended Phlx Rule 511(d)(1).

Foreign Currency Options

Finally, the Exchange proposes various amendments to the rules to include references to foreign currency options and the Foreign Currency Options Committee where appropriate.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Moreover, the Commission finds that the rule change is consistent with Section 11(b) of the Act [7] and Rule 11b–1 thereunder,[8] which allow exchanges to promulgate rules relating to the specialists' obligations to maintain fair and orderly markets.

The Commission fully supports Phlx's effort to evaluate its current allocation policies and address issues that have arisen since the initial adoption of the policies in 1987.[9] For the reasons set forth below, the Commission believes that the amended By-Law and rules relating to the Allocation, Evaluation and Securities Committee should enhance the Exchange's allocation process and protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity in the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities. To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain securities allocation procedures and policies that ensure that securities are allocated in an equitable and fair manner and that all specialists have a fair opportunity for allocations based on established criteria and procedures. To this end, the Commission believes that meaningful and effective allocation policies would improve the allocation system.

The Commission believes that amending the composition of the Committee should provide an opportunity for expertise and objectivity [10] on the Committee, which in turn, should promote suitable matches between specialist units and the securities to be allocated. The Commission believes that the amended quorum requirement would enable the Committee to meet and make decisions

[5] Concurrently, with this proposed rule change, the Exchange has submitted File No. SR–Phlx–95–91, which proposes to revise the options specialist evaluation form and review procedure. *See* Securities Exchange Act Release No. 36776 (Jan. 26, 1996), 61 FR 3748 (Feb. 1, 1996).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78k(b).

[8] 17 CFR 240.11b–1.

[9] The rules initially were approved by the Commission as an eight month pilot program on May 21, 1987. *See* Securities Exchange Act Release No. 24496 (May 21, 1987), 52 FR 20183 (May 29, 1987). On February 23, 1988, the pilot program was extended indefinitely until further action was taken by the Commission. *See* Securities Exchange Act Release No. 25388 (Feb. 23, 1988), 53 FR 6725 (Mar. 2, 1988). The rules were permanently approved on June 26, 1991. *See* Securities Exchange Act Release No. 29369 (June 26, 1991), 56 FR 30604 (July 3, 1991).

[10] The Exchange has represented to the Commission that the Exchange applies Phlx By-Law Article IV, Section 4–8, which provides that ''no person shall participate in the adjudication of any matter in which he is personally interested,'' to the conduct of all standing committee, subcommittee, hearing panel and panel members. In this regard, the Exchange assures the Commission that no member of the Allocation, Evaluation and Securities Committee or any subcommittee or panel thereof may participate in the deliberation and/or voting on any award or reallocation of a book or options class in which such member or his affiliated firm will have an interest in the outcome. *See* letter from William W. Uchimoto, First Vice President and General Counsel, Phlx, to Jennifer S. Choi, Attorney, Division of Market Regulation, SEC, dated March 20, 1996.

as necessary on short notice while still ensuring that various interests are represented at the meetings so that such decisions are made fairly.

With respect to the Committee, core committee and the allocation panel, the Commission believes that the proposed compositions would adequately represent the options and equity floors and the public business perspective of the Exchange as well as ensure that no one group dominates the committees. The Committee is to be composed of the five member core committee and four members of the allocation panel appointed for each meeting on a rotating basis. In situations where the Committee does not represent or adequately represent constituencies that are affected or interested in the issues being discussed at a particular meeting, the Chairman of the Committee would invite extra members of the allocation panel with the relevant knowledge and expertise. Moreover, any member would always have the option of attending and voting at any meeting. Conducting each meeting with a combination of persons with the relevant expertise and those with differing perspectives should contribute to an opportunity for a fair and equitable resolution of issues. Finally, the requirement that at least two core committee members (including one conducting a public securities business) be part of the quorum would ensure a minimum level of experience at every meeting.

The Commission believes that the Exchange's proposal to require the applications for specialist appointments to specify the unit's back up arrangement endorsed by the parties providing such support and the abilities and background of the applicant would help ensure that the Committee evaluates an application with the relevant information. Moreover, the proposal that the specialist unit notify promptly the Exchange staff and the Committee in writing of any change in registration information and any material change in the application for any assigned issue would assist the Exchange in determining whether a particular specialist unit continues to be capable of performing its specialist functions.

The Exchange also proposes to amend Rule 506 so that the Committee would request personal appearances before it when there are five or more applicants for an allocation. The Commission does not believe this requirement would be too onerous on the applicants, especially because the failure to appear would not disqualify an applicant.

The Exchange also proposes to require that all proposed transfers and leases of specialist privileges be subject to prior Committee approval. The Commission believes that this amendment would allow the Exchange to monitor the transfers and leases of specialist privileges more carefully and consider the qualifications of proposed transferees and lessees before the specialist privileges are transferred or leased. This prior review would enable the Exchange to reject those units or specialists that the Exchange believes are not qualified for such responsibilities.

The Exchange also proposes to amend Phlx Rule 511 to require the Committee to approve transfers of existing equity books and options classes to applicants based on the results of the evaluations conducted pursuant to Rule 515 and other factors that the Committee may deem appropriate. The Commission believes that evaluating transfers of securities based on criteria already being used for allocating new securities and reallocating existing securities is appropriate because the concerns in allocating new securities and reallocating existing securities are equally applicable to transfers of existing securities.

With respect to transfer of option specialist privileges, the Exchange proposed a 45-day moratorium on trading floor locations moves although the Options Committee may shorten this time period if necessary. The Commission believes that this alternative is reasonable to give staff and traders in the crowd time to prepare for the move.

The Exchange also proposes to extend the period for which allocations are temporarily made to 90 days. This extension of time would allow the Exchange more time to evaluate whether an allocation was appropriate made.

The Exchange also amends the Transfer and Material Changes Reviews and proposes a new type of ''special review.'' For transfers and material changes, amended Rule 511(d)(2) would require the Committee to commence a specialist review pursuant to Rule 515 within 60 days after a lease as well as a transfer or when there has been a material change in the specialist unit. The Commission believes that this proposal would provide the Exchange with an opportunity to review leases as well as transfers of specialist privileges to promote an efficient allocation program. In situations where a transfer has been effected, the Exchange proposes that the Committee evaluate the performance of the unit, which must improve its performance within 30 days if it falls below minimum standards. The Commission believes that this allowance of time to improve performance is reasonable.

The Exchange also proposes to conduct reviews of new allocations within 90 days after the security has been allocated by the Committee. The Committee would evaluate the unit based on the representation it made either orally at an appearance before the Committee or on its written application. The unit would be given 30 days to comply with the representations it made before the Committee would institute proceedings to determine whether to reallocate the securities. The Commission believes that the proposal would provide the Exchange with a reasonable time period to evaluate the performance of the specialist unit and that it is appropriate to evaluate the unit based on the representations it made either orally or in writing to the Committee.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 assures the Commission that the Committee would have adequate representation and expertise to conduct each meeting efficiently and reach resolutions to issues fairly and withdraws certain amendments that are to be refiled in a related rule filing.[11] Amendment No. 2 also includes in this filing a proposed rule change (originally submitted in File No. SR–Phlx–95–91) that references another rule that is being amended in this filing. These amendments to the proposal strengthen the Phlx's allocation policies. In addition, the Exchange's original proposal was published in the Federal Register for the full statutory period and no comments were received.[12] Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment Nos. 1 and 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. 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

[11] Certain proposals were withdrawn from this filing to be reproposed in a relating filing pending with the Commission (File No. SR–Phlx–95–91) because the substance of the rule proposals is being proposed in the other filing.

[12] *See* Securities Exchange Act Release No. 36752 (Jan. 22, 1996), 61 FR 2557 (Jan. 26, 1996).

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 principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–77 and should be submitted by April 17, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–95–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7392 Filed 3–26–96; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(2).

[14] 17 cFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 01/10–0076]

Central Texas Small Business Investment Corporation; Notice of Surrender of Licensee

Notice is hereby given that Central Texas Small Business Investment Corporation (''Central Texas''), One Canterbury Green, P.O. Box 120013 Stamford, Connecticut 06912–0013 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Central Texas was licensed by the Small Business Administration on March 29, 1962.

Under the authority vested by the Act and Pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on February 20, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Don A. Christenson,

Associate Administrator for Investment.

[FR Doc. 96–7320 Filed 3–26–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Notice of Proposed Change in Magnetic Media Filing Requirements for Form W–2 Wage Reports; Request for Comments

SUMMARY: Notice is hereby given that SSA is currently considering a change to its Technical Instruction Bulletin for Magnetic Media Reporting (TIB–4) under which SSA would no longer accept annual Form W–2 wage reports filed on 8 inch diskettes. Instead, such wage reports would have to be filed by employers or third-party preparers on 5¼ inch or 3½ inch diskettes; on ½ inch magnetic tape; or on 3480 cartridges. Before further consideration is given to this proposal, SSA would like to receive any comments the public may offer on the proposed change.

DATES: Comments must be received on or before April 26, 1996.

ADDRESSES: Comments on this proposal should be mailed or delivered to Norman Goldstein, Senior Financial Executive, Social Security Administration, Room 451 Altmeyer Building, Baltimore, MD 21235; or sent by telefax to (410) 966–8753.

FOR FURTHER INFORMATION CONTACT: Richard Harron, Chief, Earnings Records and Reporting Branch, Office of Program Benefits Policy, Social Security Administration, 3–F–26 Operations Building, Baltimore, MD 21235, telefax (410) 966–9214.

SUPPLEMENTARY INFORMATION: Under section 6011(e) of the Internal Revenue Code and section 301.6011–2 of Internal Revenue Service (IRS) Regulations, employers who file 250 or more Form W–2 (Wage and Tax Statement) returns in a year after 1986 must file them on magnetic media. Employers with fewer returns may file on magnetic media on a voluntary basis.

Pursuant to an agreement with the IRS, SSA receives and processes employers' Form W–2 wage returns for use by both agencies. Each tax year, SSA sets out the requirements for filing magnetic media Form W–2 reports in its TIB–4 publication, which is sent to each employer who filed such reports in the preceding year. Magnetic media reports that do not meet these requirements are returned unprocessed to the submitter.

Most diskette reports filed by employers with SSA are filed on 3½ inch or 5¼ inch diskettes based upon an MS-DOS operating system. About 15% of the diskettes received by SSA are 8 inch diskettes produced by older computer equipment which is more expensive to repair and uses a different operating system. Equipment for the 8 inch diskettes is rapidly becoming obsolete and the number of returns filed in this manner is declining. SSA's continued processing of diskettes based on the two different operating systems requires the maintenance of equipment for both systems and special handling to ''translate'' 8 inch diskette data to a usable form. Moreover, the TIB–4 requirements for all filers are of necessity more complex. The consequence is slower and more costly wage reporting processes, with the additional costs having to be borne, in part, by other employers using more up-to-date equipment.

SSA is also exploring ways to simplify its disk reporting process as well as to receive more Form W–2 wage reports by electronic data transmission over telephone lines. SSA's objective is to achieve a more efficient process for both the Agency and employers. However, such efforts cannot be fully effective so long as SSA maintains requirements based on two operating systems. For these reasons and the readily available alternatives for diskette filers in the computer market, SSA is considering the possibility of eliminating 8 inch diskette from its list of acceptable magnetic media reporting formats.

Dated: March 20, 1996.

Norman Goldstein,

Senior Financial Executive.

[FR Doc. 96–7377 Filed 3–26–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–011]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of agency policy.

SUMMARY: The Coast Guard is announcing a change to its procedures and policies concerning agency actions which do not individually or cumulatively have a significant effect on the human environment under the National Environmental Policy Act

(NEPA). The change concerns the issuance of regatta and marine parade event permits and the promulgation of regulations issued in conjunction with those permits. The change is needed to avoid unnecessary or duplicative environmental analyses.

FOR FURTHER INFORMATION CONTACT: Ms. Kebby Hardy, Environmental Management Division, (202) 267–6034.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant Manual Instruction entitled ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'' (COMDTINST M16475.1 series). On July 29, 1994, the Coast Guard published a notice in the Federal Register (59 FR 38654) announcing the revision of section 2.B.2. of the instruction. Section 2.B.2.e. lists the proposed agency actions that are categorically excluded from the requirement that the actions undergo the analysis that accompanies preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

This notice announces further changes to 2.B.2.e. (35), the categorical exclusion that addresses the approval of regatta and marine parade event permits (''CE 35''), and section 2.B.2.e. (34)(h), the categorical exclusion that addresses the promulgation of regulations (special local regulations, regulated navigation areas, security zones, or safety zones, etc.) issued in conjunction with regatta or marine parade event permits (''CE 34(h)'').

CE 35 and CE 34(h) are revised. These revisions are needed to avoid unnecessary environmental analyses under CE 34 and duplicative analyses under CE 34(h).

Discussion of Changes

(1) Changes to CE 35.

After conducting numerous environmental analyses (including programmatic environmental assessments) of regatta and marine parade events, the Coast Guard has concluded that these events do not normally have a significant impact on the environment if held away from environmentally sensitive areas. These areas may include, but are not limited to, wildlife refuges, wetlands, historic areas, and other, similar areas designated as environmentally sensitive by governmental environmental agencies. The Coast Guard also concluded that some events held in or near these areas, by their nature, do not have a significant impact. For example, it may be acceptable to hold an event in an area designated as environmentally sensitive if the event is rowing, sailing, or swimming event.

The previous CE 35 (i.e., as amended on July 29, 1994) was based on the type of event; the number, type and size of the vessels expected to participate in the event; and the number of spectator vessels expected. Based on additional environmental analyses and documentation prepared for permitting regatta and marine parade events since the previous CE 35 took effect, the Coast Guard concluded that the location of the event, in relation to environmentally sensitive areas, was a more accurate determining factor than the type of event or the size and number of vessels involved. As previously written, CE 35 tended to cause the preparation of unnecessary environmental assessments for larger events that should have been categorically exclude and, in turn, tended to exclude smaller events that, because of their location, might have justified closer environmental scrutiny.

New CE 35(a) establishes a qualitative, environmentally-based threshold to categorically exclude Coast Guard approval of all regatta and marine parade event permits for events held in areas that are not environmentally sensitive. New CE 35(b) establishes a qualitative, environmentally-based threshold to categorically exclude Coast Guard approval of regatta and marine parade event permits for events to be held in environmentally sensitive areas when the proposed marine event is determined to have no significant environmental effects. New CE 35 eliminates the need for additional time and resources to analyze the environmental effects of marine event permits that were found to be environmentally benign.

2. *CE 34(h).*

CE 34(h) is amended to provide that, if the environmental analysis conducted for a regatta or marine parade event permit includes an analysis of the impact of regulations, if any, issued in conjunction with the permit, the regulations themselves do not have to be analyzed again. The previous CE 34(h) was not clear on this point and could be construed to require duplicate analyses.

Relation of New Provisions to the Rest of Section 2.B.2

New CE 34(h) and CE (35) will continue to be applied in conjunction with the requirements of section 2.B.2., including section 2.B.2.b.,which sets forth the limitations on using categorical exclusions, and section 2.B.2.c., which sets forth the documentation requirements. The limitations in section 2.B.2.b. will continue to require either an environmental assessment or impact statement when the event will result in potentially significant impacts resulting from either the participants (e.g., noise or emissions) or the spectators (e.g., air impacts of potential traffic jams or solid waste generation).

For the reasons set out in the preamble, the Cost Guard announces the following amendments to sections 2.B.2.e.(34)(h) and 2.B.2.e.(35) of COMDTINST M16475.1B:

2.B.2.e. Categorical Exclusion List

* * * * *

(34) * * *

(h) Special local regulations issued in conjunction with a regatta or marine parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations. (Checklist and CED not required.)

* * * * *

(35) Approvals of regatta and marine parade event permits for the following events:

(a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area. (Checklist and CED required.)

Dated: March 22, 1996

E.J. Barrett,

RADM, Chief, Systems Directorate.

[FR Doc. 96–7456 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

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 Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on April 11, 1996, at 9:00 a.m. Arrange for oral presentations by April 4, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Trapani, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–7624.

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 Aviation Rulemaking advisory committee to be held on April 11, 1996, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening remarks
- Training
- Working Group status reports
- Production Certification
- Parts
- Delegation
- ICPTF
- ELT
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 4, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on March 21, 1996.

Ava Robinson,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–7427 Filed 3–26–96; 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) Collected at Los Angeles International Airport (LAX), Los Angeles, CA

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 Los Angeles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 26, 1996.

ADDRESSES: Comments on this application may be mailed in triplicate to the following mailing address: Federal Aviation Administration, Airports Division, P.O. Box 92007, WWPC, Los Angeles, CA 90009, or delivered in triplicate to the following street address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerald K. Lee, Deputy Executive Director, Los Angeles Department of Airports, One World Way, Los Angeles, CA 90045.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Los Angeles Department of Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90261, Tel. (310) 725–3621. 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 LAX 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).

On February 28, 1996 the FAA determined that the application to use the revenue from a PFC submitted by the Los Angeles Department of Airports was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 31, 1996.

The following is a brief overview of the application, PFC application number AWP–96–03–C–00–LAX:

Level of the PFC: $3.00.

Actual charge effective date: July 1, 1993.

Actual charge expiration date: December 31, 1995.

Total estimated net PFC revenue collected: $168,000,000.

Total estimated PFC revenue to be used: $52,000,000.

The balance of approximately $116,000,000 in PFC revenue is concurrently proposed for the Ontario Terminal Development Program at Ontario International Airport (ONT) under a separate PFC application.

Brief description of proposed projects:

ONT: Airport Drive-West End; Transmitter/Receiver Relocation; Access Control; Taxiway N Westerly Extension, and LAX: Taxiway K Easterly Extension-Phase II; Remote Aircraft Boarding; Facilities/Boarding Facilities Special Equipment; Interline Baggage Remodel-Tom Bradley International Terminal (TBIT); Approach Lighting System Runway 6R; Southside Taxiways 19, 24, 43 & Extensions 48 & 49; Runway 24R Paved Stopway; High Speed Taxiway 85V; TBIT Improvements including: Flight Information Displays System (FIDS), In-transit Lounge, Baggage System Realignment (Interline), Domestic Carousels, and 2nd Level Structure.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing Form 1800–31, including: American Trans Air Execujet; CFI, Inc.; Chrysler Aviation; Corporate Flight, Inc.; Elliott Aviation; Geneva International; Key Air; KMR Aviation; Louisiana Pacific Corporation; Mayo Aviation, Inc.; Mcathco Enterprises, Inc.; Modesto Executive Air Charter; Morgan Equipment; Raleigh Jet Charter; Samaritan Health Services; Valko, Inc.; Windstar Aviation Corp.; Yecny Enterprises, Inc.

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 Los Angeles Department of Airports, Los Angeles International Airport.

Issued in Los Angeles, California on March 7, 1996.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–7428 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–76; Notice 2]

Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan determined that some of its vehicles fail to comply with the display identification requirements of 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, ''Controls and Displays,'' and filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Ford also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on September 18, 1995, and an opportunity afforded for comment (60 FR 48195). This notice grants the application.

Footnote 3 in Table 2 of Standard No. 101 specifies that ''[i]f the odometer indicates kilometers, then 'KILOMETERS' or ''km'' shall appear, otherwise, no identification is required.'' Ford manufactured approximately 300,000 vehicles (1995 model year Rangers, Explorers, Crown Victorias, and Grand Marquis, certain 1994 and 1995 Mustangs, and certain 1995 Ford-built Mazda B-Series pickup trucks) a relatively few of which do not comply with the display identification requirements of Standard No. 101. Of that total population of 300,000 vehicles, at least 24, but not more than 124 vehicles were manufactured with an odometer that measures distance in units of kilometers but is not labeled as such as Standard No. 101 requires. Ford has already found and corrected 24 of these noncompliant odometers in service; therefore, up to 100 of them could still exist.

Ford supported its application for inconsequential noncompliance with the following:

> In Ford's judgment, this condition is inconsequential as it relates to motor vehicle safety. [Ford's] basis for this belief is that: 1) an owner of an affected vehicle will readily recognize the condition and return the vehicle to a Ford dealer for correction; 2) even if the condition were to go undetected, the role of the odometer in alerting drivers to potential safety-related problems is minimal; and 3) no reports of accidents or injuries related to this condition are known or expected.
>
> Ford believes, as evidenced by those odometers already identified by owners, that this condition becomes obvious to an owner early in the ''life'' of a vehicle because of more rapid mileage accumulation, better than expected fuel economy, etc., and that an owner will seek repair for the condition through a Ford dealer. Ford will continue to remedy the condition of any of the vehicles brought to its attention at no cost to the owners, under normal warranty terms.
>
> With respect to the relationship of the odometer to safety, in past rulemaking (FR Vol 47, No. 216 at 50497) the agency concluded that the role of the odometer in alerting drivers to potential safety-related problems is not crucial. This conclusion was among those leading to the rescission of Federal Motor Vehicle Safety Standard No. 127, Speedometers and Odometers. That standard contemplated that the purpose of the odometer requirement was twofold. First, it was to inform purchasers of used vehicles of the actual mileage of the vehicles they were purchasing to enable them to ascertain the probable condition of the vehicle. Second, it was to provide an owner with information so that he or she could maintain a periodic maintenance schedule. In rescinding Safety Standard No. 127, the agency acknowledged that its reliance on the Tri-Level Study of the Causes of Traffic Accidents by the Indiana University Institute for Research in Public Safety, which led to the odometer requirement, was misplaced. The agency concluded that although the study found that problems with vehicle systems were causal or contributing factors in up to 25 percent of the accidents studied—such as problems with the brake system, tires, lights and signals, for example—all of those causes involved components which must be periodically replaced or serviced regardless of mileage. The agency thereby concluded that deterioration in performance, such as brake pulling, or in appearance, such as tire wear, etc., are readily apparent to the driver and should do more to alert the driver to potential safety-related problems than the distance traveled indication on the odometer.
>
> Ford agrees with the agency's conclusion that the odometer reading is not a crucial factor in alerting drivers to potential safety-related vehicle problems, and, therefore, it submits that the absence of the ''km'' designation is not crucial in this regard. We believe the vehicles that are the subject of this petition present no direct or indirect risk to motor vehicle safety. Furthermore, in the case of the vehicles in question, even if the odometer indication were a crucial indicator or required periodic maintenance, the odometer reading, if relied on for this purpose, would cause a driver to seek maintenance sooner than required because the indicated mileage would be approximately 1.6 times greater than the distance actually traveled.
>
> Therefore, while the absence of the ''km'' designation is technically a noncompliance, and the odometer of the affected vehicles registers distance traveled in kilometers while the speedometer registers in miles per hour, we believe, for the reasons cited above, the condition presents no risk to motor vehicle safety.

No comments were received on the application.

An accurate recording of mileage on a vehicle is relevant to complying with the manufacturer's recommended maintenance schedule. When the schedule is expressed in miles and the odometer records in kilometers, a vehicle owner who is not cognizant of the noncompliance will be alerted to the apparent time for maintenance before it is, in fact, needed under the maintenance schedule. This cannot be termed a negative impact upon safety. NHTSA agrees with the applicant that ''the condition presents no risk to motor vehicle safety''.

Ford believes that an owner of a noncompliant vehicle will readily recognize the seemingly excessive accumulation of mileage and ''seek service through their Ford dealers.'' This service most probably is replacement of the metric odometer with one that registers miles. NHTSA urges Ford to ask its dealers to provide the vehicle owner, at the time of odometer replacement, with a statement noting the distance accumulated prior to replacement so that the owner will be able to provide an accurate mileage statement at the time the vehicle is transferred to its next owner, as required by 49 CFR Part 580, *Odometer Disclosure Requirements.*

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, Ford Motor Company is hereby exempted from providing notification of the noncompliance pursuant to Sec. 30118, and from remedying the noncompliance pursuant to Sec. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: March 22, 1996.

Barry Felrice,

Associate Administrator, for Safety Performance Standards

[FR Doc. 96–7425 Filed 3–26–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Surface Transportation Board has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Victoria Rutson or Ms. Judith Groves, Surface Transportation Board, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6211 or (202) 927–6246. Comments on the following assessment are due 15 days after the date of availability:

AB No. 459 (Sub-No. 1X), Central Railroad Company of Indiana, Abandonment Exemption in Dearborn County, Indiana. EA available 3/15/96.

AB No. 406 (Sub-No. 5X), Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Clark and Comanche Counties, Kansas. EA available 3/15/96.

AB No. 406 (Sub-No. 6X), Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Marion and McPherson Counties, Kansas. EA available 3/15/96.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7417 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

Release of Waybill Data

The Commission has received a request from McKinsey & Company for permission to use certain data from the Board's 1994 Carload Waybill Sample. A copy of the request (WB495—3/15/96) may be obtained from the Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Board's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7416 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32825] [1]

Dakota, Missouri Valley and Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 11343–45 the lease and operation by Dakota, Missouri Valley and Western Railroad, Inc., of approximately 48.68 miles of rail line owned by the Soo Line Railroad Company between milepost 516.02 at Washburn, ND, and milepost 467.61 and milepost 467.06 on the legs of the wye at Max, ND. The exemption is subject to standard employee protective conditions.

DATES: This exemption is effective on April 16, 1996. Petitions to stay must be filed April 8, 1996. Petitions to reopen must be filed by April 11, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32825 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Thomas J. Litwiler, Oppenheimer, Wolff & Donnelly, 1020 Nineteenth Street, N.W. Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News and Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: March 20, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7418 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[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 the 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. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute.

[STB Finance Docket No. 32870] [1,2]

David L. Durbano—Continuance in Control Exemption—Cimarron Valley Railroad, L.C.

David L. Durbano (Applicant), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of Cimarron Valley Railroad, L.C. (CVR), upon CVR's becoming a Class III rail carrier. Consummation was expected to occur on or shortly after February 23, 1996.

CVR, a noncarrier, has concurrently filed a verified notice of exemption under 49 CFR 1150.31 in *Cimarron Valley Railroad, L.C.—Exemption to Acquire and Operate—Cimarron Valley and Manter Branches of The Atchison, Topeka and Santa Fe Railway Company,* STB Finance Docket No. 32869, in which CVR seeks to acquire and operate 151.04 miles of the Cimarron Valley Branch rail line and 103.83 miles of the Manter Branch rail line both of which are owned by The Atchison, Topeka and Santa Fe Railroad Company. CVR's acquisition of the rail lines was expected to have been

[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 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] A notice in this proceeding was previously served by the Board and published in the Federal Register on March 4, 1996. A corrected notice is being issued because the earlier notice imposed labor protective conditions that the Board may no longer impose under the Act for transactions such as this one that are the subject of notices of exemption filed after the January 1, 1996 effective date of the Act.

consummated on or shortly after February 23, 1996.

Applicant controls four other Class III rail carriers: Wyoming and Colorado Railroad Company, Inc. (WYCO); Oregon Eastern Railroad Company, Inc. (OER); Arizona Central Railroad, Inc. (AZCR); and Southwestern Railroad Company, Inc. (SWR).

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 [formerly section 11343] because Applicant states that: (1) CVR, WYCO, OER, AZCR, and SWR will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a Class I carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32870, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Walter T. Merrill, Durbano & Associates, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 27, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7422 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32863] [1,2]

Genesee & Wyoming, Inc.—Continuance in Control Exemption—Illinois & Midland Railroad, Inc.

Genesee & Wyoming, Inc. (GWI), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of Illinois & Midland Railroad, Inc. (IMR), upon IMR's becoming a Class III rail carrier. IMR, a noncarrier, has concurrently filed a notice of exemption in *Illinois & Midland Railroad, Inc.—Acquisition and Operation Exemption—Chicago & Illinois Midland Railway Company,* STB Finance Docket No. 32862, in which IMR seeks to acquire and operate 98 miles of rail lines of Chicago & Illinois Midland Railway Company (CIMR), in the State of Illinois. IMR also seeks to acquire the interest of CIMR in 25.4 miles of overhead trackage rights in the State of Illinois. The transaction was to have been consummated on or about February 8, 1996.

GWI also controls through stock ownership 9 other nonconnecting Class III rail carriers: Genesee & Wyoming Railroad Company; Dansville and Mount Morris Railroad Company; Rochester & Southern Railroad, Inc.; Louisiana & Delta Railroad, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Bradford Industrial Rail, Inc.; Allegheny & Eastern Railroad, Inc.; Willamette & Pacific Railroad, Inc.; and GWI Switching Services.[3]

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 [formerly section 11343] because: (1) the railroads will not connect with each other or with any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32863, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Ave., N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.O. Box 796, 213 West Miner St., West Chester, PA 19381–0796.

Decided: February 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7421 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[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 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] A notice in this proceeding was previously served by the Board and published in the Federal Register on March 1, 1996. A corrected notice is being issued because the earlier notice imposed labor protective conditions that the Board may no longer impose under the Act for transactions such as this one that are the subject of notices of exemption filed after the January 1, 1996 effective date of the Act.

[3] Also, GWI has in *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Portland & Western Railroad,* Finance Docket No. 32759, a pending petition for exemption to continue in control of a connecting Class III railroad.

[STB Finance Docket No. 32876 (Sub-No. 1)] [1]

Notre Capital Ventures II, LLC, and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Filing of Petition for Exemption.

[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 and transferred certain functions to the Surface Transportation Board (Board). This notice relates to an exemption of a motor passenger carrier acquisition of control transaction that is subject to Board jurisdiction under 49 U.S.C. 13541 and 14303.

SUMMARY: Notre Capital Ventures II, LLC, and Coach USA, Inc., both noncarriers, seek an exemption, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(4), to acquire control of 10 motor common carriers of passengers. Petitioners request expedition, asking that the exemption become effective no later than May 3, 1996.

DATES: Comments must be filed by April 11, 1996. Petitioners may file a reply by April 16, 1996.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 32876 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, send one copy of comments to petitioners' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., NW., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Petitioners, Notre Capital Ventures II, LLC, and Coach USA, Inc., seek an exemption to acquire, through stock purchase, control over 10 motor carriers of passengers: Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc. (Coach); Community Transit Lines, Inc. (Community Transit); Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp. (Management); Suburban Trails, Inc. (Trails); and Suburban Transit Corp (Suburban Transit).

Petitioners also request that the exemption extend to the possible common control of Orange, Newark, Elizabeth Bus, Inc. (ONE Bus). ONE Bus is not part of the proposed transaction but is owned in part by persons who now control Coach and Community Transit, and who will own a small percentage of the new, consolidated entity after the transaction is consummated.

Petitioners request that this exemption become effective no later than May 3, 1996, to allow them to synchronize the exemption with a Securities and Exchange Commission registration statement that is intended to authorize an initial public offering (IPO) of $45 million in stock to be issued in connection with the proposed transaction and future transactions of this nature. Petitioners state that a delay could increase their costs, make it impossible to complete the IPO as projected, and otherwise jeopardize their entire plan.

Petitioners state that the 10 carriers they seek to control are relatively small and operate in diverse markets across the country. The 10 carriers generally have no connection or control relationship with one another, except that Coach and Community Transit are under common control, and H.A.M.L., Management, Trails, and Suburban Transit are under common control. Petitioners state that the only significant competition among the 10 carriers is in the limited area of charter and special operations.

Aside from charter and special operations, petitioners state that the 10 carriers operate regionally with a relatively small market share. While acknowledging that there are some overlapping routes, petitioners note that the 10 carriers do not compete with each other to any significant degree. Although several of them operate commuter bus services between New York City and points in New Jersey, their routes (with the exception of those operated by carriers already under common control) extend in different directions and serve different termini.

Petitioners assert that, in each of their respective markets, the 10 carriers confront significant competitive pressure from other bus lines and other transportation modes, including commercial airlines, Amtrak, commuter rail services, and the private automobile. Further, petitioners state that the 10 bus companies, whether considered as individual entities or as consolidated into what would be the nation's second largest group of passenger carriers, cannot compare, much less compete on any substantial basis, with Greyhound Lines, Inc., the only bus company providing nationwide, regular-route bus service.

Following the acquisition of control, the 10 carriers allegedly will continue to operate in their respective markets, each in its own name and in the same basic manner as before. Petitioners claim that the 10 carriers will benefit from centralized management, coordination of functions, financial support, and economies of scale and that improved services at lower costs will result.

Petitioners assert that prior review and approval of the transaction under 49 U.S.C. 14303 are not necessary to carry out the transportation policy of 49 U.S.C. 13101, that regulation is not needed to protect shippers from the abuse of market power, that the transaction is of limited scope, and that exempting the transaction from regulation is in the public interest.

Additional information may be obtained from petitioners' representatives.

Decided: March 21, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7423 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–453 (Sub-No. 1X)] [1]

Georgia & Florida Railroad Co., Inc.—Abandonment Exemption—in Mitchell and Colquitt Counties, GA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10505, exempts Georgia & Florida Railroad Co., Inc. from the prior approval requirements of 49 U.S.C. 10903–04 to abandon service over 5.45 miles of rail line in Mitchell and Colquitt Counties, GA, subject to standard labor protective conditions. Specifically, the line runs 1.6 miles between mileposts 93.0 and 94.6 near Camilla, in Mitchell County, GA, and 3.85 miles between mileposts 23.25 and 27.1 near Moultrie, in Colquitt County, GA.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on April 26, 1996. Formal expressions of intent to file financial assistance offers [2] under 49 CFR 1152.27(c)(2), requests for a notice of interim trail use/rail banking and petitions to stay must be filed by April 8, 1996. Requests for a public use condition and petitions to reopen must be filed by April 16, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–453 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: Jo A.

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[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 section 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.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

DeRoche, Weiner, Brodsky, Sidman & Kider, 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 14, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7420 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–57 (Sub-No. 36X)] [1]

Soo Line Railroad Company—Abandonment Exemption—in Stearns and Morrison Counties, MN

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Soo Line Railroad Company (Soo) of the remaining 60.22 miles of its Brooten Line between milepost 104.00 near Brooten and milepost 164.22 near Genola (end of line), in Stearns and Morrison Counties, MN, subject to standard labor protective conditions, environmental conditions, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 26, 1996. Formal expressions of intent to file an offer [2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 8, 1996; petitions to stay must be filed by April 11, 1996; requests for a public use condition must be filed by April 16, 1996; and petitions to reopen must be filed by April 22, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 36X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Larry D. Starns, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: March 13, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7419 Filed 3–26–96; 8:45 am]

BILLING CODE 4915–00–P

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Office of Small and Disadvantaged Business Utilization, Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Office of Small and Disadvantaged Business Utilization invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before May 28, 1996.

ADDRESSES: Direct all written comments to Gladys Lane, Office of Small and Disadvantaged Business Utilization (00SB), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the request for Office of Management and Budget (OMB) approval. This document solicits comments concerning the following information collection:

OMB Control Number: 2900–0444.

Title and Form Number: VAAR Subpart 819.70, Veteran-Owned and Operated Small Business, (Exceptions to SF 18 and SF 129).

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Need and Uses: The information will be used by VA to identify veteran-owned business to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for goods and services. Without this information there would be no way to properly monitor this program.

Current Actions: Public Law 93–237, amended the Small Business Act by directing the U.S. Small Business Administration (SBA) to give ''special consideration'' to veterans of the U.S. Armed Forces in all SBA programs. In September 1983, VA adopted the ''special consideration'' philosophy and directed all VA contracting activities to take affirmative action to solicit and assist Vietnam Era and disabled veteran-owned small businesses to participate in VA acquisition process. This established VA Vietnam Era and Disabled Veteran-Owned Small Business Outreach Program. In October 1983, VA received OMB approval to modify SF 18, Request for Quotations, and SF 129, Solicitation Mailing List Application, to include Vietnam Era and disabled veteran-owned information. On April 5, 1990, the Secretary approved an initiative to expand the Vietnam Era and disabled veteran-owned small business program to include all veteran-owned small

businesses. Title 38 U.S.C. vests the Secretary with broad authority and responsibility to assist veterans. Therefore, we requested that approval be granted to include veteran-owned business in addition to Vietnam Era and disabled veteran-owned businesses information on SF 18 and SF 129. The information requested will be a self certification that a firm is veteran-owned. It allows VA to ensure that eligible veteran-owned firms are given an opportunity to participate in VA acquisitions and to monitor our success in implementing these regulatory provisions. The information requested on the SF 18 and SF 129 will be solicited from the respondents on a voluntary basis.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 14,181 hours.

Estimated Average Burden Per Respondent: Additional burden imposed on SF 18 and SF 129 is 15 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,403,500.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: March 14, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–7324 Filed 3–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before May 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0101.

Title and Form Number: Eligibility Verification Reports.

a. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

b. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

d. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

f. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

j. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

Type of Review: Extension of a currently approved collection.

Need and Uses: These reports are used by VA regional offices to verify continued eligibility for pension and parents' Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These reports are also used for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or parents' DIC. It would be impossible to administer the pension and parents' DIC programs without the collection of information.

Current Actions: Until recently, VA was required by 38 U.S.C. 1315(e) and 38 U.S.C. 1506(2) to secure a completed Eligibility Verification Report (EVR) at least once a year from every pension beneficiary and every parents' DIC beneficiary under the age of 72, showing the beneficiary's income and dependency status and verifying other entitlement factors. Public Law 103–271, the Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994, amended 38 U.S.C. 1315 and 1506 to give the Secretary of veterans Affairs discretionary authority to require submission of income and resource reports by recipients of income-based benefits. VA amended 38 CFR 3.256 and 38 CPR 3.277 to require submission of an EVR in three instances. First, VA will require submission of an EVR by any beneficiary whose Social Security number, or whose spouse's Social Security number, has not been verified by the Social Security Administration. VA will also require beneficiaries who receive income other than Social Security to submit an EVR. Further, VA will require completion of an EVR if it determines that submission of an EVR is necessary to preserve program integrity.

Affected Public: Individuals or households.

Estimated Annual Burden: 406,250 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 325,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: March 13, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–7328 Filed 3–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection; Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None Assigned.

Title and Form Number: Study of Environmental Health and Persian Gulf War Syndrome, VA Form 10–20989(NR).

Type of Review: Existing collection in use without an OMB control number.

Need and Uses: This information collection will be a case controlled study to describe and elucidate the causes of Gulf War Syndrome. Participants will be 2,000 veterans of the Persian Gulf War who currently reside in Oregon and Washington.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,833 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 2,000.

ADDRESSES: A copy of the submission may be obtained from Ann Bickoff, Veterans Benefits Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–7407.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the collection of information should be directed to the OMB Desk Officer on or before April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: March 14, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–7325 Filed 3–26–96; 8:45 am]

BILLING CODE 8320–01–P

VA Residency Realignment Review Committee; Notice of Meeting

As required by the Federal Advisory Committee Act, Public Law 92–463, the VA hereby gives notice that the Residency Realignment Review Committee has scheduled a meeting on April 8th and 9th, 1996. The meeting on the 8th will start at 10:00 a.m. and end at 5:00 p.m., and the meeting on the 9th will start at 8:30 and end at 12 noon. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Ave., NW., Washington, DC. The purpose of the committee is to review the present scope and structure of Veterans Health Administration's Residency Program to ensure that the program is effective in the future health care setting.

The first day will be to discuss the principles identified in the March meeting which form the basis for the Committee's recommendations, proposals for restructuring the Residency Program to meet both VHA's and the nation's future graduate medical education needs, and how changes could be accomplished within the new headquarters and field structure of VHA. The second day will be to finalize the principles, recommendations, and to prepare the report to the Under Secretary for Health.

The meeting will be open to the public. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Betty, Department of Veterans Affairs at 202–565–7954 or 7955.

The Designated Federal Official for the Committee is Jan Lamoreaux, Office of Policy, Planning, and Performance; phone number: 202–565–7961.

Dated: March 13, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–7327 Filed 3–26–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
March 27, 1996

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Funding Availability (NOFA) for Indian Applicants under the HOME Program, Fiscal Year 1996; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3999–N–01]

Notice of Funding Availability (NOFA) for Fiscal Year 1996 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal year 1996 for Indian applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program.

SUMMARY: This NOFA announces the availability of up to $14,000,000 in funding for Fiscal Year (FY) 1996 for the HOME Program for Indian tribes; provides the selection criteria; provides information on how to apply; and explains how selections will be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA. NOTE: The Congress has not yet enacted a FY 1996 appropriation for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds available for this program is based on the level of funding available for FY 1995. HUD is not bound by the estimate set forth in this notice.

DATES: Application Due Date: May 28, 1996. Applications must be RECEIVED by the Area Office of Native American Programs (Area ONAP) having jurisdiction over the applicant on or before 3:00 p.m. (Area ONAP local time) on May 28, 1996. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile (''FAX'') copies shall not be accepted.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Area ONAP. Refer to Appendix 1 of this NOFA for a complete list of Area ONAPs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget and approved under OMB control number 2577–0191.

Changes from Last Year's NOFA

1. *COMPETITIVE AREA.* This year HOME funds will be allocated to each Area ONAP pursuant to the formula in the Program Regulation (24 CFR 92.601). Applicants in each Area ONAP jurisdiction will only compete with each other for the HOME funds allocated to the Area ONAP.

The applicant need submit only the original and 1 copy of the application to its Area ONAP.

2. *MULTIPLE PROJECTS.* An applicant may apply for grant assistance for more than one project. If so, each project is limited to no more than one category (i.e., acquisition, rehabilitation, new construction) and stands on its own. The total grant amount requested by the applicant may not exceed the maximum allowed. Each project will be rated independently and ranked independently. For each project grant request, where appropriate and to assure maximum point award, applicants must provide individual responses to application information requirements.

3. *LIMIT ON GRANTS THAT ARE NOT CLOSED OUT.* An applicant may not have more than two HOME grants at a time. An application from an applicant with more than two HOME grants that are not closed out will be set aside and not rated.

4. *LEVERAGE DEFINITION.* This year the NOFA clarifies some elements of scoring for different kinds of financial assistance in order to receive leverage points. To be considered for leverage points, the financial assistance proposed by the applicant must come in, i.e., be in the possession of or legally obligated to the applicant, within 90 calendar days after award notification.

HUD is, again this year, requesting that the data and explanation provided by the applicant to address the selection criteria be limited to 200 words per component.

I. Purpose and Substantive Description

(a) Authority

The HOME Investment Partnerships Act (the HOME Act) (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart A and subpart M (§§ 92.600–92.652), apply specifically to the Indian HOME program.

The HOME Act was amended by the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) and the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102–233, approved April 11, 1994).

Note: The Congress has not yet enacted a FY 1996 appropriation for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds available for this program is based on the level of funding available for FY 1995. HUD is not bound by the estimate set forth in this notice.

(b) Allocation Amounts

(1) *Fiscal Year 1996 Funding.* In accordance with section 217(a)(2) of the HOME Act, each Fiscal Year (FY) HUD shall provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. For the fiscal year ending September 30, 1995, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1995 (approved September 28, 1994, Pub. L. 103–327), appropriated a total of $1.4 billion for the HOME program. Together with $42,000 available from the 1994 Appropriations Act, the amount of funding available for the HOME Indian program for Fiscal Year 1995 was up to $14,042,000.

HOME funds will be allocated to the Area ONAPs as follows:

1. Eastern/Woodlands ONAP	$1,086,250
2. Southern Plains ONAP	2,626,250
3. Northern Plains ONAP	2,208,750
4. Southwest ONAP	6,096,250
5. Northwest ONAP	818,750
6. Alaska ONAP	1,163,750
Total	$14,000,000

(2) *Project Grant Amount.* The maximum grant amount per applicant is $1.5 million. Grants may be funded at less than applied for levels. In determining appropriate grant amounts to be awarded, the Area ONAP may take into account the level of demand, the scale of the activity proposed relative to need, the number of persons to be served, and the amount of funds required to achieve project objectives.

(3) If the Department does not award the entire $14,000,000 in this funding round because there is not a sufficient number of eligible applications, the amount not awarded shall be awarded at another time.

(4) If an insufficient number of fundable applications is received in any one Area ONAP, any surplus funds may be assigned to other Area ONAPs which have unfunded fundable applications.

(c) Eligibility

(1) *Eligible Applicants.* (i) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(ii) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds under this NOFA on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that Act when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(iii) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(iv) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (i) of this section, or as a Tribal organization, as provided in paragraph (ii) of this section, by the application submission date.

(v) Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively.

(2) *Eligible Projects.*

(i) *Size and Location of a Project.* A ''project'' may be located on one or more sites. The applicant must identify the scale and location of a project and show that the project is within the operating area of the applicant. A project may be as small as one site or as large as the operating area of the tribe. (NOTE: For purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the term ''project'' means one or more activities paid for in whole or in part with HUD financial assistance. Two or more activities that are integrally related, each essential to the other, are considered one project.)

(ii) *Categories of Eligible Projects.* In accordance with 24 CFR 92.604, projects that may be funded under the HOME Indian program include: (A) housing rehabilitation (moderate and substantial), (B) acquisition of housing, and (C) new housing construction. These project types may also include site improvements and relocation. A project may be for rental or homeownership.

(A) A rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation.

(B) An acquisition project consists of the acquisition of standard units not requiring rehabilitation.

(C) A new construction project consists of new construction of housing and may include acquisition and demolition.

(3) *Eligible Activities.* Eligible activities, in accordance with 24 CFR 92.611, are as follows:

(i) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

(ii) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(iii) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

(iv) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part.

(v) Site improvements must be in keeping with improvements of surrounding, standard projects. Site improvements include roads, streets, sidewalks, curbs, gutters, and connections to utilities, such as storm and sanitary sewers, water supply, gas, and electricity. The ''site'' of the improvements may include property adjacent or near the immediate site of the housing if this property and the housing are owned by the same entity (e.g., the housing is owned—at least until sold to homebuyers—by the tribe and the housing and the improvements are located on a reservation). If the site improvements will benefit housing (existing or future) in addition to housing assisted with FY 1995 HOME Indian Program grant funds, only a pro-rated share of the site improvements may be charged to the HOME grant.

(d) Selection Criteria and Rating Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 92.604, as more fully explained in sections I.(e)(1), (2), and (3) of this NOFA, below. See Figure 1. For an application to be considered for rating, ranking, and funding, all eligibility requirements must be addressed. *After rating, the project must receive at least 50 points to be considered for funding.* The complete rating and ranking process is described in detail at section I.(e)(5).

All the potential points which can be earned are summarized as follows:

Need and Design	30
Need	(15)
Need/Quantity/Documentation	4
Need/Quantity/Demographics	3
Responsiveness	3
Benefits	5
Project Feasibility	(15)
Planning and Implementation	40
Financial	(15)
Property/Cost/Ability to Pay	6
Cashflow thru Completion	3
Feasibility thru Affordability Period	3
Cost Effectiveness Test	3
Legal and Administrative	(10)
Staffing Plan during Implementation	(15)

Leveraging 30

HUD urges each applicant to screen its application using the Checklist of Eligibility Requirements and Application Submission Requirements to ensure that the application meets each requirement.

In responding to each of the components which address the selection criteria, HUD requests that each applicant:

—Use separate tabs for each selection criterion and sub-criterion. In order to be rated, make sure the response is beneath the appropriate heading.
—Keep its responses in the same order as the NOFA.
—Provide the necessary data and the explanation, not exceeding 200 words, that supports the response. Include all relevant material to a response under the same tab. Do not assume the reviewer will search for the answer or information to support the answer elsewhere in the application.
—Do a preliminary rating for its own project, providing a score according to the scoring guide. This will help to show the applicant how its project might be scored by the reviewers. It will also help to show the applicant whether the application meets the eligibility requirements and the minimum point score requirement (50 points), and where the strengths and weaknesses of the application are located. Then, the applicant can strengthen the weaker parts of the application and retain the stronger parts.

The HOME program is for low-income and very low-income persons. In the application, applicants must provide information on the median income for the community in which the proposed project is located. The low-income and very low-income levels for each applicant community are available from the Area ONAPs.

FIGURE 1.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and Design	30
Planning and Implementation	40
Leveraging	30

(1) NEED AND DESIGN—30 points maximum.

The first of the three criteria provided in 24 CFR 92.604 addresses the degree to which the application: (1) identifies the housing needs of the tribe, (2) describes the demographic characteristics of needy very low and low-income families, (3) describes the characteristics of the homes to be provided, (4) is from an applicant with a high ratio of unmet need to total need, and (5) proposes homes which meet the requirements of the needy. This first criterion is divided into two parts that will be examined and evaluated separately. These parts are: (i) Need and (ii) Project Feasibility.

(i) Need—15 points maximum. The degree to which the proposed project addresses the housing need(s) of the tribe as identified in the documentation for the project. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc. Waiting lists from the IHA must identify whether the list is for rental housing or ownership housing, e.g., mutual help. An IHA waiting list for ownership housing is especially important if the proposed project contemplates the sale of units, e.g., new construction.

(A) Housing Need Expressed in Terms of Quantity (4 points maximum). The tribe shall express its housing needs within its reservation, service area, or area of operation by:

—The number of affordable units, as documented by the applicant;
—The size (number of bedrooms) of the needy households as documented by the applicant;
—The type of assistance needed, e.g., rehabilitation vs. new construction, as documented by the applicant; and
—The tenure type of the housing needed, i.e., homeownership or rental, as documented by the applicant.

Documentation that contains a recent formal survey prepared by a tribe, a State, the Federal Government or a commission authorized by a tribe, a State, or the Federal Government, or a recent formal survey authorized by a tribe, State, the Federal Government or a tribe authorized commission and actually performed by a third party, such as a consultant or university, shall receive four points. Documentation supporting housing need other than a formal survey shall receive 0 or 2 points depending upon the quality of the documentation presented. See Table 1.

TABLE 1.—SCORING GUIDE

Quantity of Housing Need—Quality of Documentation—		
Good	Fair	Unsatisfactory
4 points	2 points	0 points.

(B) Demographic Information Regarding Indian Households in Need of Affordable Housing (3 points maximum). The demographic characteristics of low-income and very low-income Indian households that are in need of the housing identified in (A), above, shall quantify the number of Indian households and number of family members in the household, their age, and gender, as well as the number of households for which an accessible unit is needed. An application which contains this data shall receive 3 points. A current IHA waiting list may be used to supply this data. Waiting lists must identify whether the list is for rental housing or ownership housing, i.e., mutual help. A waiting list for ownership housing is especially important if the proposed project contemplates the sale of units, e.g., new construction.

Partial supporting documentation shall receive 2 points. If the documentation is unclear or missing entirely, 0 points. See Table 2.

TABLE 2.—SCORING GUIDE

Quantity of housing need—Demographic characteristics—		
Complete or with correct IHA list	Partial documentation	Unclear or missing
3 points	2 points	0 points

(C) Proposed Supply by Quantity, Size, Tenure, and Type (3 points maximum). Documentation in the application must identify the housing to be supplied by the proposed project. Supply must be described by the following characteristics:

—The number of affordable units to be provided;
—The size (number of bedrooms) of the units to be provided;
—The type of assistance to be provided, e.g., rehabilitation vs. new construction; and
—The tenure type of the housing to be provided, i.e., homeownership or rental.

An application that provides this information shall receive 3 points. An application that does not respond to all these requirements shall receive 2 or 0 points depending upon its

responsiveness to this factor. See Table 3.

TABLE 3.—SCORING GUIDE

Responsiverness to Housing Supply Factors		
Very responsive	Fairly responsive	Not responsive
3 points	2 points	0 points

(D) Benefits to Very Low-Income and Low-Income Families of the Tribe (5 points maximum). Under this factor, the applicant with the larger ratio of unmet low-income and very low-income need for affordable housing receives more points. The ratio consists of a numerator, which is the number of very low-income and low-income families of the tribe in need of affordable housing divided by a denominator, which is the total number of very low-income and low-income families of the tribe. The result is multiplied by 5 to determine the number of points received under this criterion. The number of points should be rounded to 2 decimal places.

In the response to this criterion, the applicant may use data for ''members'' or ''families,'' whichever one is available. Whichever one is chosen, it must be used in both the numerator and the denominator of the ratio. If data is chosen for ''families,'' ''families'' must be used in both the numerator and denominator. The applicant must provide the source for the data. Failure to identify the source of the data will result in the loss of one point. See Table 4.

The total of all the low-income and very low-income families with unmet housing needs is the number that is considered for the numerator in the formula used in this criterion, regardless of the particular activity for which funding is sought in the application. The denominator is the total number of low-income and very low-income families of the tribe. For example, say:

—the total number of low-income and very low-income families of the tribe is 1,000,
—the applicant is applying for funds to rehabilitate 10 units, and
—there are 100 low-income and very low-income families in need of rehabilitated units,
—but the total number of low-income and very low-income families with housing needs of all types (rental, new construction, and rehabilitation) is 500.

Then, the number that would be used in the formula as the numerator is 500; the denominator is 1,000. If the project is mixed, that fact is of no consequence in using the formula. A mixed project may be mixed as to tenure of the families to be assisted, i.e., rental or home ownership, but it may not be mixed as to type of project activity, i.e., a combination of acquisition, rehabilitation, new construction.

For example, a tribe has 20 low-income and very low-income families in need of affordable housing and a total of 100 low-income and very low-income families. No source for the data is identified. Substitute these values in the formula:

$5 \times (20/100) =$
$5 \times 0.20 =$
1.00 point.

The formula results in a preliminary score of 1.00 point. Then, deduct one point because the source for the data is not given and the final point score for this item becomes zero.

TABLE 4.—SCORING GUIDE

Benefits to very low-income and low-income families
5×(low-income and very low-income families in need of affordable housing/total of low-income and very low-income families). Round to 2 decimal places. Deduct 1 point if source of data is not provided.

(ii) Project feasibility. Match Between Demand and Supply by Characteristics.—15 points maximum. Project feasibility as measured here is the degree to which the characteristics of housing units in the proposed project are responsive to need of actual low-income and very low-income families for affordable housing that was identified in the previous evaluation factor. A project which provides a number of units with the appropriate characteristics less than or equal to the identified need will receive more points. A project which provides a number of units with the appropriate characteristics greater than the demand will receive less points. Thus, there is a penalty if supply is greater than demand. To evaluate the degree to which the proposed project addresses the housing needs of the tribe as identified in the application, points will be awarded based upon:

(A) The relationship between the number of affordable units to be provided as compared to the number needed, as documented by the applicant;

(B) The size (number of bedrooms) of the units to be provided relative to sizes of needy households as documented by the applicant;

(C) The type of assistance to be provided, e.g., rehabilitation vs. new construction, compared with the type of assistance necessary, as documented by the applicant; and

(D) The tenure type of the housing to be provided, i.e., homeownership or rental, compared with the type of assistance required, desired, or necessary as documented by the applicant, and;

(E) The project plan must indicate a schedule for the implementation of the expanded housing opportunities.

The documentation for a project shall receive 15 points if it: (1) shows that the quantity of housing units to be made available for very low-income and low-income families of the tribe is equal to or less than the demand, (2) shows that the sizes of the units to be made available meet but do not exceed the needs of the very low-income and low-income families, (3) shows that the type of assistance (rehabilitation, new construction) to be provided meets the type of assistance needed, (4) shows that the tenure type (ownership, rental) to be provided is the tenure type needed, and (5) describes the delivery schedule. The documentation for a project shall receive 8 points if it does not clearly respond to all five items. The documentation for a project shall receive 0 points if it does not clearly respond to four of the five items. See Table 5.

TABLE 5.—SCORING GUIDE

Match between proposed supply and documented demand		
Good	Fair	Unsatisfactory
15 points	8 points	0 points.

(2) PLANNING AND IMPLEMENTATION—40 points maximum.

The second of the three criteria provided in 24 CFR 92.604 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to carry out the project successfully. Applicants must be concrete and specific in describing the financial, administrative, and legal actions involved in carrying out the project, and must describe their own administrative capability, existing or planned, to carry out this project. The applicant must demonstrate, using complete cost and revenue estimates for the project, including loans if necessary, that the proposed project is financially feasible and meets the regulatory

affordability requirements. This second criterion is divided into three parts that will be examined and evaluated separately. These three parts are: (i) Financial; (ii) Legal and Administrative Actions; and (iii) Staffing Plan during Implementation.

(i) Financial—15 points maximum.

(A) Property identification and comparison of project cost and ability of needy family to pay (6 points maximum). The applicant must demonstrate that the proposed very low- and low-income families who will be the owners or tenants shall be able to afford to buy or rent this housing in accordance with the affordability requirements under 24 CFR 92.614: ''qualification as affordable housing and income targeting: rental housing,'' and 24 CFR 92.615: ''qualification as affordable housing: home ownership.'' This evaluation is to include the results of market surveys for acquisition, rehabilitation, or new construction of housing and/or the identification of the actual properties to be acquired, rehabilitated, or constructed.

In addition to information concerning the supply of homes, the applicant must provide information to support the demand for homes. This market information must indicate that there is a demand for the type of tenure being proposed for the home at the price being proposed. If the project is for homeownership, what evidence is there that there is sufficient demand of interested and eligible applicants? Have applicants been identified? Selected? If the proposed applicants are renting, is there evidence they want to buy? Is there evidence they can afford to buy? As an indication of credit worthiness, have applicants been pre-qualified for a loan?

For all types of projects, but especially for an owner-occupied rehabilitation project, include a discussion of funding for routine maintenance and property taxes, which may increase due to an increase in the unit value, and energy conservation. Since the units to be rehabilitated with the HOME grant became substandard because they were not maintained, include a discussion of provisions to pay for training and education, and for major repair and replacement as a result of damage or loss through wear and tear. For example: After the unit is rehabilitated with this HOME grant, how will it be maintained? Are funds being set aside to maintain the unit? Whose funds are they—the owner's, tenant's, owner/occupant's? Is there a plan included in the application to address this? Will the applicant provide for energy efficient construction/rehabilitation which goes beyond regulatory requirements so as to minimize occupant expenditure for utilities? Will the applicant employ construction/rehabilitation techniques/materials which will help minimize the upkeep and maintenance costs to the occupant/owner? For scoring, see Table 6. Points will be awarded based upon the completeness and adequacy of responding to pertinent questions.

TABLE 6.—SCORING GUIDE

Property identification and cost vs. ability to pay		
Good	Fair	Unsatisfactory
6 points	3 points	0 points.

(B) Cash flow projection through project completion (3 points maximum). This requirement deals with the year by year cash flow for the proposed project. For example, for a new construction project by the applicant of a single family detached unit that is to be sold to a low income family that will occupy the unit, the cash flow projection would show the cost of construction, the construction payments, any equity or debt using HOME or non-HOME funds, any downpayment and any mortgage loan made in the sale of the unit to the family, and the monthly mortgage payment and the source of funds to make those payments.

The applicant must provide a year-by-year cash flow projection which includes an estimate of all project costs and revenues. The project must be financially feasible from the start. The costs and the revenues must be realistic. The housing opportunities must be achievable for the amounts shown. The costs must not be unrealistically low, showing more product for less money.

There must be a projection of costs and revenues for the time the work is being carried out as well as the time of maintenance and repair. The costs and revenues projection identifies what the maintenance and repair and major replacement costs for the long term (i.e., not less than the minimum period of affordability, 24 CFR 92.614) are going to be and how they will be paid. The projection must identify what the costs and revenues are. If the source of revenue is a grant, the grant must be identified. The costs and revenues and the cash flow must cover the construction period and the marketing period (if there will be a marketing period); the period of maintenance and repair must be projected separately. The applicant must identify whether there is a need for short-term borrowing for rehabilitation or whether rehabilitation is paid for entirely from HOME and leveraged funds; any years of negative cash flow; and the cumulative negative cash flow. If the project requires financing, i.e., borrowing, to get through periods of negative cash flow, the applicant must show the financing in the cash flow projection. For scoring, see Table 7. Points will be awarded based on completeness in adequately addressing the pertinent questions.

TABLE 7.—SCORING GUIDE

Cash flow projection through project completion		
Good	Fair	Unsatisfactory
3 points	2 points	0 points.

(C) Financial feasibility during the affordability period (3 points maximum). This requirement deals with the financial feasibility of the housing during the affordability period beginning after project completion, i.e., after completion of the acquisition, rehabilitation, or new construction. The affordability period can be from 5 years to 20 years (24 CFR 92.614). The housing has costs and revenues throughout the affordability period. Identify all of the costs and revenues, year by year, and display them to ensure that all of the costs shall be paid by revenues reasonably anticipated to occur.

The housing must be financially feasible for the affordability period, while at the same time remaining affordable as prescribed by the requirements at 24 CFR 92.614 and 92.615. Arrangements to be made for long-term costs must be shown. If during this period developer borrowing is required to get through periods of cumulative negative cash flow, the applicant must show the borrowing. The applicant must show buyer mortgage payments, if any.

As costs occur for the units that are occupied (e.g., owner-occupied rehabilitation, or new construction of rental housing), the application must discuss who will pay those costs and how they will be paid; whether any borrowing will be involved; whether the owner is expected to make the payments and when the payments will occur. The costs and revenues for maintenance, repair, and major replacements must be included in the affordability period cash flow projection. For a rental project, the projection must include how the project management staffing costs described in the staffing plan will be paid. For scoring, see Table 8. Points will be

awarded for completeness in addressing the pertinent questions.

TABLE 8—SCORING GUIDE

Financial feasibility during the affordability period		
Good	Fair	Unsatisfactory
3 points	2 points	0 points.

(D) Cost effectiveness test (3 points maximum). The cost effectiveness test is related to leverage because the more non-HOME grant money brought to the project, the lower the amount of HOME grant money needed. The cost effectiveness test gives more points to projects that use less HOME funds. The cost effectiveness test also rewards projects which use HOME funds most efficiently. To score a project in the cost effectiveness test, a maximum allowable expenditure of HOME funds is identified for each project type with respect to the total development cost (TDC).

(*1*) Housing Rehabilitation. For rehabilitation projects, the maximum allowable expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) for substantial rehabilitation (''substantial'' means an expenditure of $25,000 or more per home) and no more than 50% of the TDC of new construction for moderate rehabilitation. If the HOME assistance is less than 20% of the maximum allowable expenditure of HOME funds, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 9.

(*2*) Acquisition. For acquisition projects, the maximum allowable expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) if the property has been substantially rehabilitated and no more than 50% of the cost of new construction if the property has been moderately rehabilitated. If the HOME assistance is less than 20% of the maximum allowable amount, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If the HOME assistance is 100% of the maximum allowable amount, the project receives 0 points. See Table 9.

(*3*) New Construction. For new construction projects, the maximum allowable expenditure of HOME funds shall be less than or equal to 100% of the TDC. If the HOME assistance amount is less than 20% of the maximum allowable amount, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If the HOME assistance amount is 100% of the maximum allowable expenditure of HOME funds, the project receives 0 points. See Table 9.

TABLE 9—SCORING GUIDE

Cost Effectiveness Test			
0% to 19%	20% to 60%	61% to 99%	100%
3 pts.	2 pts.	1 pts.	0 pts.

(ii) Legal and Administrative Actions—10 points maximum. All policies, procedures, standards, criteria, and planning documents necessary for the type of project proposed must be included in the documentation for the project. Where rental housing is envisioned, this includes the tenant selection requirements for rental housing at 24 CFR 92.622(e). Where assistance for homeowners is contemplated, this includes the requirements for rehabilitation at 24 CFR 92.615(b). If the applicant is assisting homebuyers, the applicant must establish guidelines determined by HUD to be appropriate for the subsequent resale of the housing units, required under 24 CFR 92.615(a)(4). Planning documents must include a discussion of steps that will be taken to ensure maintenance of housing quality throughout the affordability period. See Table 10. Points will be awarded based on the completeness of the application and sample documentation in addressing the pertinent factors:

(A) Housing Rehabilitation. Data submitted must include adopted rehabilitation policies, including adopted rehabilitation standards that meet applicable local codes and/or ordinances; maximum rehabilitation cost per unit; rehabilitation selection criteria; and project planning documents.

(B) Acquisition. Data submitted must include adopted standards for houses that shall be acquired, including maximum purchase price per unit; participant selection criteria, and project planning documents.

(C) New Construction. Data submitted must include adopted standards for construction that meet applicable or local codes and ordinances and that meet HUD prescribed energy-efficiency standards; maximum cost per unit; participant selection criteria; and project planning documents.

Table 10—Scoring Guide

Other Legal and Administrative		
Good	Fair	Unsatisfactory
10 points	5 points	0 points.

(iii) Staffing Plan—15 points maximum. The applicant must provide a staffing plan. The plan must relate the steps in the project execution timetable with the personnel skills required for this project.

(A) For a grantee administered project, the staffing plan must identify the key personnel skills and experience requirements for the particular steps in the execution of this project, and relate this information to the project timetable, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the ability of key personnel in relation to the tasks required. A staffing plan which relates tasks, time, and personnel skills will receive 15 points. If the personnel requirements are for individuals who are experienced in the administration/management of programs which are somewhat similar to, but not the same as, the proposed program, 7 points will be awarded. Failure to submit a staffing plan or the submission of a plan which identifies personnel requirements for individuals whose experience would not have prepared them for the administration/management of the proposed program will result in the award of 0 points. Points will be awarded in accordance with Table 11 below.

(B) If the tribe has an agreement for the tribal IHA (or any other entity) to implement the project, a copy of the agreement must be included, as well as a staffing plan of the IHA (or other entity), which includes the addition of this project, and a description of the impact on the entity due to administering this project. The staffing plan must identify the key personnel skills and experience requirements for the particular steps in the execution of this project, and relate this information to the project timetable, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the ability of key personnel in relation to the tasks required. A staffing plan which relates tasks, time, and personnel skills will receive 15 points. If the personnel requirements are for individuals who are experienced in the administration/management of programs which are somewhat similar to, but not the same as, the proposed program, 7 points will

be awarded. Failure to submit a staffing plan or the submission of a plan which identifies personnel requirements for individuals whose experience would not have prepared them for the administration/management of the proposed program will result in the award of 0 points. Points will be awarded in accordance with Table 11 below.

TABLE 11.—SCORING GUIDE

Staffing plan		
Good	Fair	Unsatisfactory
15 points	7 points	0 points.

(3) Leveraging—30 points maximum.

The third of the three criteria provided in 24 CFR 92.604 is: Leveraging of HOME funds. Leveraging means using HOME funds to attract or bring in other dollars. Leveraging is the degree to which other sources of assistance (including—but not limited to—loans, advances, equity investments, interest subsidies, State funds, and private contributions) are used in conjunction with HOME funds to carry out the proposed project. The application must identify the leveraged funding for the HOME project and whether the leveraged funding will be used to pay for an eligible HOME project cost. For example, a Bureau of Indian Affairs-funded road is only counted for leveraging purposes if it's a site improvement and then only to the extent it benefits the HOME project units (and that amount becomes part of the development cost). If the proposed HOME project is being funded with resources other than the HOME grant, the application must identify those resources and explain how they will be used. The application may propose some or all of those resources for leverage points. Proportionate amounts of each resource and the HOME grant should be expended at the same time, but if not, the application must explain why and identify when the HOME funds and the non-HOME funds will be spent.

Resources will be counted for leverage points only if they are in the possession of, or legally obligated to, the applicant before or within 90 calendar days of notification of grant award. For example, the contribution of land, goods, and services which come in or become available, or the prequalification of buyers for mortgage loans with a mortgage lender, before or within 90 calendar days of notification of grant award, fulfills this criterion. Contributions to a low-income housing tax credit program (LIHTC) where the funds do not become available to be expended for eligible project costs until 90 calendar days after notification of grant award do not fulfill this criteria. The use by the grantee of HOME grant funds for acquisition, rehabilitation, or construction will be conditioned upon the fulfillment of this criterion. If fulfillment does not occur, the grant will be withdrawn.

For consideration as leverage points, applicants must not submit information about the category of costs called indirect costs in OMB circular A–87. Such amounts are not counted for leverage points.

The phrase ''in-kind'' has been removed for leveraging points. Submit information about financial assistance for leverage points and identify it as land, goods, or services.

Whether or not leverage points are awarded, the use of additional funding to the tribe or family, including mortgage loans and LIHTC funding, is encouraged.

Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs), which are to be used in conjunction with HOME funds to carry out the proposed project.

Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it will be counted if the donation was contingent upon the receipt of the HOME award. Land value will be counted as a contribution only to the extent of its appraised value. All appraisals shall be in conformance with established and generally recognized appraisal practices and procedures in common use by professional appraisers. Donated services will be accepted, provided that: first, the costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and second, comparable costs and time estimates are submitted that justify the costs attributable to the donated services or labor. Donated labor shall be valued at a level necessary for the work provided and shall be assessed at the skill level of the individual(s) providing the labor.

The amounts recognized as leverage can include any other Federal grant or assistance program. However, do not propose to use Indian Health Service funding for leverage points; IHS funding is not being made available for HOME projects. Loans secured through mortgage loan insurance programs (e.g., section 184 loan guarantee) may be recognized as leverage.

Points will be awarded as presented in Table 12. Ratio as a percentage is calculated by dividing the number of dollars made available from other sources of assistance by the number of dollars of HOME funds requested in the application, and multiplying by 100. For example, when one hundred (or more) dollars are made available from other sources of assistance for each one hundred dollars of HOME funds requested in the application, the maximum number of points (30) is awarded. When sixty dollars are made available from other sources of assistance for each one hundred dollars of requested HOME funds, fifteen points are earned.

TABLE 12.—SCORING GUIDE

Leveraging	
Ratio	Points
100% or more	30
80% but less than 100%	20
60% but less than 80%	15
40% but less than 60%	10
Less than 40%	0

(e) Application Review

(1) Receipt, eligibility, correctable deficiencies, and non-correctable deficiencies.

(i) Receipt. Upon receipt of the application, the Area ONAP will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received.

(ii) Eligibility. Each application will be screened at the Area ONAP for eligibility requirements. For the application to be rated and ranked, it must meet each eligibility requirement.

(iii) Correctable deficiencies. The opportunity to correct a technical, non-substantive deficiency is only given for those deficiencies which would *not* affect the evaluation of the application. Therefore, only minor administrative deficiencies are correctable. To assure uniform treatment, these are limited to a failure to submit a certification with the application or failure to submit a signed certification with the application. An applicant is not permitted to improve its application by filing statements that address substantive requirements after the due date for submissions has passed. If the application has correctable deficiencies, prior to a final determination on funding, the Area ONAP shall notify the applicant in writing of the correctable

deficiencies and require their correction by the applicant within 14 calendar days of the issuance of notification.

(iv) Non-correctable deficiencies. If the application does not include all the items identified as non-correctable eligibility requirements, the Area ONAP shall not request any corrections for correctable deficiencies. The Area ONAP shall set the application aside. When HUD announces its decisions concerning the funding competition, the Area ONAP shall notify the applicant whose application did not meet the eligibility requirements.

(2) Eligibility requirements. Completeness will be determined by the Area ONAP as to whether the application includes all the non-correctable items, properly prepared and executed, identified in the Checklist of Eligibility Requirements and Application Submission Requirements under Appendix 2 of this NOFA. The Area ONAP screening does not include determining whether the application meets the minimum point score requirement. After screening, each application which meets the eligibility and application submission requirements set forth in this NOFA and those which are complete except for correctable deficiencies will be rated.

(3) Rating and ranking. Rating and ranking of applications will be carried out by a panel of HUD staff. The panel will review and rate each application which meets the eligibility requirements. The application ratings will be used to create an Initial Application Ranking List.

(i) Ranking. After the applications from all applicants have been rated by the Area ONAP, the scores will be assembled in a single, merged list of scores for all applications rated by the Area ONAP. There will be a single list for each Area ONAP. For multi-project applications, each project will be rated and ranked individually.

(ii) Computation. Scores for ranking will be carried out to two decimal places (e.g., 12.34).

(4) Selection. The ranking process will produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The eligibility requirement for further consideration will be 50 out of 100 points. Project applications scoring lower than 50 points will be set aside as non-responsive and ineligible. After rating and ranking, applicants with the highest scores will be selected and offered awards *to the extent that funds are available.* NOTE: The grantee must carry out an environmental review before any HOME funds are committed to an activity requiring such a review (acquisition, rehabilitation, or new construction, generally; administrative costs are exempt) and obtain approval of its request for release of funds under 24 CFR part 58, in accordance with 24 CFR 92.633.

(5) Tie Breaker. When rating results in a tie among projects, projects will be approved in the following order:

(i) Those that can be fully funded over those that cannot be fully funded;

(ii) Projects that benefit the greatest number of very low-income and low-income persons; and

(iii) Projects that benefit the highest percentage of the total population of the tribe.

(6) Errors. Area ONAP Administrators may make a determination that an error has occurred in the rating or ranking of applications. Applicants may bring errors in the rating and ranking of applications to the attention of Area ONAP within 90 days of being informed of their score. If an Area ONAP review determines that there was an error that denied funding to the applicant, the Area ONAP will construct a hypothetical distribution that would have existed if the error had not been made, and the Area ONAP will determine what the funding would have been for the applicant subject to the funds that were available at the time. The applicant will be funded out of remaining funds in the challenged round of funding, or out of the next available round of funding.

II. Application Process

(a) Application Packages. Although this NOFA provides the public with notice of, and salient information about, the FY 1996 HOME program for Indian applicants, it is the application kit that provides applicants with further necessary information on how to participate in the program. Applicants should obtain a copy of the application kit, which includes copies of required forms, from any Area ONAP listed in Appendix 1.

(b) Submittal of Complete Application. Completed applications must be submitted to the Area ONAP having jurisdiction for the applicant at the address listed at Appendix 1. The application shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) Application Due Date. An applicant may submit an application for grant assistance to the Area ONAP having jurisdiction over the applicant after the publication of this NOFA in the Federal Register but before 3:00 P.M. Area ONAP local time, 60 calendar days after the publication date. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile (''FAX'') copies of applications will not be accepted.

III. Other Matters

(a) Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

(b) Energy. Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. 24 CFR 92.621: ''Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.'' See also 24 CFR 905.250(b) and 24 CFR 85.36(b)(7).

(c) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA shall not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing. As a result, the rule is not subject to review under the order.

(d) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that the provisions of this NOFA have the potential for indirect, although positive, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the

impact on the family is indirect and beneficial. Accordingly, no further review is considered necessary.

(e) Section 102 of the HUD Reform Act. Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 of the HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified at 24 CFR part 4. Part 4 applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) Section 3. 24 CFR part 135. Economic Opportunities for Low and Very Low Income Persons. All applicants are herein notified that section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. Applicants that receive Indian HOME Program assistance which exceeds $200,000 for housing rehabilitation or new construction shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: March 15, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX 1.—LIST OF LOCAL OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes located	Area ONAP address
East of the Mississippi River (including all of Minnesota and Iowa).	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TDD Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and eastern Texas.	Southern Plains Office of Native American Programs, 6.IPI, 500 West Main Street, Suite 400, Oklahoma City, Oklahoma 73102, (405) 553–7525, TDD Numbers: 405–231–4181 or 405–231–4891.
Colorado, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TDD Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and western Texas.	Southwest Office of Native American Programs, 9EPID, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: 602–379–4461 or Office of Native American Programs, HUD, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, (415) 436–8121, TDD Number: (415) 436–6559.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TDD Number: (907) 271–4328.

Appendix 2. Checklist of Eligibility Requirements and Application Submission Requirements

Applications must meet the requirements in (1) and (2), below. Except for the certifications in (2)(iii) and (2)(iv), these requirements are non-correctable after the closing of the application submission period.

(1) Each application must be:

(i) _____ From an eligible applicant.

(ii) _____ If the applicant proposes to involve its IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135. (A resolution may be attached which authorizes another entity, e.g., a housing authority, to prepare the application on behalf of the tribe; however, the tribe must be the applicant and sign the application.)

(iii) _____ There is no information to indicate that the eligible applicants and involved IHA lack the administrative capacity to undertake the project proposed.

(iv) _____ For one or more Indian HOME Program eligible projects.

(v) _____ For not more than a $1.5 million grant.

(vi) _____ For a grant amount not in excess of 115% of the maximum per-unit subsidy amount (24 CFR 92.620). The maximum per-unit subsidy amount is the total development cost standard for the area. Maximum allowable Total Development Costs (''TDCs'') are established by location and by unit size (size is expressed as number of bedrooms). Maximum allowable TDCs are available from the Area ONAP for each applicant community. To determine whether the HOME grant amount requested satisfies this limitation, multiply the maximum allowable TDC for each size by the proposed number of units, add the products, multiply by 115%, and compare the result to the HOME grant amount requested. The grant amount request may not be more than this amount.

(vii) _____ Submitted with an original and one copy.

(2) Each application must contain the following:

(i) _____ Transmittal Letter.

(ii) _____ Standard Form-424, Application for Federal Assistance. Complete side one only.

Name of the eligible applicant, e.g., a tribe or an authorized Tribal organization, must be in field 5, legal applicant. A resolution may be attached which authorizes another entity, e.g., a housing authority, to prepare the application on behalf of the eligible applicant; however, the eligible applicant must be the applicant and sign the application. The Catalog of Federal Domestic Assistance identifies this program as program number 14.239.

(iii) _____ Form HUD–4126, which contains the following certifications:

(A) A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 92.634.

(B) A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

(C) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(D) Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

(E) Audits. A certification that the applicant does not have an outstanding Indian HOME or ICDBG obligation to HUD that is in arrears, or it has agreed to a repayment schedule. A certification that the applicant does not have an overdue or unsatisfactory response to an audit finding(s).

(F) Fire Safety. A certification that the applicant shall comply with the requirements of the Fire Authorization Administration Act of 1992 (Pub. L. 102–522).

(G) Economic Opportunities for Low-Income and Very Low-Income Persons. A certification that the applicant shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

(iv) _____ Drug-free workplace. In order to fulfill OMB requirements, a separate, complete text certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(v) _____ Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(vi) _____ Form HUD–4121–I, Indian HOME Program Grants. Comprehensive Approach; component that addresses the Comprehensive Approach For Expanding The Supply Of Affordable Housing. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

(vii) _____ Form HUD–4122–I, Indian HOME Program Grants. Project Summary; component that addresses the summary description of the proposed project.

(viii) _____ Operation Plan. All proposed projects that shall be operated as rental projects MUST include a management and maintenance plan and a staffing plan for these functions. An agreement with the tribal IHA to manage the units is not sufficient as a management and maintenance staffing plan; the IHA must include projected staffing to carry out these functions.

(ix) _____ Form HUD–4125–I, Indian HOME Program Grants. Implementation Schedule.

(x) _____ Form HUD–4123–I, Indian HOME Program Grants. Cost Summary.

(xi) _____ Project location map.

(xii) _____ Components that address the selection criteria. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(d) (1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

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March 27, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 880, et al.

Consolidation of Regulations for Project-Based Section 8 Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Consolidation of Regulations for Project-Based Section 8 Programs

24 CFR Parts 880, 881, 883, and 884

[Docket No. FR–3984–F–01]

RIN 2502–AG65

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Final rule.

SUMMARY: This rule removes obsolete provisions concerning development of housing under regulations for the Section 8 project-based assistance programs for New Construction, Substantial Rehabilitation, and State Housing Agencies, and Rural Rental Housing now found in 24 CFR parts 880, 881, 883, and 884. It also consolidates into one part, the certain nearly identical provisions concerning the housing assistance payments contract and management for the New Construction, Substantial Rehabilitation, and State Housing Agencies programs that are now found in three parts.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: For development issues: Jane Luton, Director, New Products Division (telephone: (202) 708–2556, ext. 2537) or for management issues: Barbara D. Hunter, Director, Program Management Division (telephone: (202) 708–4162, ext. 2632), Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. The above telephone numbers may be accessed through TDD by calling the Federal Relay Service at (202) 708–9300 or 1–800–877–TDDY (1–800–877–8389). (Other than the ''1–800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

This rule does not alter existing information collection requirements. An agency may not conduct or sponsor, and person is not required to respond to a collection of information unless the collection displays a valid control number.

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

The authority for funding activity under the Section 8 project-based assistance programs affected by this rule was repealed in 1983, and there have been no projects in the development stage for a substantial period. This rule, accordingly, removes from 24 CFR parts 880, 881, 883, and 884 obsolete provisions relating to the development of projects under these parts. The removed provisions include but are not limited to: part 880, subparts C and D; part 881, subparts C, D, and G; and part 883, subparts B, D, and E. Section 883.106, added by this rule, replaces current § 883.201, which was in subpart B. In part 884, individual sections have been removed.

This rule also consolidates into part 880, subparts E and F, the closely-related housing assistance payments (HAP) contract and the management regulations currently contained in parts 880, 881, and 883. Because of the similarity of the two sets of HAP contract regulations, §§ 881.505 through 881.508 have been removed and replaced by a cross-reference to the same sections in part 880, subpart E. (See § 881.503) In part 883, which is not as closely related to part 880, §§ 883.605 and 883.608 have been replaced by cross-reference to the comparable §§ 880.504 and 880.508 provisions in part 880, subpart E.

In both parts 881 and 883, the respective Management subparts have been removed and replaced by cross-references to part 880, subpart F. Part 880, subpart F has been revised to include certain part 883-specific requirements, where the current part 883 requirements differ from those applicable to part 880 and part 881 projects.

The New Construction Set-Aside for Section 515 Rural Rental Housing Projects program, contained in part 884, is administered by the Rural Housing and Community Development Service, successor agency to the Farmers Home Administration, under a memorandum of understanding. The part 884 provisions have not been consolidated into part 880.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely consolidates existing CFR parts and removes obsolete regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the rule merely consolidates existing provisions into one part.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, since it only consolidates and streamlines existing provisions. Therefore, the rule is not subject to review under the Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes no substantive changes in the regulations affected.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.182.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated in the preamble, parts 880, 881, 883, and 884 of title 24 of the Code of Federal Regulations are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart A—Summary and Applicability

2. Section 880.101 is revised to read as follows:

§ 880.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

§§ 880.102 and 880.103 [Removed]

3. Sections 880.102 and 880.103 are removed.

4. Section 880.104 is revised to read as follows:

§ 880.104 Applicability of part 880 in effect as of November 5, 1979.

(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the November 5, 1979, effective date of part 880. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the November 5, 1979 effective date of part 880. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

Subpart B—Definitions and Other Requirements

5. The heading for subpart B of part 880 is revised as set forth above.

6. Section 880.201 is amended by removing the definitions of *''Allocation area''*, *''New Communities''*, and *''Preliminary proposal''* and by adding in alphabetical order, the definition of *''Agency''*, to read as follows:

§ 880.201 Definitions.

* * * * *

Agency. As defined in 24 CFR part 883.

* * * * *

§§ 880.202, 880.203, 880.204, 880.206, 880.209, and 880.210 [Removed]

7. Sections 880.202, 880.203, 880.204, 880.206, 880.209, and 880.210 are removed.

Subparts C and D—[Removed and Reserved]

8. Subpart C (§§ 880.301 through 880.311) and subpart D (§§ 880.401 through 880.405) of part 880 are removed and reserved.

Subpart E—Housing Assistance Payments Contract

9. Section 880.501 is amended by revising paragraph (a), and by removing and reserving paragraph (b), to read as follows:

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

* * * * *

10. In § 880.504, paragraphs (b), (c) introductory text, (c)(1), and (e) are revised, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(b) *Reduction of number of units covered by Contract.* (1) *Part 880 and 24 CFR part 881 projects.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(2) *For 24 CFR part 883 projects.* HUD and the Agency may reduce the number

of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* For this part 880 and 24 CFR part 881 projects, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, and for 24 CFR part 883 projects, HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, if:

(1) HUD determines (for 24 CFR part 883 projects, HUD and the Agency determine) that the restoration is justified by demand,

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

Subpart F—Management

11. Section 880.601 is amended by revising paragraphs (a)(4), (b), (c), and (e), to read as follows:

§ 880.601 Responsibilities of owner.

(a) * * *

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants in accordance with 24 CFR parts 5 and 24 CFR part 813, provision of Federal selection preferences in accordance with 24 CFR part 5, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 5), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 5), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for services.* (1) For this part 880 and 24 CFR part 881 projects, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

* * * * *

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with § 880.602 and to provide distributions to the owner as provided in § 880.205, § 881.205 of this chapter, or § 883.306 of this chapter, as appropriate.

(2) For this part 880 and 24 CFR part 881 projects:

(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(ii) Partially-assisted projects are exempt from the provisions of this section.

(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.

(3) For 24 CFR part 883 projects:

(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.

(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.

* * * * *

12. Section 880.602 is revised to read as follows:

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880 and 24 CFR part 881 projects.* (i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.

(2) *Part 883 of this chapter projects.* (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:

(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or

(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.

(iii) All earnings, including interest on the reserve, must be added to the reserve.

(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.

(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

13. Section 880.603 is revised to read as follow:

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. For this part 880 and 24 CFR part 881 projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and 24 CFR part 813, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

(1) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5 and 813), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR part 813 and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers

at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(Approved by the Office of Management and Budget under control number 2502–0204.)

14. In § 880.606, paragraph (b) is revised to read as follows:

§ 880.606 Lease requirements.

* * * * *

(b) *Form.* (1) *Part 880 and 24 CFR part 881 projects.* For this part 880 and 24 CFR part 881 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

(2) *24 CFR part 883 projects.* For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.

(i) *Required provisions (Addendum to lease).*

Addendum to Lease

The following additional Lease provisions are incorporated in full in the Lease between ____ (Landlord) and ____ (Tenant) for the following dwelling unit: ____. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.

a. The total rent will be $____ per month.

b. Of the total rent, $____ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and $____ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.

c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Landlord will provide the following services and maintenance: _____

e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.

Landlord _____

By _____

Date _____

Tenant _____

Date _____

[End of addendum]

(ii) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

a. *Confession of Judgment.* Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. *Seize or Hold Property for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. *Waiver of Legal Notice.* Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease.

e. *Waiver of Legal Proceeding.* Agreement by the tenant to allow eviction without a court determination.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. *Waiver of Right to Appeal Court Decision.* Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit.* Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

15. Section 880.607 is amended by:

a. Removing from paragraph (b)(3)(ii), the words ''part 812'', ''part 750'', ''part 760'', and by adding, in their respective places, the words ''part 5''; and

b. Revising paragraphs (c)(4) and (d), to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(d) *Modification of Lease form.* The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in

accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by § 880.609 and other applicable HUD regulations.

* * * * *

§ 880.608 [Amended]

16. In § 880.608, paragraph (f) introductory text is amended by removing the words ''HUD or the PHA, as appropriate,'' and by adding, in their place, the words ''the contract administrator''.

17. In § 880.609, paragraph (b) is revised to read as follows:

§ 880.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

18. In § 880.611, the introductory text to paragraph (d)(3) is revised to read as follows:

§ 880.611 Conditions for receipt of vacancy payments.

* * * * *

(d) * * *

(3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:

* * * * *

19. In § 880.612, paragraph (b) is revised to read as follows:

§ 880.612 Reviews during management period.

* * * * *

(b) In addition:

(1)(i) For this part 880 and 24 CFR part 881 private-owner/PHA projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.

(2) HUD may independently inspect project operations and units at any time.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

20. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart A—Summary and Applicability

21. Section 881.101 is revised to read as follows:

§ 881.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 880, 882, 883, 884, and 885, except to the extent specifically stated in those parts.

§§ 881.102 and 881.103 [Removed]

22. Sections 881.102 and 881.103 are removed.

23. Section 881.104 is revised to read as follows:

§ 881.104 Applicability of part 881 in effect as of February 20, 1980.

(a) Part 881, in effect as of February 20, 1980, applies to all proposals for which a notification of selection was not issued before the February 20, 1980 effective date of part 881. (See 24 CFR part 881, revised as of April 1, 1980). Where a notification of selection was issued for a proposal before the February 20, 1980, effective date, part 881 in effect as of February 20, 1980 applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 881, effective February 20, 1980, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the February 20, 1980, effective date of part 881. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607 of this chapter, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the February 20, 1980, effective date of part 881. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the February 20, 1980 effective date of part 881. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

Subpart B—Definitions and Other Requirements

24. The heading for subpart B of part 881 is revised to read as set forth above.

§ 881.201 [Amended]

25. Section 881.201 is amended by removing the definitions of ''*Allocation area*'', ''*New Communities*'', and ''*Preliminary proposal*''.

§§ 881.202, 881.203, 881.204, 881.206, 881.209, and 881.210 [Removed]

26. Sections 881.202, 881.203, 881.204, 881.206, 881.209, and 881.210 are removed.

Subparts C and D—[Removed and Reserved]

27. Subpart C (§§ 881.301 through 881.312) and subpart D (§§ 881.401 through 881.405) of part 881 are removed and reserved.

Subpart E—Housing Assistance Payments Contract

28. In § 881.501, paragraph (a) is revised and paragraph (b) is removed and reserved, to read as follows:

§ 881.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project

and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

* * * * *

29. Section 881.503 is revised to read as follows:

§ 881.503 Cross-reference.

All of the provisions of §§ 880.503, 880.504, 880.505, 880.506, 880.507, and 880.508 of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

§§ 881.504, 881.505, 881.506, 881.507, and 881.508 [Removed]

29a. Sections 881.504, 881.505, 881.506, 881.507, and 881.508 are removed.

30. Subpart F of part 881 is revised to read as follows:

Subpart F—Management

§ 881.601 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

Subpart G—[Removed]

31. Subpart G (§§ 881.701 through 881.709) of part 881 is removed.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

32. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Summary and Guide

33. Section 883.101 is revised to read as follows:

§ 883.101 General.

(a) The purpose of the Section 8 program is to provide decent, safe and sanitary housing for low-income families through the use of a system of housing assistance payments. These needs may be met by statewide or special purpose housing agencies established by the various States.

(b) The regulations in this part 883 contain the policies and procedures applicable to the Section 8 program for these State agencies.

§§ 883.102, 883.103, and 883.104 [Removed]

34. Sections 883.102, 883.103 and 883.104 are removed.

35. Section 883.105, is revised to read as follows:

§ 883.105 Applicability of part 883 in effect as of February 29, 1980.

(a) Part 883, in effect as of February 29, 1980, applies to projects for which the initial application was submitted on or after the February 29, 1980, effective date. (See 24 CFR part 883, revised as of April 1, 1980.) Projects for which applications or proposals were submitted before the February 29, 1980, effective date of part 883 have been processed under the part 883 regulations and procedures in effect at the date of submission. If, however, the agency notified HUD within 60 calendar days of the February 29, 1980, effective date of the part 883 regulations that they chose to have the provisions of part 883, in effect as of February 29, 1980, apply to a specific case, it must have promptly modified the application(s) and proposal(s) to comply.

(b) Subpart F of this part, dealing with the HAP contract and subpart G of this part, dealing with management, apply to all projects for which an Agreement was not executed before the February 29, 1980, effective date of part 883. In cases where an Agreement has been executed:

(1) The Agency, owner and HUD may agree to make the revised subpart F of this part applicable and execute appropriate amendments to the Agreement or Contract;

(2) The Agency, Owner and HUD may agree to make the revised subpart G of this part applicable (with or without the limitation on distributions) and execute appropriate amendments to the Agreement or Contract.

(c) Section 883.708, Termination of Tenancy and Modifications of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days following the February 29, 1980, effective date of part 883. This section also applies to families not covered by the preceding sentence, including families currently under lease, who have a lease in which a renewal becomes effective on or after the 60th day following the February 29, 1980 effective date of part 883. A lease is considered renewed when both the landlord and the family fail to terminate a tenancy under a lease permitting either to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when am Agreement was executed.

36. A new § 883.106 is added to subpart A to read as follows:

§ 883.106 Applicability and relationships between HUD and State agencies.

(a) *Applicability.* This subpart A applies to contract authority set aside for a State Agency.

(b) *General responsibilities and relationships.* Subject to audit and review by HUD to assure compliance with Federal requirements and objectives, Housing Finance Agencies (HFAs) shall assume responsibility for project development and for supervision of the development, management and maintenance functions of owners.

(c) *Certifications and HUD monitoring.* (1) Generally, when reviewing any of the certifications of an HFA required by this part, HUD shall accept the certification as correct. If HUD has substantial reason to question the correctness of any element in a certification, HUD shall promptly bring the matter to the attention of the HFA and ask it to provide documentation supporting the certifications. When the HFA provides such evidence, HUD will act in accordance with the HFA's judgment or evaluation unless HUD determines that the certification is clearly not supported by the documentation.

(2) HUD will periodically monitor the activities of HFA's participating under this part only with respect to Section 8 or other HUD programs. This monitoring is intended primarily to ensure that certifications submitted and projects operated under this part reflect appropriate compliance with Federal law and requirements.

Subpart B—[Removed and Reserved]

37. Subpart B (§§ 883.201 through 883.207) of part 883 is removed and reserved.

Subpart C—Definitions and Other Requirements

38. The heading for subpart C of part 883 is revised to read as set forth above.

§ 883.302 [Amended]

39. Section 883.302 is amended by removing the definitions of ''Allocation area'', ''Allocation plan'', ''Impacted jurisdiction'', and ''New Communities''.

§§ 883.303, 883.304, 883.305, 883.309, 883.311, and 883.312 [Removed]

40. Sections 883.303, 883.304, 885.305, 883.309, 883.311, and 883.312 are removed.

41. In § 883.307, paragraph (a) is revised to read as follows:

§ 883.307 Financing.

(a) *Types of financing.* A State Agency that used the Fast Track Procedures formerly in this part must provide

permanent financing for any new construction or substantial rehabilitation project without Federal mortgage insurance, except coinsurance under section 244 under the National Housing Act (12 U.S.C. 1701 et seq). Obligations issued by the HFA for this purpose may be taxable under section 802 of the Housing and Community Development Act of 1974 (42 U.S.C. 1440) or tax-exempt under section 103 of the Internal Revenue Code (26 U.S.C. 103), 24 CFR part 811 or other Federal Law.

* * * * *

Subparts D and E—[Removed and Reserved]

42. Subpart D (§§ 883.401 through 883.412) and subpart E (§ 883.501) of part 883 are removed and reserved.

Subpart F—Housing Assistance Payments Contract

§ 883.602 [Amended]

43. Section 883.602 is amended by:

a. Removing paragraph (b);

b. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and

c. By amending newly redesignated paragraphs (b)(2), (c)(2), and (c)(3) by removing the words ''§ 883.712'' in each place they appear, and by adding the words ''§ 880.611 of this chapter'', in their place.

§ 883.604 [Amended]

44. In § 883.604, paragraph (b)(2) is amended by removing the words ''U.S. Housing Act of 1937'' and adding, in their place, the words ''1937 Act''.

45. Section 883.605 is revised to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of § 880.504 of this chapter apply, subject to the requirements of § 883.105.

46. Section 883.608 is revised to read as follows:

§ 883.608 Notice upon contract expiration.

The provisions of § 880.508 of this chapter apply, subject to the requirements of § 883.105.

47. Subpart G of part 883 is revised to read as follows:

Subpart G—Management

§ 883.701 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 883.105. For purposes of this subpart G, all references in part 880, subpart F, of this chapter to ''contract administrator'' shall be construed to refer to ''Agency''.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

48. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Applicability, Scope and Basic Policies

49. In § 884.101, paragraph (a) is revised to read as follows:

§ 884.101 Applicability and scope.

(a) The policies and procedures in subparts A and B of this part apply to the making of Housing Assistance Payments on behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of section 8 of the 1937 Act. They are applicable only to proposals submitted by the Department of Agriculture/Farmers Home Administration (now the Department of Agriculture/Rural Housing and Community Development Service) that have been charged against the set-aside of section 8 contract authority specifically established for projects to be funded under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485).

* * * * *

§ 884.102 [Amended]

50. Section 884.102 is amended by:

a. Amending the definition of ''*Agreement to enter into housing assistance payments contract ('agreement')*'', by removing the word ''FmHA'' in each place it appears in paragraphs (a) and (b), and by adding, in each place, the word ''RHCDS'';

b. Removing the definition of ''*FmHA*'' and by adding, in alphabetical order, the definition ''*RHCDS*''; and

c. Placing the definition of ''*Proposal*'' in alphabetical order and amending it by removing the word ''FmHA'', and by adding in its place, the word ''RHCDS'', to read as follows:

§ 884.102 Definitions.

* * * * *

RHCDS. The Rural Housing and Community Development Service.

* * * * *

§ 884.103 [Removed]

51. Section 884.103 is removed.

§ 884.105 [Amended]

52. Section 884.105 is amended by removing the word ''Act'' from paragraphs (b)(1) and (b)(2) in each place it appears and adding, in each place, the words ''1937 Act''.

§§ 884.107, 884.111, 884.112, and, 884.113 [Removed]

53. Sections 884.107, 884.111, 884.112, and 884.113 are removed.

§§ 884.108, 884.118, 884.119, and 884.120 [Amended]

54. Sections 884.108(a), 884.118(a)(9), 884.119(b), and 884.120(b)(3) are amended by removing the word ''FmHA'', each place it appears, and by adding in each place the word ''RHCDS''.

§ 884.117 [Amended]

55. Section 884.117 is amended by removing the words ''part 705'' and adding, in their place, the words ''part 5''.

56. In § 884.118, paragraphs (a)(3) and (a)(7) are revised, to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 5 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with 24 CFR part 5, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 5), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 5), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria;

* * * * *

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with 24 CFR part 813; obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 5; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5;

* * * * *

Subpart B—Project Development and Operation

§§ 884.201, 884.202, 884.203, 884.204, 884.205, 884.206, 884.207, 884.208, 884.209, 884.210, and 884.211 [Removed]

57. Sections 884.201, 884.202, 884.203, 884.204, 884.205, 884.206, 884.207, 884.208, 884.209, 884.210, and 884.211 are removed.

§ 884.214 [Amended]

58. In § 884.214, paragraph (b)(1) is amended by removing the phrase ''part 812,'' and adding, in its place, the phrase ''part 5,''.

§ 884.216 [Amended]

59. Section 884.216 is amended by:

a. Removing the words ''part 760,'' and adding in their place, the words ''part 5,''; and

b. Removing the words ''24 CFR 812.9, and also 24 CFR 812.10'' and adding, in their place, the words ''24 CFR part 5 and also''.

§ 884.218 [Amended]

60. Section 884.218 is amended by:

a. Amending paragraph (a) by removing the words ''part 750'' where it appears, by removing ''part 760'' where it appears, and by removing ''part 812'' each place it appears, and by adding in each place the words ''part 5'';

b. Amending paragraph (b) by removing the words ''part 760'', where it appears, and by removing ''part 812'', where it appears, and by adding in each place the words, ''part 5'';

c. Amending paragraph (c) by removing the words ''part 750'', where it appears, and by removing the words ''part 760'', where it appears, and by adding in each place the words, ''part 5''; and

d. Further amending paragraph (c), by removing the words ''24 CFR 812.9, and also 24 CFR 812.10'' and adding, in their place, the words ''24 CFR part 5 and also''.

§ 884.223 [Amended]

61–62. In § 884.223(e), remove the words ''§ 812.9 of this chapter'' and add, in their place, the words ''24 CFR part 5'' and remove the words ''24 CFR 812.10'' in each place they occur and add, in each place, the words ''24 CFR part 5''.

Dated: February 28, 1996.

Stephanie A. Smith,

Acting General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–5990 Filed 3–26–96; 8:45 am]

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March 27, 1996

Part IV

Department of Housing and Urban Development

24 CFR Parts 1700, 1710, and 1715

Interstate Land Sales Registration Programs: Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Interstate Land Sales Registration Program; Streamlining Final Rule

24 CFR Parts 1700, 1710, and 1715

[Docket No. FR–3987–F–01]

RIN 2502–AG63

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Interstate Land Sales Registration Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Interstate Land Sales Registration Program regulations by eliminating provisions that are repetitive of statutes or are otherwise unnecessary. This final rule will make the Interstate Land Sales Registration Program regulations clearer and more concise. Guidelines applicable to the program are available from the Department, as provided in an uncodified attachment to this rule.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Room 5241, Washington, DC 20410–8000); telephone number: (202) 708–4560 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the Interstate Land Sales Registration Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.* It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), because those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Many provisions of part 1720 in the regulations are based on requirements that apply to more than one program, and therefore HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, some of part 1720 has been removed, and a consolidated rule of investigation procedures that are in a new part 3800 has been made applicable to the Interstate Land Sales Registration program by cross-reference (see 61 FR 10440, March 13, 1996). In addition, the Department is developing a separate rule to consolidate certain procedures into a uniform rule on hearings. When that separate rule is final, the Department expects to revise § 1710.45 to include certain provisions of subpart D of part 1720 that will not be removed by the consolidated hearing procedures rule.

This final rule also removes from codification part 1700, § 1710.501, § 1710.502, and Appendix A to 1710 (which are maintained in an uncodified appendix accompanying this final rule). The information contained in the material to be removed is informational and will be available through separately issued guidance, which is available from the Department (see uncodified attachment to this rule) and may be updated from time to time and published in the Federal Register.

Copies of this rule and related notices are available electronically from HUD or other sources. You can access this material through the World Wide Web at http://www.hud.gov or telenet to hudclips.aspensys.com. You also may subscribe separately to HUDClips (a source of all of HUD's directives) by calling 301/251–5757 or e-mailing to hudclips@aspensys.com.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule primarily removes unnecessary regulatory provisions. Although the rule also contain some clarification of policy, it does not make substantive changes in the program regulations. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the Interstate Land Sales Registration Program. That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship

between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

24 CFR Part 1700

Consumer protection, Freedom of information, Land sales, Reporting and recordkeeping requirements.

24 CFR Part 1710

Administrative practice and procedure, Consumer protection, Freedom of information, Land sales, Reporting and recordkeeping requirements.

24 CFR Part 1715

Advertising, Consumer protection, Fraud, Land sales.

Accordingly, under the authority of 42 U.S.C. 3535(d), parts 1700, 1710, and 1715 of title 24 of the Code of Federal Regulations are amended as follows:

PART 1700—[REMOVED]

1. Part 1700 is removed.

PART 1710—INTERSTATE LAND SALES REGISTRATION PROGRAM

1a. The authority citation for part 1710 is revised to read as follows:

Authority: 15 U.S.C. 1718; 42 U.S.C. 3535(d).

2. Section 1710.1 is revised to read as follows:

§ 1710.1 Definitions.

(a) *Statutory terms.* All terms are used in accordance with their statutory meaning in 15 U.S.C. 1702 or with part 5 of this title, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Act means the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701.

Advisory opinion means the formal written opinion of the Secretary as to jurisdiction in a particular case or the applicability of an exemption under §§ 1710.5 through 1710.15, based on facts submitted to the Secretary.

Available for use means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

Beneficial property restrictions means restrictions that are enforceable by the lot owners and are designed to control the use of the lot and to preserve or enhance the environment and the aesthetic and economic value of the subdivision.

Date of filing means the date a Statement of Record, amendment, or consolidation, accompanied by the applicable fee, is received by the Secretary.

Good faith estimate means an estimate based on documentary evidence. In the case of cost estimates, the documentation may be obtained from the suppliers of the services. In the case of estimates of completion dates, the documentation may be actual contracts let, engineering schedules, or other evidence of commitments to complete the amenities.

Lot means any portion, piece, division, unit, or undivided interest in land located in any State or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land.

OILSR means the Interstate Land Sales Registration program.

Owner means the person or entity who holds the fee title to the land and has the power to convey that title to others.

Parent corporation means that entity which ultimately controls the subsidiary, even though the control may arise through any series or chain of other subsidiaries or entities.

Principal means any person or entity holding at least a 10 percent financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

Rules means all rules adopted pursuant to the Act, including the general requirements published in this part.

Sale means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms ''sale'' or ''seller'' include in their meanings the terms ''lease'' and ''lessor''.

Senior Executive Officer means the individual of highest rank responsible for the day-to-day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

Site means a group of contiguous lots, whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility, or any similar object.

Start of construction means breaking ground for building a facility, followed by diligent action to complete the facility.

§ 1710.2 [Removed]

3. Section 1710.2 is removed.

4. Section 1710.5 is revised to read as follows:

§ 1710.5 Statutory exemptions from the provisions of this chapter.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§§ 1710.501, 1710.502, and Appendix A to part 1710 [Removed]

5. Sections 1710.501 and 1710.502 and Appendix A to Part 1710 are removed.

PART 1715—PURCHASERS' REVOCATION RIGHTS, SALES PRACTICES, AND STANDARDS

6. The authority citation for part 1715 is revised to read as follows:

Authority: 15 U.S.C. 1718; 42 U.S.C. 3535(d).

7. Section 1715.1 is revised to read as follows:

§ 1715.1 General.

The purpose of this subpart A is to elaborate on the revocation rights in 15 U.S.C. 1703, by enumerating certain conditions under which purchasers may exercise revocation rights. Generally, whenever revocation rights are available, they apply to promissory notes, as well as traditional agreements.

8. Section 1715.2 is revised to read as follows:

§ 1715.2 Revocation regardless of registration.

All purchasers have the option to revoke a contract or lease with regard to a lot not exempt under §§ 1710.5 through 1710.11 and 1710.14 until midnight of the seventh day after the day that the purchaser signs a contract or lease. If a purchaser is entitled to a

longer revocation period under State law, that period is deemed the Federal revocation period rather than the 7 days, and all contracts and agreements (including promissory notes) shall so state.

§ 1715.3 [Removed]

9. Section 1715.3 is removed.

10. Section 1715.4 is revised to read as follows:

§ 1715.4 Contract requirements and revocation.

(a) In accordance with 15 U.S.C. 1703(d)(3), the refund to the purchaser is calculated by subtracting from the amount described in 15 U.S.C. 1703(d)(3)(B), the greater of:

(1) Fifteen percent of the purchase or lease price of the lot (excluding interest owed) at the time of the default or breach of contract or agreement; or

(2) The amount of damages incurred by the seller or lessor due to the default or breach of contract.

(b) For the purposes of this section:

Damages incurred by the seller or lessor means actual damages resulting from the default or breach, as determined by the law of the jurisdiction governing the contract. However, no damages may be specified in the contract or agreement, except a liquidated damages clause not exceeding 15 percent of the purchase price of the lot, excluding any interest owed.

Purchase price means the cash sales price of the lot shown on the contract.

(c) The contractual requirements of 15 U.S.C. 1703(d) do not apply to the sale of a lot for which, within 180 days after the signing of the sales contract, the purchaser receives a warranty deed or, where warranty deeds are not commonly used, its equivalent under State law.

11. Section 1715.5 is revised to read as follows:

§ 1715.5 Reimbursement.

If a purchaser exercises rights under 15 U.S.C. 1703(b), (c) or (d), but cannot reconvey the lot in substantially similar condition, the developer may subtract from the amount paid by the purchaser, and otherwise due to the purchaser under 15 U.S.C. 1703, any diminished value in the lot caused by the acts of the purchaser.

12. Section 1715.15 is revised to read as follows:

§ 1715.15 Unlawful sales practices—statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:

(a) The contractual covenant to provide or complete the services or amenities may be conditioned only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being incorporated by reference must be specified in the contract of sale or lease.

13. Section 1715.27 is revised to read as follows:

§ 1715.27 Fair housing.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, et seq., and its implementing regulations and guidelines apply to land sales transactions to the extent warranted by the facts of the transaction.

Dated: March 13, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

(Note: The following guidelines will not be codified in the Code of Federal Regulations.)

Guidelines to the Interstate Land Sales Registration Program

A copy of these guidelines applicable to the Interstate Land Sales Registration Program may be obtained by writing to: Interstate Land Sales Registration Program, HUD, 451 7th Street SW., Washington, DC 20410–8000 or by electronic access on the World Wide Web, at: http://www.hud.gov

These guidelines were previously published as appendix A to Part 1710; Part 1700, Introduction; Part 1700.501, Certification criteria; and Part 1700.502, Application for certification of State land sales program, in title 24 of the Code of Federal Regulations (CFR) (1995 edition).

Part IV(b), *Improved Lots* (which pertains to Appendix A to Part 1710) is revised to reflect recent court actions on this matter, as discussed below.

Section 1702(a)(2) of Title 15 of the United States Code exempts (1) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building; or (2) the sale or lease of land under a contract obligating the seller or lessor to erect such a building on the lot within a period of 2 years.

Although there is virtually no legislative history regarding this exemption at the time Congress passed the Interstate Land Sales Full Disclosure Act, institutional memory within the Department is to the effect that this exemption was added by an amendment offered late in the course of passage. The reason for the amendment was to exclude traditional homebuilders from the Act's requirements since they did not comprise the class of persons Congress sought to regulate. Nor were traditional home buyers, whose purchases tend to be reasoned and deliberative, the class of consumers for whom the Act's protections were intended.

HUD's first set of Guidelines, denoted ''Condominium And Other Construction Contracts,'' was published on February 28, 1974, in response to inquiries as to the applicability of the Act and this exemption to condominiums. The Department published expanded Guidelines on October 8, 1975, April 23, 1979, and August 6, 1984. The 1984 Guidelines (which had appeared as an appendix to 24 CFR part 1710) remained applicable until the effective date of these Guidelines on April 26, 1996.

HUD consistently has taken the position that for a lot sale to be eligible for the exemption under section 1702(a)(2), the seller's obligation to construct must be real and not illusory, and must be obligatory except for the conditions described in these guidelines.

On July 11, 1995, the United States Court of Appeals for the Eighth Circuit issued an opinion that from HUD's perspective effectively nullified the seller's obligation to construct. In fact, it effectively nullified the exemption.

In *Attebury* v. *Maumelle Company*, 60 F.3d 415 (8th Cir. 1995), a case in which HUD appeared as amicus curiae as to the exemption issue only, the developer, Maumelle, used a sales contract that initially recited its obligation to build within two years after the lot sale. The contract then went on to recite a number of conditions, the effect of which was to shift the obligation to build onto the buyer.

HUD argued these guidelines and several cases that have recognized an unconditional requirement on the seller to build. In part, the case law adhered to the rule of construction that exemptions from a remedial statute should be narrowly construed. The court, which observed that the plaintiffs had not relied on the HUD Guidelines in the district court, dismissed the government's arguments primarily based on the language in this section that says: ''* * * the contract must *specifically* obligate the seller to complete the building within two years'' (emphasis added), by distinguishing the Guidelines' literal requirement that the obligation to build be ''specific'' from the argument in this case that the requirement be ''unconditional.''

At the time of the decision the language in question read:

If a seller (or developer) is relying on this exemption and the residential, commercial, condominium or industrial building is not complete, the contract must specifically obligate the seller to complete the building within two years. If the contractual obligation

is not present, the sale is not exempt. The two-year period begins on the date the purchaser signs the sales contract. The use of a contract that obligates the buyer to build within two years would not exempt the sale.

As amended, the above paragraph will read:

If a seller (developer) is relying on this exemption and the residential, commercial, condominium or industrial building is not complete, the contract must obligate the seller to complete the building within two years. If the contractual obligation is not present, the sale is not exempt. The two-year period normally begins on the date the purchaser signs the sales contract. A contract that conditions construction upon acts of a buyer will not exempt the sale. The essence of this exemption is that it applies to the sale of a house (if not built at the time of sale, then to be built within two years after the sale).

HUD's interpretation of what constitutes an obligation to construct a building relies on general principles of contract law. Provisions for purchaser financing and remedies clauses are matters to be decided by the parties to the contract under the laws of the jurisdiction in which the construction project is located. However, such clauses may not alter the obligation of the seller to build.

(Another reason the court appears to have ruled in favor of Maumelle is that the plaintiffs based much of their case on allegations of fraudulent conduct, conduct which the court found wanting of proof.)

The court also refused to accept the argument that by recognizing the Maumelle contract as eligible for the exemption it essentially abolished the reasons for the exemption. The purpose of the exemption was to eliminate homebuilders from the ambit of the Interstate Land Sales Full Disclosure Act. The rationale was that a person who buys a house is much more attentive to the transaction than one who is buying a lot. Moreover, the methods and practices of selling the two products usually differs with a ''heavier sell'' being employed for lot sales.

Obviously, a buyer in a non-exempt transaction will shoulder any responsibility for building a house. If the conditions in the Maumelle contract create a similar result, which is the effect of the ruling, there would be no reason for the exemption. (The fact that fewer than 200 houses had been built on approximately 2,000 lots sold over a multi-year period was not a factor that the court considered; the district court had found this fact not probative, a finding that the Department found puzzling, given the purpose of this exemption.)

For the above reasons HUD is amending the third, fourth and fifth paragraphs of this section to make it clear that the seller's obligation to build must be unconditional, except for the conditions HUD recognizes as acceptable for exemption eligibility. HUD also is amending the eighth and ninth paragraphs to update the discussion of case law.

HUD is bound by the *Maumelle* decision within the jurisdiction of the Eighth Circuit but not in other federal judicial circuits. Moreover, since the Guidelines that the court considered when making its decision are being changed to clarify the Department's position that the obligation to build must be that of the developer, subject only to the conditions recognized by HUD, HUD will not recognize the *Maumelle* decision as controlling within the Eighth Circuit as to lots offered after the publication of these amendments to the Interstate Land Sales Guidelines.

Therefore, the Interstate Land Sales Guidelines are revised as follows:

Guidelines to the Interstate Land Sales Registration Program

Public Information

In general. The identifiable records of the Office of Interstate Land Sales Registration are subject to the provisions of 5 U.S.C. 552, as implemented by 24 CFR part 15—Public Information, subtitle A.

Availability of information and records. Information concerning land sales registrations and copies of statements of record may be obtained from the following address: Interstate Land Sales Registration Program, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000.

In addition, statements of record may be reviewed at such address on any business day from 9 a.m. to 4:15 p.m.

Nonapplicability of exemptions authorized by 5 U.S.C. 552. With the exception of information exempt from disclosure under 5 U.S.C. 552(b)(7) and 24 CFR 15.21(a)(7), all information contained in or filed with any statement of record shall be made available to the public as provided by 15 U.S.C. 1704(d).

Duplication fee—property report. Notwithstanding the provisions of 24 CFR 15.14, *Schedule of Fees,* copies of a Property Report on file with the Office of Interstate Land Sales Registration will be provided upon request for a fixed fee of $2.50 per copy regardless of the number of pages duplicated. Payment may be made in cash or by check or money order payable to the Department of Housing and Urban Development. Personal checks are acceptable.

Duplication and certification fee-required documents to the several States that accept Federal filings. Notwithstanding the provisions of 24 CFR 15.14, *Schedule of Fees,* copies of documents on file with the Office of Interstate Land Sales Registration that are provided for certification to the several states that accept Federal filings will be provided upon request for a fixed fee of $12.00 per filing regardless of the number of pages duplicated.

Methods of payment. The fees set forth above may be paid by cash, by personal check, or by company check; or by U.S. money orders; or by certified check payable to the Treasurer of the United States or to the Department of Housing and Urban Development. Postage stamps will not be accepted. All other fees must be paid as set forth in 24 CFR 15.14(g).

Supplemental Information on Part 1710, Subpart C—Certification of Substantially Equivalent State Law

Certification Criteria

(a) *Certification of States requiring full disclosure.* The Secretary shall certify a state when—

(1) It is determined that the laws and regulations of the state applicable to the sale or lease of lots not otherwise exempt under section 1403 of the Act require the seller of lots to disclose information which is substantially equivalent to or greater than the information required to be disclosed in the Federal Statement of Record; and

(2) The state's administration of such laws and regulations shall provide that the information disclosed is current and accurate. The means for administering the disclosure requirements must include considerations of ample staffing, budgetary provisions for policing functions and that the requisite legal authority be vested in the state agency or agencies responsible for enforcing the laws and regulations of the State land program.

(b) *Certification of States providing sufficient protection.* The Secretary shall certify a state when—

(1) It can be demonstrated that the laws and regulations of the state applicable to the sale or lease of lots not otherwise exempt under section 1403 provide the purchasers and lessees with protection commensurate with that which is provided by the Federal disclosure requirements. That is, a State must develop substantive measures plus disclosure which provides a level of protection that is, at a minimum, comparable to the protection provided by the Federal disclosure standard; and

(2) The administration of the laws and regulations provide that all information disclosed is accurate and current. The means for administering the requirements of sufficient protection must include considerations of ample staffing, budgetary provisions for policing functions and that the requisite legal authority be vested in the state agency or agencies responsible for enforcing the laws and regulations of the State land program.

(c) *Applicability to Federal exemptions.* To be certified a state need not provide protections with regard to the sale or lease of lots that would qualify for a Federal exemption. The state may choose at its discretion to provide protections on the sale of lots exempt under the Act. However, for certification a state's laws should, in general, apply to the same lots as would be required to be registered under the Act.

(d) *Equivalency with Federal disclosure.* In order to be determined as substantially equivalent under paragraph (a) or (b) of this section, a state must provide protection either through disclosure, substantive development standards or some combination thereof in the topics delineated in paragraph (e) of this section. In addition, a state must satisfy requirements of paragraphs (f), (g), (h), (i), (j) and (k) of this section.

(e) *Areas of required protection.* In order to be certified, a state must require specific protections for consumers with regard to

paragraphs (e) (1) through (10) of this section. Protection in these areas can be secured through disclosure, substantive development standards or some combination thereof. Establishing protection provisions in these areas is to be considered essential to the granting of certification to a state. Paragraphs (e) (11) through (15) of this section are considered to be complementary protection provisions which would give additional strength to a state's land program if combined with the required provisions for protection. If the protection which is required by the items listed below is provided through substantive standards rather than solely disclosure, it is expected that the state will buttress those substantive standards with requirements of performance that are enforceable against developers. The state will designate who shall be responsible for enforcing the commitments made by developers and the method of enforcement to be used.

(1) *Subdivision and developer information.* The name of the subdivision, the name and address of the developer or owner, the nature of the offering and the number of lots in the subdivision must be given to the purchaser.

(2) *Method of sale or lease.* Information with regard to the: developer's method of sale, type of contract used, type and time frame for delivery of the deed, recordation of contract and deed, whether there is a security arrangement and its description, any escrow arrangement for monies received, title insurance, prepayments, defaults, developer's resale and lot exchange program, time sharing and membership sales must be given to the purchaser.

(3) *Condition of title.* Information about all liens, encumbrances or mortgages affecting purchasers in the subdivision, the lots covered and the impact on purchasers and lessees in a subdivision should a developer default, and mortgage release provisions must be given to the purchaser.

(4) *Condition and use of property.* Information regarding land reservations, unusual or restrictive easements, mineral reservations, land use restrictions, special zoning permits, environmental impact studies which may have been conducted and their results, topographical characteristics, including any subsurface conditions and potentially hazardous natural conditions must be given to purchasers.

(5) *Financial and legal information.* Information about the net income and worth of the developer, condition of financial operations at present and in the preceding fiscal year, bankruptcy litigation or other litigation to which the developer is a party or action taken against the developer by a governmental agency which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities must be given to purchasers.

(6) *Roads.* Information about access and subdivision roads, type of surface (present and final), completion dates, percentage of completion, buyer's cost and assessment, who is responsible for completion and maintenance and financial assurance of completion must be given to purchasers.

(7) *Water.* Information as to how water is to be supplied, supplier, completion dates, percentage of completion, any financial assurance of completion, buyer's cost and assessment including hook-up and water hauling costs, who is responsible for completion, quality and quantity, source, capacity of the water system, any intention to transfer the water system and the cost to lot owners or property owners association and any permits or approvals required must be given to purchasers.

(8) *Sewerage facilities.* Information as to the method used, supplier, completion dates, percentage of completion, any financial assurance of completion, buyer's cost and assessment including hook-up and sewage pumping and hauling, capacity of central system, who is responsible for completion, approvals and permits required, transfer of system to lot owners or property owners association must be given to purchasers.

(9) *Utilities (gas, electric, phone).* Information as to the availability, supplier, purchaser's or lessee's cost, completion date, percentage of completion must be given to purchasers.

(10) *Recreational facilities.* A list of the facilities and information about estimated date available for use, percentage of completion, any financial assurance or completion, buyer's or lessee's cost and assessment, who is responsible for completion, maintenance, disclosures on facilities which will be leased and/or transferred to the lot owners or property owners' association and who may use the facilities must be given to purchasers.

(11) *Lots being sold or leased.* Information about the legal descriptions of the offering by lot, block and unit number may be given to purchasers.

(12) *Location, size surrounding communities.* Information which describes the county seat, surrounding communities of significant size and services offered, population of the area, road systems and the potential size of the subdivision may be given to purchasers.

(13) *Taxes and assessments.* Information about payments to property owners' associations, the property owners' association's functions and responsibilities, management of the association, extent of developer control and the purpose of any special improvement district may be given to purchasers.

(14) *Community facilities.* Information about the availability of schools, medical and dental services, postal services, fire and police protection, shopping facilities and public transportation may be given to purchasers.

(15) *Platting.* Information which reports whether the subdivision's plats have been approved by regulatory authorities, whether the plats have been recorded and whether the survey and staking of each lot has been done and the cost that may be passed on to purchasers may be given to purchasers.

(f) The disclosure law of the State must be consistent with, but not necessarily identical to, the requirements of 15 U.S.C. 1703(a)(2)(D). This provision makes it unlawful for a developer to represent in any manner that it will provide or complete roads, sewers, water, gas or electric service or recreational amenities without stipulating in the contract of sale or lease that such services or amenities will be provided. Developers registered with the Secretary through a certified state are subject to this requirement. Consequently, the State may itself impose this substantive requirement upon developers. In any event, the disclosure documents approved by any certified state must meet the federal standard with respect to subdivision improvements. Developers are not allowed to represent that they will provide or complete roads, water, sewer, gas or electric facilities or recreational facilities unless the contract or agreement for sale obligates the developer to complete the facilities.

(g) In order to be determined substantially equivalent to the federal disclosure requirement, the state law and regulations must require that prospective purchasers and lessees receive, prior to or at the time of the signing any contract or agreement for purchase or lease, the applicable disclosure document containing complete and accurate information on the subdivision and the developer. In addition, state law or regulation must require developers to file amendments if any change occurs in any representation of material fact required to be stated in the disclosure materials filed with the state. The state law or regulation regarding amendments should entail requirements equivalent to those stated in 24 CFR 1710.23.

(h) For a state to be certified, it must be demonstrated that the state has or will have adequate full-time professional and clerical staff in its regulatory agency or agencies responsible for regulating the sale or lease of lots within its jurisdiction; that there is a budget approved for that staff which will permit them to fulfill the administrative and enforcement responsibilities; and that the staff have adequate legal authority to take official action in cases falling within the purview of state law and regulation.

(i)(1) If a certified state modifies or amends any law, regulation or administrative procedure with regard to subdivision development standards, it shall so notify HUD by registered or certified mail within 30 days after the modification or amendment has been enacted or promulgated. The state must submit to HUD new copies of its laws, regulations, rulings, administrative provisions and legal opinions, as amended, mandating the disclosure of information or establishment of development standards regarding land sales.

(2) Should any changes occur as set forth above and result in a measurable alteration of the protection provided to consumers by the state, the Secretary may, upon examination of those changes, re-evaluate the certification status of the state's land program.

(j) Once a state is certified and the state's disclosure document has become the Federal Property Report, the Secretary may require, as a condition of certification, a cover page, similar to the one presently used for federal filings, to be attached to the certified state filings. The form and substance of the federal cover page is explained in 24 CFR 1710.105. If a certified state filing does not have a cover page, the Secretary may require that, as a condition of certification, the state include

information regarding the federal revocation period within the body of the state disclosure document.

(k) The Secretary shall require all certified states to submit to the Secretary a copy of any notice of suspension which the state has issued to a developer at the time the notice is sent to the developer.

Application for Certification of State Land Sales Program

(a) In order to be certified, a state must submit an application to the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The application should be titled ''Application for Certification of State Land Sales Program.'' The application should use the section format and contain the information set out below:

Application for Certification of State Land Sales Program Submitted by: (Name, Address and Telephone Number of State Agency and Person To Contact.)

Section 1. Legal Authorities. This section should contain copies of all laws and regulations (including rulings and legal opinions having the effect of law) establishing and interpreting disclosure requirements or substantive development standards with regard to land sales and leases including all administrative provisions and all provisions establishing exemptions from the rule. Only those legal authorities which deal with land sales and leases subject to the federal disclosure requirements need be submitted.

Section 2. Sample Copies of Material to be Submitted by Developers to the State. This section should contain sample copies of all materials required to be filed with the agency responsible for regulating the sale of lots in subdivisions and sample copies of all material required to be provided to purchasers and lessees and prospective purchasers and lessees.

Section 3. Methods of Administration and Enforcement. This section should contain a detailed statement on the methods and scope of the state's administration and enforcement procedures to include:

(a) The name and address of the agency responsible for regulating the sale or lease of lots in subdivisions.

(b) The staffing capacity of the responsible State Regulatory Agency. There should be included:

(1) An organizational chart which describes not only the internal structure of the regulatory agency (agencies) but also the relationship of that agency to other decision-making centers;

(2) a description of the functions and duties of the full-time staff;

(3) the eligibility criteria, i.e., training, education and experience, for principal members of the staff; and

(4) the formula used in calculating the necessary number of staff members to fulfill administrative, investigative and enforcement responsibilities. The state should submit for the Secretary's review the actual number of complaints received, enforcement actions taken, and investigations initiated for the past three years.

(C) A description of the anticipated additional staff, if any, and their duties and qualifications.

(D) The method and scope of investigation and enforcement to be used. The state should demonstrate the procedures to be followed from the time a complaint is received until the completion of action on that complaint and the kinds of sanctions which may be involved.

(E) Included should be an accounting of the number of new filings received per year for the past three years, the number of amendments received per year, and the total number of active filings.

Section 4. Assertion of Equivalency. This section should contain a detailed statement supporting the state's claim that its land program provides purchasers and lessees through disclosure, substantive development standards or combination thereof, protection substantially equivalent to the protection provided for them by Federal law.

(b) Upon receiving an application for certification, the Secretary will publish a Notice of Application in the Federal Register. The purpose of this public notice is to give other certified states and other interested parties an opportunity to review and comment on applications and to enhance consistency among states which are certified. Person(s) interested in receiving application materials for review and comment purposes may request them from the Secretary. Comments should be submitted no later than 30 days after the Notice of Application has been published.

Supplemental Information to Part 1710: Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

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Part I—Introduction

The Interstate Land Sales Registration Division (also known as OILSR) is offering these Guidelines to clarify agency policies and positions with regard to the exemption provisions of the Interstate Land Sales Full Disclosure Act (the Act), Pub. L. 90–448 (15 U.S.C. 1701 through 1720), and its implementing regulations, 24 CFR parts 1710 through 1730. The regulations comply with the Paperwork Reduction Act of 1980, as evidenced by Office of Management and Budget approval number 2502–0243. These Guidelines are intended to assist a developer in determining whether or not a real estate offering is exempt from any or all of the requirements of the Act. They supersede any Guidelines previously issued by this Office.

This is an interpretive rule, not a substantive regulation. Not every conceivable factor of the exemption process is covered in these Guidelines and variations may occur in unique situations. Examples are given, but the examples do not in any way exhaust the myriad possibilities occurring in land development and land sales activity, nor do they set absolute standards.

To understand the exemptions, the jurisdictional scope of the Act must be understood. Any use of the mails, including intrastate use, or advertising in media which have interstate circulation is sufficient to establish jurisdiction. Generally, if a real estate offering falls under the jurisdiction established by the Act, a developer of a subdivision containing 100 or more lots must register the subdivision. Registration includes filing a Statement of Record and supporting documentation with HUD and providing to prospective purchasers an effective Property Report containing important facts about the subdivision and the developer.

Effective June 21, 1980, the provisions of the Act that prohibit misrepresentations or practices that would result in defrauding purchasers generally apply to sales or lease programs of 25 or more lots offered pursuant to a common promotional plan where any means or instruments of transportation or communication in interstate commerce, or the mails, are used.

Real estate offerings that meet the eligibility requirements or an exemption are exempt from all or some of the Act's requirements unless the method of operation

has been adopted for the purpose of evading the requirements of the law. The exemptions are available for subdivisions with particular characteristics, for certain individual lot sales transactions or for real estate meeting specific criteria. In addition, the Act gives the Secretary authority to exempt subdivisions or lots in a subdivision if, because of the small amount involved or the limited character of the offering, enforcement of the Act (i.e., full registration and disclosure) is not necessary in the public interest and for the protection of purchasers.

If the offering is subject to the Act and does not qualify for an exemption, it must be registered. The requirement of registration does not imply that the real estate value is questioned or the integrity of a business is suspect. The law simply provides that prospective purchasers have the right to adequate disclosure of facts about a subdivision so that an informed decision about the potential purchase can be made.

As exceptions to the registration and full disclosure requirements of the Act, the exemption provisions are strictly construed. The exemption requirements do not prescribe a method of operation or dictate how a subdivision should be developed.

A developer is not required to submit any documentation or obtain a determination from HUD to operate under any exemption except the one provided under 24 CFR 1710.16 (part VI of these Guidelines). However, if there is any question whatsoever concerning whether or not a real estate offering qualifies for any of the exemptions, developers are encouraged to seek legal counsel or obtain an Advisory Opinion from the Department before making any sales or leases. Experience has shown that developers are sometimes misinformed as to the applicability of the Act to their offering and that such misunderstanding can result in violative sales and the disruption of business. The instructions and format for obtaining an Advisory Opinion are contained in § 1710.17 of the regulations and in part VIII of these Guidelines.

Part II—Definitions

The following definitions are included here because of the importance each has to the explanation and understanding of HUD's interpretations of the exemption requirements. Furthermore, with the exception of ''lot'', ''sale'', ''common promotional plan'', and ''subdivision'', these definitions are not set forth elsewhere. The definitions of ''lot'' and ''sale'' are repeated here because of their extraordinary importance to the exemptions.

(a) *Anti-Fraud Provisions* means the provisions of the Act that prohibit the use of any sales practices, advertising or promotional materials that: would be misleading to purchasers; contain any misrepresentation of material facts or untrue statements; or would operate as a fraud or deceit upon a purchaser. Also prohibited are representations that roads, sewer, water, gas or electric services or recreational amenities will be provided or completed by the developer without so stipulating in the contract. The relevant provisions are set forth in 15 U.S.C. 1703(a)(2). The regulations that implement the anti-fraud provisions are set forth in 24 CFR part 1715, subpart B.

(b) *Common Promotional Plan* means any plan undertaken by a single developer or a group of developers acting together to offer lots for sale or lease. A common promotional plan is presumed to exist if land is offered by a developer or a group of developers acting in concert and the land is contiguous or is known, designated, or advertised as a common development or by a common name. The number of lots covered by each individual offering has no bearing on whether or not there is a common promotional plan.

Other characteristics that are evaluated in determining whether or not a common promotional plan exists include, but are not limited to: a 10% or greater common ownership; same or similar name or identity; common sales agents; common sales facilities; common advertising; and common inventory. The presence of one or more of the characteristics does not necessarily denote a common promotional plan. Conversely, the absence of a characteristic does not demonstrate that there is no common promotional plan.

Two essential elements of a common promotional plan are a thread of common ownership or developers acting in concert. However, common ownership alone would not constitute a common promotional plan. HUD considers the involvement of all principals holding a 10 percent or greater interest in the subdivision to determine whether there is a thread of common ownership. If there is common ownership or if the developers are acting in concert, and there is common advertising, sales agents or sales office, a common promotional plan is presumed to exist. Experience has led to the conclusion that sales agents generally will direct a prospective purchaser to any or all properties in inventory to make a sale.

The phrase ''common promotional plan'' is most often misunderstood by those who believe that ''promotion'' implies an enthusiastic sales campaign. Any method used to attract potential purchasers is, in fact, the ''promotional plan''. For example, direct mail campaigns and free dinners may be the promotional plan of one developer while another developer's promotion may be limited to classified advertisements in a local newspaper.

Brokers selling lots as an agent for any person who is required to register are required to comply with the requirements of the Act for those sales. Brokers selling lots for different individuals who do not own enough lots to come within the jurisdiction established by the Act generally would not be considered to be offering lots pursuant to a common promotional plan as long as they are merely receiving the usual real estate commission for such sales. If the broker has an ownership interest in the lots or is receiving a greater than normal real estate commission, the broker may be offering lots pursuant to common promotional plan and may be required to comply with the requirements of the Act.

(c) *Delivery of Deed* means the physical transfer of a recordable deed, executed by the seller to the purchaser, to the purchaser's agent or to the appropriate governmental recording office. If the transfer (i.e., delivery) is to an agent or to a recording office, there must not be any conditions imposed upon the purchaser or any further action to be taken by either the purchaser or the seller. If delivery is to the place of recordation, it must be accompanied by the proper recordation fees.

(d) *Lot* means any portion, piece, division, unit or undivided interest in land if such interest includes the right to the exclusive use of a specific portion of the land or unit. This applies to the sale of a condominium or cooperative unit or a campsite as well as a traditional lot.

If the purchaser of an undivided interest or a membership has exclusive repeated use or possession of a specific designated lot even for a portion of the year, a lot, as defined by the regulations, exists. For purposes of definition, if the purchaser has been assigned a specific lot on a recurring basis for a defined period of time and could eject another person during the time he has the right to use that lot, then the purchaser has an exclusive use.

(e) *Sale* means any obligation or agreement for consideration to purchase or lease a lot directly or indirectly. The time of sale is measured from when a purchaser signs a contract, even if the contract contains contingencies beyond the control of the seller. For example, if a developer uses a contract which states that the sale is contingent upon obtaining an exemption from HUD, a sale, for the purposes of this definition, occurred when the purchaser signed the contract. The terms ''sale'' and ''seller'' include the terms ''lease'' and ''lessor'' for the purposes of the regulations and these Guidelines.

(f) *Site* means a group of contiguous lots whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or any similar object.

(g) *Subdivision* means any land that is located in any state or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan. Any number of lots, whether divided by the previous owner, divided by the current owner, or merely proposed to be divided may constitute a subdivision. ''Proposed to be divided'' includes the developer's intention to subdivide land, as well as the developer's intention to add additional land or units.

Part III—Exclusions From the Act

The following items are excluded from the coverage of the Act:

(a) *Reservation.* A reservation is a non-binding agreement used to gauge market feasibility for a developer through which a potential purchaser expresses an interest to buy or lease a lot or unit at some time in the future. A deposit may be accepted from the interested person provided that the money is placed in escrow with an independent institution having trust powers and is refundable in full at any time at the option

of the potential purchaser. To be excluded from the Act, in no case may a reservation become a binding obligation to purchase a lot; the potential purchaser must take some subsequent affirmative action, typically the signing of a sales contract, to create a binding obligation. An option agreement is an arrangement for consideration in which a potential purchaser could forfeit money; therefore, an option agreement is not a reservation. In no event may a document purporting to be a Property Report or other evidence of compliance with the Act be delivered to an interested party when entering a reservation agreement for a lot or proposed condominium unit which is neither effectively registered nor exempt.

(b) *Undivided interests.* The sale of undivided interests that do not carry with them the right of exclusive use of a specific lot does not establish jurisdiction. For example, a camping subdivision sold as 400 undivided interests to tenants in common, where purchasers have a co-extensive, non-exclusive right to the use and enjoyment of all campsites on a space available basis and no purchaser has an expressed or implied exclusive right to repeatedly use or occupy any specific campsite, would not be covered by the Act.

Part IV—Statutory Exemptions Requiring No Determination by HUD

The discussions that immediately follow pertain to 15 U.S.C. 1702(a) (1) through (8). The exemptions are set forth in the regulations at 24 CFR 1710.5 (a) through (h). These provisions exempt sales from both the anti-fraud and the registration provisions of the Act.

(a) *Twenty-five Lots.* (15 U.S.C. 1702(a)(10) and 24 CFR 1710.5(a)).

This section exempts the sale or lease of lots in a subdivision (i.e., lots offered pursuant to the same common promotional plan) that contains fewer than 25 lots. If a subdivision contains 25 or more lots, but fewer than 25 of those lots are offered for sale under a common promotional plan, those sales would be exempt. Thus, in a subdivision of 28 lots in which 4 lots are not offered for sale because, for example, they are permanently dedicated to the public for a park, the sale of the remaining 24 lots is exempt.

If fewer than 25 lots are acquired in a larger subdivision, the offer of these lots may be subject to the Act if the acquiring party is in any way acting in concert with the previous or current developer of the balance of the subdivision. Correspondingly, if fewer than 25 lots are acquired in a larger subdivision, the offer of the lots may be exempt if there is neither an identity of interest between the acquiring party and the previous or current developer nor any form of concerted action that constitutes a common promotional plan.

Since the *fewer than 25 lots* exemption is based upon the number of lots as opposed to the number of sales, resales of a lot will not be counted toward the *fewer than 25 lots* limit.

(b) *Improved Lots, 15 U.S.C. 1702(a)(2).*

Section 1702(a)(2) of Title 15 of the United States Code exempts (1) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building; or (2) the sale or lease of land under a contract obligating the seller or lessor to erect such a building on the lot within a period of two years.

For a building or unit to be considered complete, it must be physically habitable and usable for the purpose for which it was purchased. A residential structure, for example, must be ready for occupancy and have all necessary and customary utilities extended to it before it can be considered complete. Manufactured home lots with pads but no structure, even if improved with utilities and roads, will not qualify for this exemption. Recreational vehicles are not considered buildings.

If a seller (developer) is relying on this exemption and the residential, commercial, condominium or industrial building is not complete, the contract must obligate the seller to complete the building within two years. If the contractual obligation is not present, the sale is not exempt. The two-year period normally begins on the date the purchaser signs the sales contract. A contract that conditions construction upon acts of a buyer will not exempt the sale. The essence of this exemption is that it applies to the sale of a house (if not built at the time of sale, then to be built within two years after the sale).

HUD's interpretation of what constitutes an obligation to construct a building relies on general principles of contract law. Provisions for purchaser financing and remedies clauses are matters to be decided by the parties to the contract under the laws of the jurisdiction in which the construction project is located. However, such clauses may not alter the obligation of the seller to build. For example, if the type and terms of financing are subject to negotiation between buyer and seller, but the buyer is unable to obtain financing as a condition of the obligation to build, then the sale fails for exemption purposes. The inability of the buyer to obtain construction financing will not relieve the seller from the obligation to build, thereby leaving the buyer with a lot free of a construction obligation. Since the nature of the transaction is the sale of a house (or other structure), there should be no reason for separate construction financing in the normal course of business.

The contract must not allow nonperformance by the seller at the seller's discretion. Contracts that permit the seller to breach virtually at will are viewed as unenforceable because the construction obligation is not an obligation in reality. Thus, for example, a clause that provides for a refund of the buyer's deposit if the seller is unable to close for reasons normally within the seller's control is not acceptable for use under this exemption. Similarly, contracts that directly or indirectly waive the buyer's right to specific performance are treated as lacking a realistic obligation to construct. HUD's position is not that a right to specific performance of construction must be expressed in the contract, but that any such right that purchasers have must not be negated. For example, a contract that provides for a refund or a damage action as the buyer's sole remedy would not be acceptable.

Contract provisions which allow for nonperformance or for delays of construction completion beyond the two-year period are acceptable if such provisions are legally recognized as defenses to contract actions in the jurisdiction where the building is being erected. For example, provisions to allow time extensions for events or occurrences such as acts of God, casualty losses or material shortages are generally permissible. Also permissible, in the case of multi-unit construction, is a clause conditioning the completion of construction or closing of title on a certain percentage of sales of other units. The presale period cannot exceed 180 days from the date the first purchaser signs a contract in the project or, in a phased project, from the date the first purchaser signs a sales contract in a phase. Such a clause may not extend the overall two-year obligation to construct.

Although the factual circumstances upon which nonperformance or a delay in performance is based may vary from transaction to transaction, as a general rule delay or nonperformance must be based on grounds cognizable in contract law such as impossibility or frustration and on events which are beyond the seller's reasonable control.

Because of the variations in applicable contract law among the states and the many different provisions that are used by sellers in construction contracts, HUD may condition its advisory opinions regarding this exemption on representations by local counsel as to the current status of state law on the relevant issues. For example, the Florida Supreme Court has ruled that there must be an unconditional commitment to complete construction within two years and that the remedies available to the purchaser must not be limited. *Samara Development Corp.* v. *Marlow,* 556 So.2d 1097 (Fla. 1990). See also *Schatz* v. *Jockey Club Phase III, Ltd.,* 604 F. Supp. 537 (S.D. Fla. 1985). Developers, especially those in Florida, should be aware of these decisions, as well as decisions in other jurisdictions, e.g., *Markowitz* v. *Northeast Land Co.,* 906 F.2d 100 (3d Cir. 1990).

For a different view, readers should refer to *Attebury* v. *Maumelle Company,* 60 F.3d 415 (8th Cir. 1995), in which the court upheld a contractual provision to build as sufficient to qualify for the exemption despite the fact that the contract then shifted that responsibility to the buyer. This revision of the Guidelines dealing with the ''Improved lot'' exemption is in reaction to the *Maumelle* decision. At the time of this writing another case of interest was pending in the United States District Court for the Eastern District of Michigan. Whether it ultimately will result in a decision on the Land Sales issues is unknown, as it is the understanding of the Department that settlement negotiations are ongoing. The court is considering those issues on remand from the Court of Appeals for the Sixth Circuit. See *Becherer* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 43 F.3d 1054 (6th Cir. 1995).

Since questions about this exemption most often arise in connection with condominiums, developers and others should be aware of the decision in the case

of *Winter* v. *Hollingsworth Properties Inc.*, 777 F.2d 1444 (11th Cir. 1985), in which the court held that the Interstate Land Sales Full Disclosure Act applied to the sale or lease of condominium units. This ruling is in consonance with the Department's longstanding position on the condominium issue. The weight of authority of other cases, both Federal and State, supports the Department's position. Therefore, it continues to be the Department's policy that the mere use of the condominium form of ownership does not determine jurisdiction of the Act and that developers should look to the specific requirements of the statutory and regulatory exemptions as amplified in these Guidelines to determine the applicability of the Act.

(c) *Evidence of Indebtedness.* (15 U.S.C. 1702(a)(3) and 24 CFR 1710.5(c)).

This section exempts the sale or lease of evidences of indebtedness (typically a note) secured by a mortgage or deed of trust on real estate. The sale of such notes, which is common in the industry, is exempt; however, the underlying sale of the land is not exempt under this provision.

(d) *Securities.* (15 U.S.C. 1702(a)(4) and 24 CFR 1710.5(d)).

This section exempts the sale of securities issued by a real estate investment trust.

(e) *Government Sales.* (15 U.S.C. 1702(a)(5) and 24 CFR 1710.5(e)).

This section exempts the sale or lease of real estate by any government or government agency. This exemption extends to the sale or lease of land by a city, state, or foreign government as well as the sale of land by the U.S. Government. However, it does not exempt sales or leases of lots by Federal or state chartered and regulated institutions such as banks or savings and loan associations, nor does the fact that the development is assisted, insured or guaranteed under a Federal or state program exempt the lot sales. Municipal Utility Districts and Special Improvement Districts may or may not be considered a qualified government agency under this exemption depending on the legal basis and operation of the District.

(f) *Cemetery Lots.* (15 U.S.C. 1702(a)(6) and 24 CFR 1710.5(f)).

This section exempts the sale or lease of cemetery lots.

(g) *Sales to Builders.* (15 U.S.C. 1702(a)(7) and 24 CFR 1710.5(g)).

This section exempts the sale or lease of lots to any person who acquires the lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of the lots to persons engaged in such a business. The term business is viewed as an activity of some continuity, regularity, and permanency, or means of livelihood.

The sale or lease of lots to an individual who purchases the lots to have his or her own home built is not exempt under this provision. The sale to a non-broker who is buying a lot for investment with indefinite plans for resale also is not exempt.

(h) *Industrial or Commercial Developments.* (15 U.S.C. 1702(a)(8) and 24 CFR 1710.10(h)).

This section exempts the sale or lease of real estate which is zoned for industrial or commercial development. If there is no zoning ordinance, the exemption is available only if the real estate is restricted to industrial or commercial development by a declaration of covenants, conditions, and restrictions which have been recorded in the official records of the city or county in which the real estate is located. In addition, the following five conditions must exist in order to establish eligibility for this exemption:

(1) Local authorities have approved access from the real estate to a public street or highway. The approved access to a public street or highway must run to the legal boundary of the subdivision, but need not run to each and every lot;

(2) The purchaser or lessee of the real estate is a duly organized corporation, partnership, trust or business entity engaged in commercial or industrial business. To be considered ''duly organized'', a purchaser or lessee must have set up an administrative structure to conduct business, such as: checking accounts; licenses and permits, if required; evidence of intent; and a set of accounting records. The phrase ''engaged in business'' implies an activity of some continuity, regularity and permanency, or means of livelihood. A new entity or individual starting a business must be authorized to conduct such business in the jurisdiction in which the subdivision is located;

(3) The purchaser or lessee of the real estate is represented in the transaction of sale or lease by a representative of its own selection. The term ''representative'' is not limited to attorneys and does not exclude sole proprietors from representing themselves. Any person can serve as the representative of the purchaser or lessee so long as sufficient evidence can be produced to prove authority to act in that capacity;

(4) The purchaser or lessee of the real estate affirms in writing to the seller that: it is either purchasing or leasing the real estate substantially for its own use or it has a binding commitment to sell, lease or sublease the real estate to an entity which meets the requirements of (2) above; it is engaged in commercial or industrial businesses; and it is not affiliated with the seller or agent. These affirmations should be retained by the developer in accordance with the statute of limitations of the local jurisdiction or for a period of three years, whichever is longer. If the affirmation is included in the contract, a space must be provided for the purchaser to initial immediately following the affirmation clause; and

(5) A title insurance policy or a title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as are approved in writing by the purchaser or lessee, preferably in a separate document, prior to the recordation of the instrument of conveyance or execution of the lease. The recordation of a lease is not required. Any purchaser or lessee may waive, in writing in a separate document, the requirement that a title insurance policy or title opinion be issued in connection with the transaction.

Part V—Statutory Exemptions From Registration Requiring No HUD Determination

The discussions that immediately follow pertain to 15 U.S.C. 1701(b) (1) through (8) and 24 CFR 1710.6 through 1710.13.

The developer must comply with the Act's anti-fraud provisions (15 U.S.C. 1703(a)(2)) for sales of lots in the subdivision that are exempt under these provisions. Developers should be particular aware of the requirements of 15 U.S.C. 1703(a)(2)(D).

(a) *One Hundred Lot Exemption.* (15 U.S.C. 1702(b)(1) and 24 CFR 1710.6).

This section exempts the sale of lots in a subdivision if: the subdivision contained fewer than 100 lots on April 28, 1969; has, since that date, contained fewer than 100 lots; and will continue to contain fewer than 100 lots. The 100 lot count for purposes of the exemption excludes lots that are exempt from jurisdiction under 24 CFR 1710.5 (b) through (h). It should be noted that the ''25 lot'' exemption under § 1710.5(a) cannot be used in connection with the ''100 lot'' exemption.

For example, a developer of a subdivision containing a total of 129 lots since April 28, 1969, qualifies for this exemption if at least 30 lots are sold in transactions that are exempt because the lots had completed homes erected on them. The 30 exempt transactions may fall within any one exemption or a combination of exemptions noted in § 1710.5 (b) through (h) and may be either past or future sales. In the above example, the developer also could qualify if twelve lots had been sold with residential structures already erected on them, nine lots had been sold to building contractors and at least nine lots were reserved for either the construction of homes by the developer or for sales to building contractors. The reserved lots need not be specifically identified.

Developers of subdivisions containing more than 99 lots who wish to operate under this exemption must assure themselves that all lots in excess of 99 have been and will be sold in transactions exempt under 24 CFR 1710.5 (b) through (h). The sale of more than 99 lots in transactions not exempt under § 1710.5 (b) through (h) would nullify this exemption for prior and future sales and might result in prior sales being voidable at the purchaser's option.

Since the ''100 lot'' exemption applies to the number of the lots as opposed to the number of sales, resales of a lot will not be counted toward the 100 lot limit. However, any sale or resale of a lot must comply with the anti-fraud provisions.

If fewer than 100 lots are acquired in a larger subdivision, the offer of these lots will not be exempt if the acquiring party is, in any way, acting in concert with the previous or current developer of the balance of the subdivision so as to create a common promotional plan for 100 or more lots unless sales of the other lots are exempt under § 1710.5. However, if fewer than 100 lots are acquired in a larger subdivision, the offer of the lots may be exempt if there is neither an identity of interest between the acquiring party and the previous or current developer nor a form of concerted action constituting a common promotional plan.

(b) *Twelve Lot Exemption.* (15 U.S.C. 1702(b)(2) and 24 CFR 1710.7).

This section exempts the sale of lots from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent 12-month period. Thereafter, the sale of the first twelve lots each period is exempt from the registration requirements if no more than twelve lots were sold in each previous 12-month period that began with the anniversary date of the first sale after June 20, 1980. For example, if a developer's first lot sale after June 20, 1980 occurred on August 5, 1980 and no more than eleven additional lots in the subdivision were sold through August 4, 1981, the sales would be exempt.

During the second year of operation under this exemption (beginning on August 5, 1981 in the example) at least the first twelve lot sales would be exempt. However, if lot sales exceed twelve in the second or any subsequent year, the exemption would terminate on the sale of the thirteenth lot. Once eligibility has been terminated, the exemption is no longer available and cannot be recaptured by the same developer for the same subdivision even if there are fewer than twelve lots sold in subsequent years.

A developer may apply to the Secretary to establish a different twelve-month period for use in determining eligibility for the exemption, and the Secretary may allow the change if it is for good cause and consistent with the purpose of this section. An example would be to change the year to coincide with the developer's fiscal or tax year.

In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980 are counted, whether or not the lot is registered or the transaction is otherwise exempt, such as the sale of a home and lot package. This exemption extends to twelve lots, not twelve sales. Each lot would be counted in the sale or lease of multiple lots.

Since the ''twelve lot'' exemption applies to the number of lots as opposed to the number of sales, resales of a lot will not be counted toward the twelve lot limit. The sale and resale of a lot must qualify for the exemption and comply with the anti-fraud provisions. However, lot sales exempt under § 1710.5 (b) through (h), while counted toward the total of twelve, are not required to comply with the anti-fraud provisions.

(c) *Scattered Site Exemption.* (15 U.S.C. 1702(b)(3) and 24 CFR 1710.8).

This section exempts from the Act's registration requirements the sale of lots in a subdivision consisting of noncontiguous parts if: (1) each noncontiguous part of the subdivision contains twenty or fewer lots; and (2) each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased before signing a contract.

This exemption is intended to relieve the developers of small, scattered offerings of the requirement to register their subdivisions. The exemption may also apply to real estate brokers who have an ownership interest in more than one site, each containing 20 or fewer lots.

If a developer intends to rely on this exemption, it is important that the developer understand the definition of subdivision, how a common promotional plan is determined and what constitutes a site. These terms are defined in part II of these Guidelines.

Lots that are contiguous when they are originally platted or developed are considered to remain contiguous. For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(d) *Twenty Acre Lots Exemption.* (15 U.S.C. 1702(b)(4) and 24 CFR 1710.9).

This section exempts the sale of lots in a subdivision from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

This exemption applies to the entire subdivision and requires that each lot in the subdivision be twenty acres or larger in order for the subdivision to qualify. If a single lot offered in the subdivision is less than twenty acres in size, no lot in the subdivision qualifies for the exemption. If a developer has two sites which comprise the subdivision and only one of the sites contains lots that are all greater than twenty acres in size, the offering of these lots would not be exempt under this provision. All lots offered pursuant to a common promotional plan must be considered.

A subdivision which is platted of record and contains a single lot that is less than twenty acres cannot qualify for the exemption even if the lots are offered in multiples that aggregate twenty acres or more. Further, if the platted lots are all twenty acres or more in size, but a lot is divided and a portion that is less than twenty acres is offered for sale, the exemption would not be available to the subdivision.

(e) *Single-Family Residence Exemption.* (15 U.S.C. 1702(b)(5) and 24 CFR 1710.10).

(1) *General.* This section provides an exemption for the sale of lots that are limited to single-family residential use. Developers are advised to carefully review the eligibility requirements listed below before proceeding with sales. Note especially that some of the eligibility requirements pertain to the entire subdivision while others apply to individual lots.

(2) *Subdivision Requirements.* All lots offered under the same common promotional plan must comply with the two eligibility requirements listed below in order for any lot to be eligible for this exemption.

(i) The subdivision must meet all local codes and standards. If local codes expressly permit incremental development, then only the portions of the subdivision being offered at any given time are required to meet the codes and standards to satisfy this requirement. Otherwise, the entire subdivision must comply with the local standards.

(ii) In the promotion of the subdivision, there cannot be offers, by direct mail or telephone solicitation, of gifts, trips, or dinners or the use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot. There is no prohibition against using the mails, telephone or other advertising media to promote or advertise the offering or to respond to inquiries from potential purchasers. The only prohibition is that these media cannot contain offers of gifts, trips, dinners or other inducement.

In order to qualify for this exemption, the subdivision must have complied with the requirements pertaining to advertising and promotional methods since June 13, 1980, the date the exemption became effective.

(3) *Lot Requirements.* Having met the edibility requirements for a subdivision, each lot offered under the exemption also must comply with the eight requirements listed below. Lots within a subdivision that do not comply with these additional requirements must either be registered or sold in compliance with another exemption, even though the two subdivision requirements have been met.

(i) The lot must be located within a municipality or county where a unit of local government or the State specifies minimum standards for the development of subdivision lots taking place within its boundaries. Each lot must comply with these standards. The following is a list of the areas which must be regulated:

(A) Lot dimensions.
(B) Plat approval and recordation.
(C) Roads and access.
(D) Drainage.
(E) Flooding.
(F) Water supply.
(G) Sewage disposal.

(ii) Each lot sold under the exemption must be either zoned for single-family residence or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one to four family use are considered single-family residences for purposes of this exemption. Recreational vehicles are not considered to be residential buildings. Manufactured homes must be affixed to the real estate to be eligible, e.g., connected to water, sewer and electrical sources and on blocks with skirts.

The phrase ''* * * in the absence of a zoning ordinance'' is interpreted in its literal sense. The existence of a zoning ordinance other than single-family residence zoning is considered to be disqualifying even if there are covenants or restrictions limited construction to single-family residences. Situations such as the foregoing would, however, be a candidate for a ''substantial compliance'' exemption (24 CFR 1710.16) if all other eligibility requirements of the exemption are satisfied substantially. ''Substantial compliance'' is discussed in part VII of these Guidelines.

(iii) The lot must be situated on a paved street or highway which has been built to standards prescribed by a unit of local government in which the subdivision is located and be acceptable to that local unit. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure its completion to local standards. For the purposes of this exemption, paved means concrete or pavement with a bituminous wearing surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated.

(iv) The unit of local government or a homeowners' association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. The obligation of the local government entity to accept this responsibility may be evidenced by an ordinance which binds the government to maintain the streets or by a written statement signed by the appropriate government official. Maintenance independently provided by a developer is not acceptable under this exemption.

In any case in which a homeowners' association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to a purchaser signing a contract or agreement to purchase, provide the purchaser with a good faith written estimate of the cost of maintenance over the first ten years of ownership. A *good faith estimate* means a current estimate based on documentary evidence, usually obtainable from the suppliers of the necessary services.

(v) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must be obligated to install the facilities within 180 days following closing.

The obligation may be in the form of a local statute or written agreement signed by the appropriate government authority. A local code or statute that obligates the subdivider or developer to complete installation of water and sewage disposal systems within a certain time does not satisfy this requirement of the exemption.

For subdivisions that will not have a central water system, there must be assurances that an adequate potable water supply is available year-round to service the subdivision. Assurances of an adequate, drinkable water supply can be obtained from a hydrologist or the local health department.

For subdivisions that will not have a central sewage disposal system, there also must be assurances that each lot is approved for the installation of a septic tank. If the individual lot is not approved for the installation of a septic tank at time of sale, the developer may provide in the contract that approval will be obtained prior to closing provided that any purchaser deposits and/or payments are placed in an escrow account with an institution having trust powers in the jurisdiction where the subdivision is located. All such monies must be refunded to the purchaser if the approval is not obtained prior to closing. Closing must occur within 180 days. The approval for the installation of a septic tank must come from the appropriate government authority, usually the local health department, local governmental engineer or county sanitarian. Developers selling lots prior to obtaining approval for installation of a septic tank on the individual lot are proceeding at their own risk. The sale will not qualify for the exemption if the approval is not obtained and the closing does not occur within 180 days.

(vi) The contract of sale must require delivery of a warranty deed to the purchaser within 180 days after the signing of the sales contract. The deed must be free from monetary liens and encumbrances at the time of delivery. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant that warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must also warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through or under the seller.

(vii) At the time of closing, a current title insurance binder, policy or title opinion reflecting the condition of title must be issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller. In order to satisfy this requirement, a developer may want to obtain the purchaser's written approval of exceptions to title prior to closing, although the actual title binder, policy or opinion must be current at the time of closing and show that title is vested in the seller. If closing occurs and the purchaser has not approved the exceptions to title in writing, the sale would not be exempt under this provision. The party that bears the cost of the title binder, policy or opinion is not relevant to eligibility for the exemption. Unless otherwise defined by state law, the *time of closing* is the date that legal title to the property is transferred from seller to buyer.

(viii) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(f) *Mobile home exemption.* (15 U.S.C. 1702(b)(6) and 24 CFR 1710.11)

For purposes of this exemption, a mobile home is a unit receiving a label in conformance with HUD Regulations implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.).

This section exempts the sale of a mobile home lot from the registration requirements of the Act when all eligibility requirements listed below are met:

(1) The lot is sold as a homesite by one party and a mobile home is sold by another party, and the individual contracts of sale:

(i) Obligate the sellers to perform, contingent upon the other seller carrying out its obligations, so that a completed mobile home will be placed on a completed homesite within two years after the date the purchaser signs the contract to purchase the lot (see part IV(b) of these guidelines for HUD's position on two year completion requirements);

(ii) Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;

(iii) Provide that funds received by the sellers will be released to the buyer upon demand if either of the sellers do not perform; and

(iv) Contain no provisions that restrict the purchaser's right to specific performance under state law.

(2) The homesite is developed in conformance with all local codes and standards, if any, for mobile home subdivisions.

(3) At the time of closing:

(i) Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line:

(ii) The homesite is accessible by roads;

(iii) The purchaser receives marketable title to the lot; and

(iv) Other common facilities represented in any manner by the developer or agent to be provided are completed or, in the alternative, there are letters of credit, cash escrows or surety bonds in a form acceptable to the local government in an amount equal to 100 percent of the estimated cost of completion. Corporate bonds are not acceptable for purposes of the exemption.

(g) *Intrastate Exemption.* (15 U.S.C. 1702(b)(7) and 24 CFR 1710.12).

This section exempts the sale or lease of real estate in a sales operation that is intrastate in nature. The lot must be free and clear of all liens, encumbrances and adverse claims. The following six eligibility requirements must be met before a lot qualifies for this exemption:

(1) The sale of lots in the subdivision after December 20, 1979, must have been and must continue to be restricted solely to residents of the state in which the subdivision is located, unless the sale is exempt under 24 CFR 1710.5, 1710.11 or 1710.13. Sales of lots exempt under § 1710.5, § 1710.11 or § 1710.13 may be to out-of-state purchasers without affecting the eligibility of the overall subdivision for the intrastate exemption. Any other sales to out-of-state purchasers, even if the lots were registered or otherwise exempt under any other section, would make the entire subdivision ineligible for the intrastate exemption.

Residency is determined by state law. For purposes of this exemption, a developer may rely on a statement signed by the purchaser or lessee as to the state of residence. Obviously, the prospective purchaser must be an actual resident of the state at the time of signing the sales contract as opposed to a person visiting the state or planning to move into the state. However, service personnel

may, at their option, claim the state in which they are stationed.

(2) The purchaser or purchaser's spouse must make a personal on-the-lot inspection of the lot to be purchased before signing a contract. Evidence of this inspection should be retained by the developer.

(3) Each contract must:

(i) Specify the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities. If the developer is not responsible for providing or completing a particular service or amenity, the contract should make it clear that it is up to the buyer to make the necessary arrangements for the desired services. If a third party is involved, the contract must specify whether the buyer or seller is responsible for making the required arrangements;

(ii) Contain a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed.

This estimate is required for any facility the developer promises or indicates will be completed. Estimates should be based on documentary evidence, such as contracts, engineering schedules or other evidence of commitments to complete the facilities and amenities; and

(iii) Contain a non-waivable provision giving the purchaser the right to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. This revocation right cannot be restricted to a specific method of notification such as requiring notification to be in writing. If the purchaser is entitled to a longer revocation period by operation of state law, that period automatically becomes the Federal revocation period and the contract must reflect the longer period. If the purchaser revokes the contract during this ''cooling-off period,'' he or she is entitled to a full refund of all money paid.

(4) The lot being sold must be free and clear of all liens, encumbrances and adverse claims. To remain exempt, the real estate must remain free and clear of all liens, encumbrances and adverse claims, with the exception of those placed on the property by the purchaser. Thus, real estate that is sold under a installment contract prior to conveyance by deed cannot be burdened by a lien and still qualify for the exemption. If a lien is placed on the property, the exemption is automatically terminated at the time the lien is perfected.

The fact that a title company will insure against a lien, encumbrance or adverse claim has no bearing in determining whether or not the sale qualifies for the exemption. Except as noted below, the existence of a lien, encumbrance or adverse claim disqualifies the affected lot or lots for this exemption. The only exceptions to this requirement are listed below:

(i) Mortgages or deeds of trust containing release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver a free and clear warranty deed or its equivalent under local law within 180 days (constructive delivery is acceptable); and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered. The escrow account must be with an institution which has trust powers or in an established bank, title insurance, abstract or escrow company that is doing business in the jurisdiction in which the property is located. The purchaser's earnest money payment or any other payment by the purchaser cannot be used to obtain a release from the mortgage and may not be released from escrow until the deed is delivered.

(ii) Liens that are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations that are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

Other acceptable property reservations are easements for roads and electric lines to serve the subdivision as well as certain drainage easements. The reservation of subsurface oil, gas or mineral rights is acceptable unless the reservation expressly or impliedly includes the right of ingress and egress upon the property. Examples of the types of reservations and easements that are unacceptable and disqualify the burdened property for the exemption include easements for high power transmission lines, telephone long lines, pipelines and bridle trails.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by all lot owners in the subdivision.

Developers who wish to maintain control of a subdivision indefinitely through a Property Owners' Association, Architectural Control Committee, and/or restrictive covenants will find the requirements of this exemption unsuitable.

In recognition of the fact that developer control is unavoidable until lots are sold, for the purpose of this exemption, a developer must provide an opportunity for the transfer of control to all lot owners at or before the time when the developer no longer owns a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control must require affirmative action, usually in the form of an election based upon one vote per lot.

The developer may continue to participate in the control of the subdivision to the extent that lots remain unsold. For example, a developer who still owns thirty percent of the lot inventory has a thirty percent voting block on issues regarding the subdivision.

It is acceptable for the developer to appoint, during the initial stages of development, a governing body (panel, commission, etc.) whose members subsequently are elected and re-elected by all the lot owners to administer subdivision control.

To be enforceable, restrictions must be part of a general plan of development. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every applicable lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations are excepted from the term ''liens'' but must be disclosed in the Intrastate Exemption Statement.

Many of the land patents by which land west of the Mississippi River was originally conveyed contain reservations to the United States for minerals and water rights-of-way for canals and ditches. These reservations as well as any other Federal grants or reservations must be disclosed but are not disqualifying factors.

(5) Before the sale the developer must disclose in a written statement (see sample below) to the purchaser all liens, reservations, taxes, assessments and restrictions applicable to the lot purchased. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered.

Neither the statement nor the written receipt have to be submitted to HUD, but copies of the purchaser receipts should be available for review upon demand by the Secretary or his or her designee. It is suggested that the developer retain the purchaser receipts for at least three years.

(6) The written statement (see sample below) also must include good faith cost estimates for providing electric, water, sewer, gas and telephone service to the lot. Estimates must include all costs associated with obtaining the services. For example, if private wells are the water source, the estimate should include the cost of the well, pump, casing, etc. Likewise, if butane or propane gas is used, the statement must include the cost of installing a tank and the per gallon cost of the gas.

The estimates for services applicable to unsold lots must be updated every two years or more frequently if the developer has reasons to believe that at least a $100 increase or decrease for a particular item has occurred. The dates on which the estimates were made must be included in the statement.

Effective state property reports or disclosure statements containing all the information required in the Intrastate Exemption Statement may be used in lieu of a separate statement. State property reports which do not contain all the information required in the Intrastate Exemption Statement may be used only of they are supplemented with the missing information.

Sample Intrastate Exemption Statement

Intrastate Exemption Statement

Name of Developer _____

Address _____

Name of Subdivision _____

Location _____

Liens

(Provide a clear and concise listing of all liens on the property. As used in this statement, liens are security interests such as mortgages or deeds of trust, tax liens, mechanics liens or judgments. Liens which are acceptable for purposes of the exemption are those which contain release provisions for the individual lot purchased but only if the contract of sale obligates the developer to deliver a deed within 180 days and the purchaser's payments are held in an independent escrow account until a deed is delivered and, in the case of leases, liens which are subordinate to the lease hold interest and do not affect the lessee's right to enjoy or use the lot.) A chart similar to the following may be used:

Type of lien	Amount of lien	Lots subject to lien.
.....	.....	

Reservations

(Disclose all easements and reservations affecting the lots that are offered for sale. The preceding narrative contains examples of easements and reservations which are acceptable.)

Taxes

(Provide sufficient information to enable a purchaser to estimate the annual taxes due on the lot purchased.)

Assessments

(Disclose all assessments, fees and dues that have been imposed or may be imposed. The list of assessments, fees and dues must show the rates and amounts and explain who has the authority for imposing the listed assessments, fees and dues.)

Restrictions

(Recite verbatim all restrictions that apply to the lots being offered. In the alternative, the developer may attach a complete copy of all restrictions affecting the lots. If the restrictions do not apply to all the lots in the offering, the developer should specify which lots are affected by the restrictions. In addition, the developer should explain who has the authority to enforce the restrictions and indicate whether or not the restrictions are recorded.)

Utility Cost Estimates

(Disclose a good faith estimate of the cost to the purchaser of providing water, electric, telephone, sewage disposal and gas service to each lot offered under the exemption. The estimate must include all costs associated with obtaining the services.) A chart similar to the following may be used.

Lot No.	Water	Electric	Telephone	Sewage disposal	Gas
....					

Under each heading list the estimated cost to the purchaser and the date the estimate was made.

I affirm that to the best of my knowledge the above information is accurate and complete.

_____
(Signature of Developer or Authorized Agent)

_____
(Date)

_____
(Title)

Purchaser's Acknowledgement

(The developer must obtain a written receipt from the purchaser acknowledging that the purchaser received a written statement(s) of all liens, reservations, taxes, assessments and restrictions applicable to the lot and good faith estimates of the cost of providing electric, water, sewer, gas and telephone service to the lot.)

The receipt may be in the following form:

Sample Receipt

I acknowledge that I have received an Intrastate Exemption Statement listing all liens, reservations, taxes, assessments, restrictions and estimates of utility costs applicable to (identify the subdivision and its location) from (name of developer). I have made a personal on-the-lot inspection of (identify the lot), which is the lot I am interested in buying or leasing.

_____
(Signature of Purchaser)

_____
(Date)

(h) *Metropolitan Statistical Area (MSA) Exemption.* (15 U.S.C. 1702(b)(8) and 24 CFR 1710.13).

This section exempts the sale or lease of lots in a subdivision located in a Metropolitan Statistical Area (MSA). The eligibility criteria for the MSA Exemption are the same as that of the Intrastate Exemption with the following exceptions:

(1) The subdivision must have contained fewer than 300 lots on and since April 28, 1969, and continue at or below that quantity in the future;

(2) The lot(s) must be located in a MSA as defined and designated by the U.S. Office of Management and Budget;

(3) The principal residence of each purchaser must be within the same MSA;

(4) Adverse claims that are disqualifying for the Intrastate Exemption are acceptable for the MSA Exemption. The only requirement in this regard is for the adverse claim to be disclosed in the MSA Exemption Statement. The party making the claim, the basis of the claim and the property affected by the claim must be identified; and

(5) Although the MSA exemption is self-determining, a written affirmation must be submitted by developers relying on this exemption. The due date is January 31 of each year. Failure to submit the affirmations will disqualify the subdivision for this exemption. The written affirmation must be in the following format: Affirmation

Developer's Name _____

Developer's Address _____

Purchaser's Name(s) _____

Purchaser's Address(es) (including county)

_____

_____

Name of Subdivision _____

Legal Description of Lot(s) Purchased _____

_____

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 24 CFR 1710.13 have been met in the sale or lease of the lot(s).

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

_____
(Date)

_____
(Signature of Developer or Authorized Agent)
(Title)

The sample Intrastate Exemption Statement shown above may be used as a guide in preparing the MSA Exemption Statement. Simply substitute references to the MSA Exemption in lieu of references to the Intrastate Exemption and add a provision for disclosure of ''Adverse Claims'' after the discussion of ''Restrictions'' and before the caption ''Utility Cost Estimates''.

Part VI—Regulatory Exemptions From Registration Requiring No HUD Determination—(24 CFR 1710.14)

(a) *General.*

The Secretary has established several regulatory exemptions from the registration and full disclosure requirements of the Act (i.e., filing a Statement of Record and furnishing a Property Report). These exemptions are self-determining and do not require a submission to HUD.

To qualify, a developer must satisfy the eligibility criteria at all times. Exempt status ends when a developer fails to immediately comply with the eligibility criteria. Furthermore, if there are reasonable grounds to believe that the use of any of these regulatory exemptions is not in the public interest in a particular case, the Secretary may deny the use of the exemption by an otherwise eligible subdivision, site or lot. The developers will be given notice and an opportunity for hearing before a final determination is made. Proceedings under this provision follow the requirements set forth in the regulations (24 CFR 1720.105, et seq.) and are patterned after the notice and

time requirements of a proceeding pursuant to 24 CFR 1710.45(b)(1).

If a sale meets any one of the following requirements, it qualifies for exemption from the registration requirements of the Act. However, qualifying sales must comply with the anti-fraud provisions.

(b) *Eligibility Requirements.*

(1) *Inexpensive Lots (24 CFR 1710.14(a)(1))*

The sale or lease of a lot for less than $100, including closing costs, is exempt if the purchaser or lessee is not required to purchase or lease more than one lot. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(2) *Leases for Limited Duration (24 CFR 1710.14(a)(2))*

The lease of a lot for a term of five years or less is exempt if the terms of the lease do not obligate the lessee to renew. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

The use of an arrangement that is called a lease but is tantamount to the sale or long-term lease of a lot would not qualify for this exemption; i.e., a lease with a large initial payment or substantial payments over five years and token payments thereafter.

A five-year lease with an option to purchase or renew would be suspect under this exemption and might or might not qualify depending on the overall transaction. In these cases, a request for an Advisory Opinion is strongly recommended.

(3) *Lots Sold to Developers (24 CFR 1710.14(a)(3))*

The sale or lease of lots to a person who is engaged in a bona fide land sales business is exempt. For a transaction to qualify for this exemption, the purchaser must be a person who plans to subsequently sell or lease the lot(s) in the normal course of business. The term business refers to an activity of some continuity, regularity and permanency, or means of livelihood. The sale or lease of lots to an individual who is buying the property for investment, to be sold at some unforeseeable time in the future, would not be exempt under this provision. This exemption is available on a lot-by-lot basis, although most transactions would include more than one lot. The entire subdivision need not qualify.

(4) *Adjoining Lot (24 CFR 1710.14(a)(4))*

The sale or lease of a lot to a purchaser who owns a contiguous lot that has a residential, commercial, or industrial building on it is exempt. This exemption permits a developer to sell or lease unimproved lots to persons wishing to enlarge the property on which their home or business is located. This exemption is available on a lot-by-lot basis.

(5) *Lot Sales to a Government (24 CFR 1710.14(a)(5))*

The sale or lease of real estate to a government or government agency is exempt. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(6) *Sales of Leased Lots (24 CFR 1710.14(a)(6))*

The sale of a lot or lots on which the purchaser has maintained his or her primary residence for at least one year is exempt. Typically, these sales will occur in a mobile home subdivision. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(c) *Termination.*

If HUD has reasonable grounds to believe that exemption from registration in a particular case is not in the public interest, HUD may terminate the exemption as to a subdivision or as to particular lots in a subdivision. Termination could be ordered only after the developer is notified of HUD's intention to terminate and is afforded a hearing opportunity. The reasons for termination will vary from case to case but could include unlawful sales practices by the developer or its agents, insolvency or adverse information about the lots or the subdivision that should be disclosed to purchasers.

Part VII—Regulatory Exemption HUD Determination Required—(24 CFR 1710.16)

An Exemption Order is available for a subdivision or certain lots in a subdivision that technically do not comply with the eligibility requirements of one of the other available exemptions. However, to qualify for an Exemption Order, the offering must substantially comply with the eligibility requirements.

In evaluating the circumstances of an Exemption Order request, HUD examines the basic intent and legislative history of the exemption that the developer claims to substantially meet. If the offering is not consistent with the basic intent, an Exemption Order will not be issued even though some of the technical requirements of that exemption are met.

Offerings that involve circumstances that are equal to or better than the technical requirements, or that are consistent with the basic intent of the exemption, will be judged to be in substantial compliance and an Exemption Order will be issued. It should be noted that an Exemption Order applies only to sales after the date of the Order and has no retroactive effect. This is the only exemption that requires submission of a request and a determination by HUD before it is effective. Developers wishing to request an Exemption Order must submit the information listed below:

(a) A detailed statement describing how the proposed sales of lots meet, or substantially meet, each of the eligibility requirements of the exemption that the developer claims to substantially meet.

(b) A copy of the contract to be used. The contract must:

(1) Specify the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities. If the developer is not responsible for providing or completing a particular service, the contract should make it clear that it is up to the buyer to make the necessary arrangements for desired services; and

(2) Contain a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed. This estimate is required for any facility the developer promises or indicates will be completed. Estimates should be based on documentary evidence, such as contracts, engineering schedules or other evidence of commitments to complete facilities and amenities; and

(3) Contain a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period; and

(4) Contain a provision that obligates the developer to deliver to the purchaser within 180 days of the date the purchaser signed the sales contract, a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances.

(c) A plat of the entire subdivision with the lots subject to the exemption delineated.

(d) A description of how the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) Documentation to establish that each purchaser or purchaser's spouse will make an on-the-lot inspection of the lot to be purchased before the contract is signed.

(f) A filing fee in the amount set forth in § 1710.35(c) in the form of a certified check, cashier's check or postal money order made payable to the U.S. Treasury.

If, after an Exemption Order has been issued, HUD has reasonable grounds to believe that the exempt status of the subdivision or individual lots is not in the public interest, the Exemption Order may be terminated. Such an action would be preceded by a notice giving the developer an opportunity to request a hearing on the allegations leading to termination. For example, proceedings may be initiated because of the apparent omissions or misrepresentations in the information upon which the Exemption Order was based, the unethical conduct of the developer or the developer's agent or the presence of adverse conditions at or about the real estate which should be brought to the attention of purchasers by way of a disclosure document.

Some examples of substantial compliance are listed below. These are examples only and presume that all other applicable eligibility requirements of the exemption are either fully met or substantially met. It should be remembered that substantial compliance can occur with virtually any of the twenty-two available exemptions.

(1) One of the eligibility requirements for the Single-Family Residence Exemption is that the lots be zoned as single-family residential or, in the absence of a zoning ordinance, restricted to single-family residence development by enforceable covenants or restrictions. As stated before, the phrase ''* * * in the absence of a zoning ordinance * * *'' is interpreted in its most literal sense. Therefore, the existence of any zoning ordinance other than single-family

residence zoning is a disqualifying factor for the exemption.

However, substantial compliance would be considered if a different zoning ordinance existed and the enforceable covenants or restrictions limited development to single-family residences.

(2) Another eligibility requirement for the Single-Family Residence Exemption states that, at the time of closing, potable water, sanitary sewage disposal and electricity must be extended to each lot or the unit of local government must be obligated to install these facilities within 180 days following closing.

Substantial compliance with this provision would be considered in those cases where one or more of these utilities is not available but the developer has a contract with a publicly regulated utility to install the facilities within 180-days following closing or upon demand of the purchaser.

Furthermore, substantial compliance would be considered if the utility trunk lines are ''reasonably close'' to the lots instead of at each lot line.

(3) An eligibility requirement for the Intrastate Exemption is that the lot sold must be free and clear of all liens, encumbrances and adverse claims. Mineral reservations have been deemed to be acceptable so long as the reservation does not include the right of ingress or egress upon the property. If the right of ingress or egress exists, substantial compliance will be considered if there are written, recorded provisions from the owner(s) of the mineral rights for compensating the lot owner for loss of the use or enjoyment of the property when such rights are exercised.

Part VIII—Advisory Opinion—Secretary's Opinion May Be Requested—(24 CFR 1710.17)

(a) *General*

When it is not clear that an offering is either exempt under the self-determined statutory or regulatory provisions or whether jurisdiction exists, an Advisory Opinion may be requested to clarify the situation. The filing requirements are found in 24 CFR 1710.17 of the regulations and are described in (b) and (c) below.

The material to be submitted with all requests for Advisory Opinions is described under (b) below. In most cases, depending on the provision under which an exemption is claimed, additional documentation is needed before an opinion can be given. Review (c) below to determine what additional documentation is customarily needed before submitting a request.

HUD's Advisory Opinions are based upon and limited to the representations made by the developer. Therefore, if a favorable Advisory Opinion is issued based upon incomplete, improper or incorrect representations, the Opinion has no binding effect.

(b) *Basic Requirements For Submission*

(1) A filing fee in the amount required by § 1710.35(c) in form a certified check, cashier's check or postal money order made payable to the U.S. Treasury.

(2) A comprehensive description of the conditions and operations of the offering. Specify the provision(s) of the Act or regulations under which sales are believed to be exempt or why there is no jurisdiction.

(c) *Additional Requirements For Submission*

Depending on the provision under which an exemption is claimed, a developer may be required to submit additional information. Beginning with the exemption under 24 CFR 1710.5(a) of the regulations and ending with 24 CFR 1710.14, the additional information that should be submitted with a request for an Advisory Opinion is listed below. In some cases, information or documentation other than that specified may be requested after a submission has been reviewed by HUD.

(1) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(a), the ''25 lot'' exemption, submit a plat of the subdivision. Submit a listing of any other properties in which the developer has an interest and the geographic relationship of those properties to the subdivision for which the exemption is claimed. If other properties are divided or proposed to be divided, indicate the total number of lots planned. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the lots are marketed, i.e., who sells the lots, how the lots are advertised, whether prospective purchasers are referred between subdivisions, etc.

(2) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(b), the ''improved lot'' exemption, submit a copy of the contract of sale or lease and an opinion of local counsel with respect to whether the contract meets the exemption's requirements under the law in the jurisdiction in which the subdivision is located.

(3) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(c), the ''evidences of indebtedness'' exemption, describe the security arrangement and submit a copy of the evidence of indebtedness.

(4) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(d), the ''securities'' exemption, no additional documentation is customarily required to be submitted with the request.

(5) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(e), the ''government sales'' exemptions, specify the government agency selling the property and submit the enabling legislation.

(6) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(f), the ''cemetery lots'' exemption, no additional documentation is customarily required to be submitted with the request.

(7) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(g), the ''sales to builders'' exemption, submit specific information showing that the purchaser or lessee is engaged in the business of building or is acquiring the real estate for resale or lease to a builder.

(8) To obtain an Advisory Opinion pertaining to 24 CFR 1710.5(h), the ''industrial or commercial development'' exemption submit a plat and supporting documentation, including a copy of the instrument containing the purchaser or lessee affirmation and evidence of the zoning or, in the absence of zoning, restrictive covenants.

(9) To obtain an Advisory Opinion pertaining to 24 CFR 1710.6, the ''100 lot'' exemption, submit a plat of the subdivision. In addition, submit a listing of any other properties in which the developer has an interest and the geographic relationship of those properties to the subdivision for which the exemption is claimed. If other properties are divided or proposed to be divided, indicate the total number of lots planned. Indicate those properties that will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the lots are marketed, i.e., who sells the lots, how the lots are advertised, whether prospective purchasers are referred between subdivisions, etc.

(10) To obtain an Advisory Opinion pertaining to 24 CFR 1710.7, the ''12 lot'' exemption, submit a list of all lots sold under the same common promotional plan since June 20, 1980. (Review Part II(b) of these Guidelines for an explanation of common promotional plan.) Indicate the date of each sale. State whether the developer has been involved in the sale of any other real estate since June 20, 1980 and indicate how it is intended that future sales will be restricted.

(11) To obtain an Advisory Opinion pertaining to 24 CFR 1710.8, the ''scattered sites'' exemption, submit a plat of the site and list the name and geographic location of all other properties in which the developer has an interest. State the extent of the developer's interest.

(12) To obtain an Advisory Opinion pertaining to 24 CFR 1710.9, the ''20 acre lots subdivision'' exemption, submit a plat of the subdivision with the acreage of each lot clearly delineated. In addition, substantiate that all lots offered under the same common promotional plan are greater than 20 acres in size and have been that size since April 29, 1969. Describe all properties in which the developer has an interest and the geographic relationship of such properties to the subdivision for which the exemption is claimed. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which the exemption is claimed. Describe how the properties are marketed, i.e., who sells the lots, how the lots are advertised, whether purchasers are referred between subdivisions, etc.

(13) To obtain an Advisory Opinion pertaining to 24 CFR 1710.10, the ''single-family residence'' exemption, address each of the subdivision requirements and the eight lot requirements as set forth in Part V(e) of these Guidelines. For example, the developer should specifically state how the condition of title will be demonstrated, that the purchaser's approval of exceptions to title will be obtained prior to closing and that the purchasers will make a personal on-the-lot inspection prior to signing the contract. The submission should describe how the standards are being enforced by the local authorities. The submission must also describe the marketing and promotion of the subdivision.

The submission should be accompanied by documentation including a copy of the contract of sale and a copy of the state or

local minimum standards. The documents submitted must include minimum standards for each of the eight areas listed in the regulations. The documentation should clearly show that the standards are being enforced and are not merely discretionary. If the developer states that the local authorities will take over responsibility for the roads, submit documentation evidencing that intent. If the developer represents that water is the purchaser's responsibility, submit a copy of the appropriate report assuring that an adequate year-around water supply is available. If septic tanks are to be used, submit a copy of the approval for their installation and a statement of how approval will be obtained for each lot.

The above listing is not comprehensive. It is designed to give the developer an idea of the type of statements and documentation which will be requested before an opinion will be issued.

(14) To obtain an Advisory Opinion pertaining to 24 CFR 1710.11, the ''manufactured home'' exemption, identify who is selling the lot and who is selling the manufactured home. Submit a copy of the contracts to be used.

(15) To obtain an Advisory Opinion pertaining to 24 CFR 1710.12, the ''intrastate'' exemption, submit a copy of the contract of sale, the Intrastate Exemption Statement, the restrictive covenants, a statement of the status of mineral right ownership and the enabling document(s) of the Property Owners' Association or condominium association including the by-laws, if any. If sales have been made since December 20, 1979, submit a list of such sales with the purchaser's name, address at the time of sale, date of sale and lot number(s).

(16) To obtain an Advisory Opinion pertaining to 24 CFR 1710.13, the ''MSA'' exemption, submit a copy of the contract of sale, plat, and MSA Exemption Statement. If sales have been made, submit a list of such sales with the purchaser's name, address at the time of sale, date of sale and lot number(s).

(17) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(1), the ''inexpensive lots'' exemption, submit a copy of the proposed promotional materials and the documents to be used in the sale.

(18) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(2), the ''limited term leases'' exemption, submit a copy of the lease and other documentation relevant to the lease transaction.

(19) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(3), which exempts sales of lots to developers, submit information to substantiate the claim that the purchaser is in the land sales business.

(20) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(4), the ''adjoining lot'' exemption, submit a map showing the lot on which the purchaser owns a residential, commercial or industrial building and the lot to be purchased.

(21) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(5), the ''sales to government'' exemption, name the Government entity and submit a copy of the legal document by which the entity was created or a document evidencing the governmental decision to purchase.

(22) To obtain an Advisory Opinion pertaining to 24 CFR 1710.14(a)(6), the ''sales of leased lots'' exemption, state the circumstances which the purchaser has lived on or will have lived on the lot for one year or more and submit a copy of the lease or other agreement entitling the purchaser to occupy the lot. State whether the purchaser is using the lot as his or her primary residence.

Part IX—No-Action Letter—(24 CFR 1710.18)

The availability of expanded regulatory exemptions has resulted in the exemption of most transactions which may previously have warranted the issuance of a No-Action Letter. Nevertheless, there may be instances when one or more sales or leases fall within the purview of the Act but do not qualify for an exemption, although the circumstances of the sales or leases may be such that no affirmative action is needed to protect the public interest and prospective purchasers.

In such instances, a No-Action Letter may be requested. The request should include a thorough explanation of the proposed transaction(s) and the facts and supporting documentation necessary to demonstrate that no affirmative action is needed in the particular situation. If a request for a No-Action Letter is based upon a belief that the offering is ineligible for an exemption due to a minor technicality, demonstrate how other provisions of the particular exemption are met. The issuance of a No-Action Letter will not affect any right or remedy that the purchaser may have under the Act, including the right to rescind a contract for a period of two years. A No-Action Letter simply signifies that HUD will not take any affirmative action to require registration. However, the issuance of a No-Action Letter does not preclude any future agency action which may become necessary because of new information or a change in the circumstances.

HUD's No-Action Letters are based upon and limited to representations made by the developer. Therefore, if a favorable No-Action Letter is issued based upon incomplete, improper or incorrect representations, the Letter has no binding effect.

In no event will a No-Action Letter be issued if the sale or lease has already occurred.

There is no prescribed format for requesting a No-Action Letter. Therefore, describe the circumstances as fully as possible following a general rule that too much information is better than too little. Upon review of the information submitted, additional clarification may be required to permit a final determination.

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Wednesday
March 27, 1996

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 5, et al.

Consolidation and Streamlining of the Restrictions on Assistance to Noncitizens; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 5, 200, 236, 247, 812, 882, 887, 904, 912, 960, and 982

[Docket No. FR–3988–F–01]

RIN 2501–AC12

Consolidation and Streamlining of the Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On March 20, 1995, HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's Public Housing and Indian Housing programs (including homeownership); the Section 8 housing assistance payments programs; the Housing Development Grants program; the Section 236 interest reduction and rental assistance programs; the Rent Supplement program; and the Section 235 homeownership program. HUD's March 20, 1995 final rule, which became effective on June 19, 1995, promulgated virtually identical ''noncitizen'' regulations for the HUD programs covered by Section 214. This final rule eliminates the redundancy of these duplicative regulations by consolidating noncitizens requirements and relocating them to a single location in 24 CFR part 5. This rule does not consolidate or revise the noncitizens requirements for HUD's Indian Housing programs.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation (except Single Room Occupancy—''SRO'') programs—Linda Campbell, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–0744;

(2) For Indian Housing programs—Deborah Lalancette, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 755–0088;

(3) For the Section 8 Moderate Rehabilitation SRO program—Dave Pollack, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–4300;

(4) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3944; and

(5) For the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–1824.

For persons with hearing or speech impairment, the TTY number is 1–800–877–8339 (Federal Information Relay Service TTY). With the exception of the ''800'' number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Background

A. The March 20, 1995 Final Rule

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's: (1) Public Housing and Indian Housing programs (including homeownership); (2) the Section 8 housing assistance payments programs; (3) the Housing Development Grants program; (4) the Section 236 interest reduction and rental assistance programs; (5) the Rent Supplement program; and (6) the Section 235 homeownership program.

B. Regulatory Reform

President Clinton's Regulatory Reform Initiative calls for immediate, comprehensive regulatory reform. The President has directed all Federal departments and agencies to undertake an exhaustive review of their regulations. This initiative, which is part of the National Performance Review, calls for the elimination of redundant, unnecessary, or obsolete regulatory requirements, and the modification of others to increase flexibility and reduce burden.

On February 9, 1996 (61 FR 5198), HUD, as part of its continuing regulatory reform efforts, published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. Consolidation in part 5 of requirements applicable to one or more programs will eliminate redundancy in title 24 and assist in HUD's overall efforts to streamline the content of its regulations.

HUD's March 20, 1995 final rule implementing Section 214, which became effective on June 19, 1995, promulgated virtually identical noncitizen regulations for the HUD programs covered by Section 214. Subpart G of part 200, subpart B of part 812, and subpart B of part 912, contain, with minor exceptions, the same noncitizen requirements. This final rule eliminates the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements and relocating them to a single location in 24 CFR part 5. This rule does not consolidate the noncitizens requirements for HUD's Indian Housing programs. These provisions will continue to be located in 24 CFR part 950, which sets forth the consolidated regulatory requirements for the Indian Housing programs.

Although HUD is consolidating its noncitizen requirements, it is not revising the requirements nor is it modifying any differences in the requirements among the program regulations. This final rule eliminates redundancy in the existing noncitizen requirements wherever possible, but it retains those provisions which are specific to certain of the Section 214 covered programs.

C. Technical Corrections/Clarifying Changes

Additionally, although HUD is not making substantive changes, it is making certain clarifying changes. These changes are as follows. First, this streamlining rule clarifies that a noncitizen student alien's family may be eligible for assistance if the family meets the conditions for prorated assistance for mixed families. Second, this rule removes from the text of the regulation those INS documents that are required to show proof of immigration status. Because INS may change these documents from time to time, notification of the documents that are required to show proof of immigration status is best accomplished through notice in the Federal Register. The INS uses the Federal Register frequently to list appropriate documents for various immigration categories. Third, the rule also provides increased flexibility on when verification of immigration status

is to occur for public housing projects. Fourth, the rule clarifies that for tenants receiving assistance under the Section 8 Moderate Rehabilitation assistance, Section 8 tenant-based assistance, and the Section 8 project-based certificate assistance programs, that the applicable hearing procedures are found in parts 882, 982, and 983, respectively. Section 812.9(f)(3) of the March 20, 1995 rule incorrectly referred to the procedures in part 966, which are the public housing hearing procedures. This rule does not revise the noncitizens requirements for HUD's Indian Housing programs in 24 CFR part 950.

Additionally, this rule makes one technical change unrelated to the noncitizens requirements. On February 13, 1996, HUD published a final rule which consolidated HUD's general requirements for assistance under the United States Housing Act of 1937 in a new subpart D of part 5. This final rule amends paragraph (c)(2) of § 5.405 to add the phrase ''as determined by the HA subsidy standard.'' The addition of this phrase will clarify how the limitations on housing assistance for single persons is applied under the tenant-based assistance programs.

With regard to more substantive changes to HUD's noncitizens regulations, HUD is aware that some housing providers desire certain changes be made to the noncitizen requirements set forth in the March 20, 1995 rule. In some cases, the types of changes requested cannot be made because the changes would affect statutory requirements not regulatory ones. Other changes which could possibly be made are not those that can be addressed by this streamlining final rule, but rather, would need to be addressed through rulemaking that provides for advance notice and public comment. Because the March 20, 1995 final rule became effective June 19, 1995, implementation of Section 214 remains fairly recent. HUD is monitoring implementation of Section 214 and will consider making changes to the regulations (to the extent that HUD can give the statutory requirements) after opportunity to review the results of the procedures provided in the March 20, 1995 rule.

D. New Immigration Legislation and Changes to Noncitizen Requirements

HUD is also aware of several immigration bills that have been proposed by House and Senate committees that would possibly amend Section 214. As of the date of publication of this rule, no changes have been made to Section 214. If and when changes are made to Section 214 that may require changes to the regulations issued on March 20, 1995, HUD will undertake whatever regulatory action may be required in accordance with any new immigration legislation or by the Administrative Procedures Act.

E. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule that all regulatory procedures involved in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

II. Justification for Final Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1). HUD finds that in this case prior comment is unnecessary since this final rule does not affect or establish policy. This rule merely consolidates HUD's noncitizen requirements in 24 CFR part 5. Where consolidation is not possible, this rule retains those provisions which are applicable to several, but not all, Section 214 covered programs. This final rule does not add or remove program requirements, but merely relocates them to a single part of HUD's regulations.

III. Other Matters

Environmental Review. This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Section 214 of the Housing and Community Development Act of 1980. That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to consolidating and streamlining existing regulations.

Executive Order on Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this final rule merely consolidates HUD's noncitizen requirements which are currently repeated throughout title 24 of the Code of Federal Regulations.

Executive Order on The Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. This final rule merely consolidates HUD's noncitizen requirements which are currently repeated throughout title 24 of the Code of Federal Regulations.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs— housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 912

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), parts 5, 200, 236, 247, 812, 882, 887, 904, 912, 960, and 982 of title 24 of the Code of Federal Regulations, are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 101r-1; 42 U.S.C. 1436a, 3535(d), 3543, and 3544.

2. Section 5.405 is amended by revising paragraph (c)(2) to read as follows:

§ 5.405 Basic eligibility; preference over single persons; and housing assistance limitation for single persons.

* * * * *

(c) * * *

(2) For tenant-based assistance, housing assistance for which the family unit size as determined by the HA subsidy standard exceeds the one bedroom level.

* * * * *

3. A new subpart E is added to read as follows:

Subpart E—Restrictions on Assistance to Noncitizens

Sec.
5.500 Applicability.
5.502 Requirements concerning documents.
5.504 Definitions.
5.506 General provisions.
5.508 Submission of evidence of citizenship or eligible immigration status.
5.510 Documents of eligible immigration status.
5.512 Verification of eligible immigration status.
5.514 Delay, denial, reduction or termination of assistance.
5.516 Availability of preservation assistance to mixed families and other families.
5.518 Types of preservation assistance to mixed families and other families.
5.520 Proration of assistance.
5.522 Prohibition of assistance to noncitizen students.
5.524 Compliance with nondiscrimination requirements.
5.526 Protection from liability for responsible entities and State, and local government agencies and officials.
5.528 Liability of ineligible tenants for reimbursement of benefits.

Subpart E—Restrictions on Assistance to Noncitizens

§ 5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S. C. 1437 *et seq.*) which covers:

(i) HUD's Public Housing Programs;

(ii) The Section 8 Housing Assistance Programs; and

(iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities.* (1) *Covered individuals/persons and families.* The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) *Covered entities.* The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term ''responsible entity'' is used in this subpart E to refer collectively to these entities, and is further defined in § 5.504.

§ 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 5.504 Definitions.

(a) The definitions *''1937 Act''*, *''HUD''*, *''Public Housing Agency (PHA)''*, and *''Section 8''* are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only) (the Section 236 Program); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of ''Section 8 Covered Programs'' in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in § 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

§ 5.506 General provisions.

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in §§ 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of §§ 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) One of the INS documents referred to in § 5.510; and

(iii) A signed verification consent form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *For Housing covered programs:* The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form.* (1) *Who signs.* Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other

purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214.* (1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to tenants.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) *Tenants.* For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) *Extensions of time to submit evidence of eligible status.* (1) *When extension must be granted.* The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

(ii) [Reserved]

§ 5.510 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status for the specific immigration status claimed by the individual.

§ 5.512 Verification of eligible immigration status.

(a) *When verification is to occur.* The responsible entity is encouraged to commence verification of immigration status at a date that the responsible entity believes will allow for verification of immigration status, including any appeals or informal hearings, to be completed by the time that verification of other aspects of eligibility for assistance under a Section 214 covered program will be completed. In no case may verification of immigration status occur later than the date the responsible entity commences verification of other aspects of eligibility for assistance under a Section 214 covered program. The responsible entity shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.* (1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.* (1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see § 5.514(d)(4)).

(d) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 5.514 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) *Restrictions on reduction, denial or termination of assistance.* Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 5.514(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 5.520;

(vii) Assistance for a mixed family is continued in accordance with §§ 5.516 and 5.518; or

(viii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508; or

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in §§ 5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of

notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing. For good cause shown, the responsible entity shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) *Decision by INS.* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The responsible entity shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) *Tenants assisted under a Section 8 covered program:* For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) *For Section 8 Moderate Rehabilitation assistance:* 24 CFR part 882;

(B) *For Section 8 tenant-based assistance:* 24 CFR part 982; or

(C) *For Section 8 project-based certificate program:* 24 CFR part 983.

(ii) *Tenants assisted under any other Section 8 covered program or a Public Housing covered program:* For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(iii) *Families under Housing covered programs and applicants for assistance under all covered programs.* For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual.* The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the responsible entity.* The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation.* The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) *Interpretive services.* The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) *Hearing to be recorded.* The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(4) *Hearing decision.* The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income reexamination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final informal hearing decision.

(i) *Termination of assisted occupancy.* (1) Under Housing covered programs,

and in the Section 8 covered programs other than the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The responsible entity and tenant entering into a new lease without financial assistance.

(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

§ 5.516 Availability of preservation assistance to mixed families and other families.

(a) *Assistance available for tenant mixed families.* (1) *General.* Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in § 5.514. There are three types of preservation assistance:

(i) Continued assistance (see paragraph (a) of § 5.518);

(ii) Temporary deferral of termination of assistance (see paragraph (b) of § 5.518); or

(iii) Prorated assistance (see § 5.520, a mixed family must be provided prorated assistance if the family so requests).

(2) *Availability of assistance.* (i) *For Housing covered programs:* One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) *For Section 8 or Public Housing covered programs.* One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.

(b) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 5.520.

(c) *Assistance available to other families in occupancy.* Assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (c)(2) of this section.

(1) *For Housing covered programs:* Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) *For Section 8 or Public Housing covered programs:* The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(d) *Section 8 covered programs: Discretion afforded to provide certain family preservation assistance.* (1) *Project owners.* With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.

(2) *PHAs.* The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of § 5.518. However, the PHA must offer prorated assistance to eligible families.

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(b) *Temporary deferral of termination of assistance.* (1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a

temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing covered program and one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i) (A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the three conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(c) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs. (1) Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs.* (1) *Section 8 assistance other than Section 8 rental*

voucher assistance. For Section 8 assistance other than assistance provided under the Section 8 Rental Voucher Program, the PHA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with 24 CFR 813.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) *Step 3.* Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) *Step 4.* Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Section 8 Rental Voucher assistance.* For assistance under the Section 8 Rental Voucher Program, the PHA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR part 887. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied ''public housing maximum rent'' applicable to the unit or the PHA. (This ''maximum rent'' shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible (''family maximum subsidy'').

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (''eligible family member''). The subsidy per eligible family member is the ''member maximum subsidy''.

(4) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status (''eligible family members'').

(5) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible (''eligible subsidy''). The family's rent is the ''public housing maximum rent'' minus the amount of the eligible subsidy.

§ 5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 5.524 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100.

§ 5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in paragraph (e) of section 214.

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512 and the informal hearings provided under § 5.514, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

§ 5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 200—INTRODUCTION

4. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

Subpart G—[Removed and Reserved]

5. Subpart G, consisting of §§ 200.180 through 200.192, is removed and reserved.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

6. The authority citation for part 235 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

7. Section 235.1 is revised to read as follows:

§ 235.1 Applicability of regulations.

The regulations regarding eligibility requirements (including eligibility requirements for noncitizens) for homes for lower income families in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(i) of the National Housing Act.

8. Section 235.375 is amended by revising paragraph (b)(6) to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.

* * * * *

(b) * * *

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 5:

(i) For a new member of the family, except with respect to a mortgagor described under § 235.1.

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described under § 235.1; or

(iii) Upon modification of an existing assistance contract.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

9. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

10. Section 236.2 is amended by revising paragraph (3) of the definition of ''Qualified Tenant'' to read as follows:

§ 236.2 Definitions.

* * * * *

Qualified Tenant.

* * * * *

(3) For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5.

* * * * *

11. In § 236.70, paragraph (a)(1) is revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission. The restrictions on assistance to noncitizens set forth in 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

12. Section 236.80 is amended by revising:

a. The two sentences at the end of paragraph (a);

b. The last sentence of paragraph (b); and

c. The last two sentences at the end of paragraph (c), to read as follows:

§ 236.80 Reexamination of income.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * When termination is based upon a determination that the tenant does not have eligible immigration status, the procedures of 24 CFR part 5 apply. The procedures include the provision of assistance to certain mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination.

13. Section 236.710 is amended by revising the sentence at the end of the section to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5.

14. Section 236.715 is amended by revising the sentence at the end of paragraph (a) to read as follows:

§ 236.715 Determination of eligibility.

(a) * * * The requirements of 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

15. Section 236.765 is revised to read as follows:

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 5.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 5.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

16. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715*l*, 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

17. Section 247.3 is amended by revising paragraph (c)(3), to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) * * *

(3) If the tenant:

(i) Fails to supply on time all required information on the income and composition, or eligibility factors, of the tenant household, as provided in 24 CFR part 5; or

(ii) Knowingly provides incomplete or inaccurate information as required under these provisions; and

* * * * *

PART 812—[REMOVED]

18–19. Part 812 is removed.

PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS

20. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

21. In § 882.118, paragraph (a)(1) is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5), submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 5), submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 5), and submissions required for an annual or interim reexamination of family income and composition.

* * * * *

22. Section 882.212 is amended by revising the two sentences at the end of paragraph (a), and the sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995 the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 5, subpart E concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that a member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

23. Section 882.514 is amended by revising the sentence at the end of paragraph (f) to read as follows:

§ 882.514 Family participation.

* * * * *

(f) * * * The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

* * * * *

24. Section 882.515 is amended by revising the two sentences at the end of paragraph (a), and by revising the sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

25. Section 882.808 is amended by revising the two sentences at the end of paragraph (i)(1), the sentence at the end of paragraph (i)(2), and the sentence at the end of paragraph (l), to read as follows:

§ 882.808 Management.

* * * * *

(i) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

* * * * *

(l) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

* * * * *

PART 887—HOUSING VOUCHERS

26. The authority citation for part 887 continues to read as follows:

Authority: 42 U.S.C. 1437f(o) and 3535(d).

27. Section 887.355 is amended by revising paragraph (b) to read as follows:

§ 887.355 Regular reexamination of family income and composition.

* * * * *

(b) At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of the immigration status of any new family member.

* * * * *

28. Section 887.357 is amended by revising the sentence at the end of the section to read as follows:

§ 887.357 Interim reexamination of family income and composition.

* * * At any interim reexamination after June 19, 1995 that involves the addition of a new family member, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

29. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

30. Section 904.104 is amended by revising the first sentence of paragraph (b)(1) and the first sentence of paragraph (g)(2)(iii), to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 5 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

* * * * *

(g) * * *

(2) * * *

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR part 5.

* * * * *

31. In § 904.107, paragraphs (j)(2) and (m)(1) are revised to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(j) * * *

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 5 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 5 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated in this paragraph and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 5. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 5 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

* * * * *

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 5; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 5, the requirements of 24 CFR parts 5 and 966 shall apply.

* * * * *

PART 912—[REMOVED]

32–33. Part 912 is removed.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

34. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

35. Section 960.204 is amended by revising paragraph (a) to read as follows:

§ 960.204 Tenant selection policies.

(a) *Selection policies.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, a tenant body in each project that is composed of families with a broad range of incomes and to avoid concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants to applicants who qualify for a federal preference, ranking preference, or local preference, in accordance with 24 CFR part 5; and

(iv) To establish objective and reasonable policies for selection by the PHA among otherwise eligible applicants.

(3) The PHA tenant selection policies shall include the following:

(i) Requirements for applications and waiting lists (see 24 CFR 1.4);

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the ''federal preferences'' (described in 24 CFR part 5) will be used;

(B) How any ''ranking preferences'' (described in 24 CFR part 5) will be used;

(C) How any ''local preferences'' (described in 24 CFR part 5) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 5; and

(iv) Policies for participant transfer between units, projects, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

* * * * *

36. Section 960.206 is amended by revising paragraph (a) to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See 24 CFR parts 5 and 913.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a ranking preference, or a local preference under 24 CFR part 5 must be documented and placed in the applicant's file.

* * * * *

37. Section 960.209 is amended by revising the two sentences at the end of paragraph (a), revising the sentence at the end of paragraph (b), and by revising paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR part 5 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

38. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

39. Section 982.153 is amended by revising paragraph (b)(9) to read as follows:

§ 982.153 HA responsibilities.

* * * * *

(b) * * *

(9) Obtain and verify evidence of citizenship and eligible immigration status in accordance with 24 CFR part 5.

* * * * *

39a. Section 982.201 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 982.201 Eligibility.

(a) * * * To be eligible, the applicant must be a ''family'', must be income-eligible, and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5.

* * * * *

40. Section 982.551 is amended by revising paragraph (b)(1) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(b) * * *

(1) The family must supply any information that the HA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). ''Information'' includes any requested certification, release or other documentation.

* * * * *

41. Section 982.552 is amended by revising paragraph (e) to read as follows:

§ 982.552 HA denial or termination of assistance for family.

* * * * *

(e) *Restrictions on assistance to noncitizens.* The family must submit required evidence of citizenship or eligible immigration status. See 24 CFR part 5 for a statement of circumstances in which the HA must deny or terminate assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures. See 24 CFR part 5 for provisions on assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) instead of denial or termination of assistance, and for provisions on deferral of termination of assistance.

* * * * *

42. Section 982.554 is amended by revising paragraph (d) to read as follows:

§ 982.554 Informal review for applicant.

* * * * *

(d) *Restrictions on assistance for noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

43. Section 982.555 is amended by revising paragraph (g) to read as follows:

§ 982.555 Informal hearing for participant.

* * * * *

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

Dated: March 12, 1996.

Henry G. Cisneros,

Secretary.

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Part VI

Securities and Exchange Commission

17 CFR Part 270

Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–21838, File No. S7–7–96]

RIN 3235–AG61

Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits investment companies that are affiliated with members of underwriting syndicates to purchase securities underwritten by these syndicates if certain conditions are met. The proposed amendments are designed to make the rule more flexible by, among other things, increasing the percentage of an underwriting that an investment company may purchase in reliance on the rule and expanding the scope of the rule to include foreign securities. The proposed amendments, and a proposed new companion rule, also would permit investment companies to acquire municipal securities from underwriting syndicates in ''group sales.'' The proposed amendments respond to changes in the investment company and underwriting industries that have occurred since the rule last was substantively amended in 1979.

DATES: Comments must be received on or before June 3, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–7–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David M. Goldenberg, Senior Counsel, or Kenneth J. Berman, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Stop 10–6, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 10f–3 (17 CFR 270.10f–3) and a proposed new rule, rule 17a–10 (17 CFR 270.17a–10), under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'').

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Executive Summary

Section 10(f) of the Investment Company Act was designed to address the practice prior to 1940 by some securities underwriters (''underwriters'') of ''dumping'' unmarketable securities on their affiliated investment companies (''funds''). The section prohibits a fund from purchasing securities for which an underwriter having certain relationships with the fund (''affiliated underwriter'') is acting as a principal underwriter during the existence of an underwriting or selling syndicate. Rule 10f–3 under the Investment Company Act permits funds to purchase securities during the existence of an underwriting syndicate under specified conditions designed to assure that the purchase is consistent with the protection of fund investors. These conditions include requirements that (i) the purchased securities be either registered under the Securities Act of 1933 (''Securities Act'') or municipal securities, (ii) the fund (along with other funds advised by the same investment adviser) purchase no more than the greater of four percent of the underwritten securities, or $500,000, but in no case more than 10% of the offering (the ''percentage limit''), (iii) the fund use no more than three percent of its assets to purchase securities in a transaction subject to the rule, and (iv) the fund not purchase the securities from the affiliated underwriter. The last condition also prohibits a fund from purchasing municipal securities in a ''group sale,'' which is a sale for which all members of a syndicate receive credit in proportion to their respective underwriting commitments.

The Commission believes that the conditions of rule 10f–3 should be reevaluated in light of changes in the fund and financial services industries since the principal provisions of rule 10f–3 were last amended in 1979 and is proposing amendments to the rule that reflect these changes. The proposed amendments are intended to provide funds with additional flexibility, consistent with the policies underlying section 10(f), to make investments that may be in the best interests of investors.

The proposed amendments would raise the percentage limit to the greater of 10% of an offering or $1,000,000 (but not to exceed 15% of the offering). The proposed amendments also would eliminate the current limit on the amount of a fund's assets that may be used to make purchases pursuant to the rule and the current requirement that funds report rule 10f–3 transactions in their semi-annual reports filed with the Commission on Form N–SAR.

In recognition of the increase in the extent to which funds invest in foreign securities, the proposed amendments would expand rule 10f–3 to permit funds to purchase securities of foreign issuers (''foreign securities'') that are not registered under the Securities Act, subject to certain conditions. These conditions are designed to permit funds to purchase foreign securities in transactions having certain characteristics similar to public offerings in the United States, such as disclosure of specified information and a single public offering price.

The proposed amendments would permit funds to purchase municipal securities in group sales, subject to certain conditions designed to protect against overreaching by fund affiliates. Purchases of securities in group sales would be permitted, for example, only when the underwriting syndicate has established that group sales would have priority over other types of sales.

I. Background

A. Introduction

A central theme underlying the regulation of investment companies is the concern that fund affiliates could

use fund assets for their own purposes, to the detriment of fund shareholders. One of the major abuses noted in the period preceding the Investment Company Act was the use of funds by underwriters that controlled these funds as a ''dumping ground'' for unmarketable securities.[1] An underwriter could, for example, ''dump'' unmarketable securities on its controlled fund, either by causing the fund to purchase the securities from the underwriter itself, or by encouraging the fund to purchase securities from another member of the underwriting syndicate. Fund assets also could be used to absorb the risks of an underwriting in more subtle ways, such as to facilitate price stabilization in connection with an underwriting.[2]

Section 10(f) of the Investment Company Act was designed to address these concerns.[3] The section prohibits a fund from purchasing securities for which an affiliated underwriter is acting as a principal underwriter during the existence of an underwriting or selling syndicate.[4] Recognizing that section 10(f), by prohibiting *all* purchases by funds affiliated with members of an underwriting syndicate during the existence of the syndicate, could be overly broad, Congress gave the Commission specific authority to exempt persons from that section by order or rule when the exemption is consistent with the protection of investors.[5]

B. Rule 10f–3

In 1958, the Commission used its exemptive authority under section 10(f) to adopt rule 10f–3.[6] The rule permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things (i) the securities are either registered under the Securities Act or municipal securities, (ii) the offering involves a ''firm commitment'' underwriting,[7] (iii) the fund and all other funds advised by the same investment adviser do not in the aggregate purchase more than the greater of 4% of the principal amount of the securities being offered or $500,000 (but in no event greater than 10% of the offering), (iv) the fund does not use more than 3% of its assets to purchase the securities, (v) the fund purchases the securities from a member of the syndicate other than the affiliated underwriter, (vi) the fund purchases the securities at a price not more than the public offering price prior to the end of the first full business day after the first date on which the securities are offered, and (vii) the fund's directors have adopted procedures for purchases made in reliance on the rule and regularly review fund purchases to determine whether they comply with these procedures.[8] The conditions of rule 10f–3 are designed to ensure that a purchase by a fund from a syndicate in which an affiliated underwriter is participating is consistent with the protection of fund investors.

C. Need for Amendments

The Commission believes that the conditions of rule 10f–3 should be reevaluated in light of changes in the financial markets, particularly in the fund and financial services industries.[9]

[1] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[2] In its study of the fund industry prior to 1940, the Commission gave specific examples of cases in which underwriters had used the assets of their affiliated funds to benefit the underwriters or to save them from insolvency. *See generally* SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 1st Sess., pt. 3, at 2519–2624 (1939). The Commission explained:

The control of an investment company by an investment banker naturally impresses the client, who desires to be financed, with the resources that the investment banker may call upon to make the financing operation successful, such as, selling some of the securities to the investment company, securing the company's participation in the underwriting commitment, including the company in trading accounts or using the company's funds in stabilizing the market.

Id. at 2535–36.

[3] See 2 T. Frankel, The Regulation of Money Managers 555 (1978) (''The purpose of [section 10(f)] is to protect investment companies from purchasing securities to advance the interests of their affiliates rather than their own.''). Even in the absence of section 10(f), a fund effectively would be prohibited by section 17(a) of the Investment Company Act from purchasing securities directly from its affiliated underwriter or from an affiliate of its affiliate. *See* 15 U.S.C. 80a–17(a). That section 10(f) prevents a fund from acquiring securities from an unaffiliated member of the underwriting syndicate would seem to reflect the view that the affiliated underwriter has the potential to pressure the fund into acquiring the securities through another underwriter in order to facilitate the underwriting. If each member of a syndicate has proportionate liability for securities remaining unsold, as is frequently the case in many municipal securities syndicates, for example, the successful sale of all of the securities, regardless of from which member of the syndicate the securities are purchased, benefits all members of the syndicate, including the affiliated underwriter.

[4] ''Principal Underwriter'' is defined in section 2(a)(29) of the Investment Company Act, 15 U.S.C. 80a–2(a)(29), to mean (in relevant part) an underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer, (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate, or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

[5] Section 10(f) prohibits a fund from purchasing a security during the existence of an underwriting or selling syndicate if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. For purposes of this release, a person that falls within one of these categories is referred to as an ''affiliated underwriter,'' and the syndicate of which such person is a member is referred to as an ''affiliated underwriting syndicate.'' Funds that are subject to section 10(f) because an affiliated underwriter is a member of a syndicate are referred to as ''affiliated funds.''

[6] *See* Adoption of Rule N–10F–3 Permitting Acquisition of Securities of Underwriting Syndicate Pursuant to Section 10(f) of the Investment Company Act of 1940, Investment Company Act Release No. 2797 (Dec. 2, 1958), 23 FR 9548 (hereinafter ''1958 Adopting Release''). The rule codified the conditions of orders that the Commission had granted prior to 1958 exempting certain funds from section 10(f) to permit them to purchase specific securities. *See, e.g.,* The Chicago Corporation, Release No. 40–107 (Apr. 8, 1941); The Pennroad Corporation, Investment Company Act Release No. 1636 (Aug. 10, 1951).

The Commission amended rule 10f–3 in 1979 to permit its use for the purchase of municipal securities, in 1985 to reflect changes in the periodic reporting requirements for all funds, and again in 1993 to remove a requirement that fund boards annually review procedures adopted pursuant to the rule. *See* Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10736 (June 14, 1979), 44 FR 36152 (hereinafter ''1979 Adopting Release''); Withdrawal of Quarterly Reporting Forms and Filing Obligation of Certain Registered Investment Companies, Securities Act Release No. 6591 (July 1, 1985), 50 FR 29368; Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Securities Act Release No. 7013 (Sept. 17, 1993), 58 FR 49919.

[7] A ''firm commitment'' underwriting, for purposes of rule 10f–3, is one in which the underwriters are committed to purchase all of the securities being offered, if the underwriters purchase any of the securities being offered. *See* rule 10f–3(a)(3).

[8] The provisions of rule 10f–3 are similar to provisions permitting limited affiliated transactions by persons subject to section 406 of the Employee Retirement Income Security Act of 1974 (''ERISA''), 29 U.S.C. 1106, and by banks subject to section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1. Section 406 of ERISA, as interpreted by the Department of Labor, prohibits a plan fiduciary from purchasing a security for the plan from a syndicate in which an affiliate of the fiduciary is an underwriter. *See* Prohibited Transaction Class Exemption 75–1 (Oct. 24, 1975) (''PTCE 75–1''). The Department of Labor has issued a class exemption permitting purchases in limited circumstances, subject to conditions similar to rule 10f–3. *Id.*

Section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1(b), like section 10(f) of the Investment Company Act, prohibits a bank or its subsidiary from purchasing, as principal or fiduciary, securities from underwriting syndicates in which an affiliate of the bank participates. Section 23B, however, permits acquisitions of these securities if a majority of the bank's independent directors have approved the acquisition in advance. 12 U.S.C. 371c–1(b)(2).

[9] The Commission first recognized a need to reevaluate rule 10f–3 when it issued a release in 1986 requesting comment on whether the Commission should amend the rule, and requesting suggestions on possible amendments. *See* Advance Notice and Request for Comment on Whether the Commission Should Amend an Existing Rule that

Continued

The number of funds and the amount of assets invested in funds has grown exponentially since 1980.[10] The increase in the number and size of funds has resulted in funds becoming major sources of capital and significant purchasers in syndicated offerings.[11] This growth, however, has had an effect on the ability of funds to use rule 10f–3. The provisions in the rule limiting the amount of an offering that a fund may purchase may, in effect, be more restrictive today than they were when the Commission last substantively amended the rule in 1979.[12]

The growth of the fund industry has been accompanied by changes in the financial services industry that have limited the usefulness of rule 10f–3. Over the recent past, the financial services industry has become more concentrated as large financial conglomerates have replaced smaller, independent underwriting firms.[13] Increasing concentration in the underwriting industry has made it more likely that an affiliated underwriter will participate in an underwriting syndicate. In addition, more underwriters have either developed or otherwise become affiliated with fund complexes, and the sponsors of some fund complexes have established broker-dealer affiliates.[14] As a result of the increasing affiliations among funds and underwriters, more funds have become, and more are likely in the future to become, subject to section 10(f).

Another significant change in the fund industry since 1980 has been the dramatic increase in the number of funds that invest in foreign securities.[15] This trend may be the result of a combination of several factors, including the internationalization of the securities markets and increased investor interest in overseas investment opportunities.[16] The increase in demand for foreign securities by U.S. funds has been accompanied by an increase in the participation of U.S. underwriters in the global offerings of these securities.[17] Additionally, funds that invest only in securities of issuers located in particular countries often employ investment advisers located in those countries, many of which advisers are affiliated with major underwriters in those countries.[18] As a result of these developments, funds that invest in foreign securities increasingly are subject to the prohibitions of section 10(f), but often cannot rely upon rule 10f–3 for purchases of these securities because the securities frequently are not registered under the Securities Act.[19]

The Commission believes that amendments to rule 10f–3 may be desirable in light of these changes. Because the incentives that could lead fund affiliates to seek to use fund assets to facilitate underwritings are substantially the same today as they were in 1940, however, the concerns underlying section 10(f) remain important.[20] The proposed amendments are designed to balance these concerns with the need for funds to have more flexibility to purchase securities when their affiliated underwriters are members of syndicates.

II. Discussion

A. Quantity Limitations

1. Amount Purchased

Rule 10f–3 currently prohibits funds advised by the same investment adviser from purchasing, in the aggregate, more than 4% of the principal amount of the offering, or $500,000, whichever is greater, but in no event greater than 10% of the offering.[21] The Commission is proposing to amend the percentage

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Permits an Investment Company to Acquire Securities Underwritten by an Affiliate of that Company, Investment Company Act Release No. 14924 (Jan. 29, 1986), 51 FR 4386 (''1986 Concept Release''). In response, the Commission received 11 letters commenting on nearly every aspect of the rule. The Commission's Division of Investment Management (''Division'') further evaluated the rule in connection with its 1992 study of the Investment Company Act. The Division recommended at that time that the Commission amend rule 10f–3 to permit the purchase of foreign securities. *See Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation* 499–500 (1992).

[10] In 1980, there were 564 funds with total assets of $134.8 billion. By December 1995, there were 5,789 funds with total assets of over $2.8 trillion. Investment Company Institute, Press Release (Jan. 25, 1996).

[11] *See, e.g., The Boom in IPOs*, Bus. Wk., Dec. 18, 1995, at 64, 68 (stating that ''mutual funds are major buyers of new equity issues'').

[12] The average size of a municipal bond fund, for example, has increased at a much greater rate than the average size of a municipal bond offering. In 1980, the average municipal bond fund had $69.5 million in assets and the average municipal bond offering was $8.5 million. *Investment Company Institute, 1982 Mutual Fund Fact Book* 27; *Investment Company Institute*, 1986 *Mutual Fund Fact Book* 19; *Bond Buyer*, 1990 *Yearbook* 38. In 1995, the average municipal bond fund had more than tripled in size, with $249.6 million in assets, while the average municipal bond offering, $15.2 million, had not even doubled in size. *See* Investment Company Institute, Press Release (Jan. 25, 1996); *1995 Year-End Statistics Supplement, Bond Buyer*, Jan. 26, 1996, at 13A. *See also infra* note and accompanying text.

[13] *See, e.g.*, Shawn Tully, *Can Lehman Survive?, Fortune*, Dec. 11, 1995, at 154; *see also* Helene Duffy, *Few to Get Fewer in Investment Banking, Bank Mgmt.*, Mar. 1991, at 8; *From the Many, Perhaps Just a Few*, Bus. Month, Feb. 1988, at 69. Some commentators have suggested that there has been an increased concentration in the municipal securities industry as firms have departed from that business. *See, e.g.*, Michael Stanton, *Chemical Securities to Close Muni Division; 50 Jobs Lost, Bond Buyer*, Jan. 17, 1996, at 1; *Muni Market Liquidity Not Seen Growing Significantly, Sec. Industry Daily*, Sept. 29, 1995, at 15.

[14] *See, e.g.*, Mercedes M. Cardona, *Wall St. Managers Pay Off, Pensions & Investments*, Sept. 5, 1994, at 3 (''money managers owned by big Wall Street brokerage and investment banking firms increasingly are contributing to their parents' bottom lines, while underwriting and brokerage activities slow down''); Geoffrey Smith, *This Little Broker Went to Market—And Got Big, Bus. Wk.*, Jan. 27, 1992, at 76 (describing the development and increasing growth of a broker-dealer affiliate of the nation's largest fund complex). According to statistics compiled by the Division, in 1970 only 8 of the top 25 underwriters (ranked by percentage of amount of securities underwritten, giving full credit to the lead underwriter) were affiliated with funds. By 1980, that number had risen to 13. By 1995, 23 of the top 25 underwriters were affiliated with fund groups.

[15] According to statistics compiled by the Division, 21 funds, with aggregate assets of $2.2 billion, invested primarily in foreign securities as of December 1980. By December 1995, 682 funds, with aggregate assets of $230.3 billion, invested primarily in foreign securities. *See* Investment Company Institute, Press Release (Jan. 25, 1996).

[16] *See, e.g.*, Michael Hurley, *Comments: International Debt and Equity Markets: U.S. Participation in the Globalization Trend*, 8 *Emory Int'l L. Rev.* 701 (1994) (describing the internationalization of the securities markets); William Glasgall, *Who's Afraid of the Global Markets? Not U.S. Investors, Bus. Wk.*, Sept. 18, 1995, at 70 (describing how U.S. investors ''continue to roam the world in search of portfolio diversification and growth'').

[17] *See, e.g.*, Michael R. Sesit, *Top Dogs: U.S. Financial Firms Seize Dominant Role In the World Markets, Wall St. J.*, Jan. 5, 1996, at A1; *see also* Michael Carroll, *As the Cycle Turns, Inst. Inv.*, Sept. 1994, at 138–39 (describing how U.S. firms are in a ''preeminent worldwide position in underwriting'').

[18] *See, e.g.*, Irish Investment Fund, Investment Company Act Release Nos. 20220 (Apr. 14, 1994), 59 FR 19035 (Notice of Application) and 20286 (May 10, 1994), 56 SEC Docket 1843 (Order); Brazilian Equity Fund, Investment Company Act Release Nos. 19601 (July 28, 1993), 58 FR 41533 (Notice of Application) and 19650 (Aug. 24, 1993), 54 SEC Docket 1840 (Order); First Philippine Fund, Investment Company Act Release Nos. 19034 (Oct. 16, 1992), 57 FR 48534 (Notice of Application) and 19096 (Nov. 12, 1992), 52 SEC Docket 2436 (Order).

[19] If a fund is prohibited by section 10(f) from purchasing a security during the existence of an underwriting syndicate, the fund theoretically can wait until the syndicate is completed and purchase the security in the market. This option has disadvantages, however. *See infra* note and accompanying text.

[20] *See* I *Louis Loss & Joel Seligman, Securities Regulation* 378 (1989) (''The high turnover of underwriting capital in this country means that investment bankers for the most part cannot retain the securities they underwrite for any length of time even if they should want to.''); *id.* at 379–80 (''It is a simple fact * * * that diminution of risk and its by-product, speed, are the keynotes in distribution.''). Members of the fund industry, on the other hand, have observed that the increased contributions of funds to the revenues of major financial conglomerates, and the increased scrutiny given funds by the financial press, have reduced the likelihood that funds would be used to facilitate underwritings to the disadvantage of fund shareholders. *See, e.g.*, Letter from IDS Financial Services, Inc. to John P. Wheeler, III, Secretary, SEC, Apr. 4, 1986 (commenting on 1986 Concept Release, File No. S7–3–86).

[21] Rule 10f–3(d).

limit to permit funds relying on the rule to purchase up to the greater of 10% of the principal amount of an offering, or $1,000,000 (but not more than 15% of the offering).[22] This proposed change is designed to respond to the increasing size of funds and the increasing concentration in the underwriting industry in general.

When originally adopted in 1958, rule 10f–3 limited funds to purchasing 3% of the amount offered by the syndicate in which the affiliated underwriter participated. The exemptions from section 10(f) obtained by funds prior to 1958 generally had involved purchases that would not exceed this amount.[23] In 1979, the Commission increased the percentage limit to its current level.[24]

The current percentage limit, in some instances, may be more restrictive than is necessary for the protection of fund investors. A fund that is limited to purchasing 4% of an offering must, if it wishes to purchase more than that amount, wait until the syndicate has closed and purchase the securities in the secondary market. This delay may result in a fund paying a significantly higher price for the securities and incurring significant additional transaction costs.[25] Thus, a fund that is restricted by the percentage limit in rule 10f–3 may not be able to purchase desirable securities at prices that would benefit its portfolio. Large funds or funds in a large fund complex also may find it inefficient to purchase only 4% of an offering, particularly if the total offering amount is small. For these funds, 4% of an offering may be too small an amount to have any effect on the fund's portfolio.[26] The portfolio manager of such a fund may then decide not to purchase the security at all.

Notwithstanding these potential disadvantages, the percentage limit would appear to limit the possibility that securities will be ''dumped'' on an affiliated fund. The percentage limit provides an indication that a significant portion of the offering is being purchased by persons other than the affiliated fund. In view of its administrative experience with rule 10f–3, however, the Commission believes that the percentage limit can be raised to afford funds additional flexibility. The proposed 10% purchase limit would continue to provide assurance that a significant portion of the offering is being distributed to persons not affiliated with the fund.

2. Percentage of Fund Assets

Rule 10f–3 currently prohibits a fund from using more than 3% of its assets to acquire securities in a transaction subject to the rule (the ''3% limit'').[27] The Commission is proposing to eliminate this condition. The Commission believes that the other provisions of rule 10f–3 provide sufficient protection against dumping. In addition, the diversification provisions of the Investment Company Act provide shareholders of most funds with similar protections.[28]

3. Request for Comment on Quantity Limitations

The Commission requests comment on the percentage limit and the 3% limit generally. Does the percentage limit continue to serve a useful regulatory purpose? Should the percentage limit be retained at all? Would increasing the percentage limit to 10% provide sufficient flexibility to funds while addressing the concerns underlying section 10(f)?[29] Would a higher limit (such as 15% or 20%) be appropriate? Does the 3% limit serve a useful purpose, and if so, should the limit be retained or raised?

The Commission also requests comment whether other types of quantity limits, in addition or as an alternative to the current and proposed limits, are appropriate or necessary to reduce the risk that an underwriter will seek to cause an affiliated fund to purchase unmarketable securities. One industry commenter, for example, has suggested raising the percentage limit dramatically while limiting the percentage of a fund's assets that may consist of securities acquired in rule 10f–3 transactions.[30] Another possible approach would be to limit the amount of an offering all funds affiliated with members of the underwriting syndicate may purchase. Commenters are requested to provide specific suggestions for these types of provisions and indicate whether they would supplement or replace existing quantity limitations in the rule.

B. Purchases of Foreign Securities

Funds cannot rely on rule 10f–3 to purchase foreign securities from syndicates in which their affiliated underwriters participate when those offerings are not registered under the Securities Act. As a result, several funds have, over time, applied for orders from the Commission that would exempt them from section 10(f) and allow them to make these purchases.[31] The proposed amendments would permit funds to rely on rule 10f–3 to purchase foreign securities in circumstances similar to those described in prior Commission orders.

The Commission has granted orders permitting funds to purchase foreign securities in accordance with rule 10f–3 when the securities have been offered in foreign public offerings that have characteristics similar to those present in offerings registered under the Securities Act.[32] One important factor present in all of the orders, for example,

[22] Proposed rule 10f–3(f).

[23] *See* 1958 Adopting Release, *supra* note 6.

[24] *See* 1979 Adopting Release, *supra* note 6.

[25] In many instances, particularly in the equity market, the price of a security increases, sometimes dramatically, after an initial public offering. *See, e.g.,* I Louis Loss & Joel Seligman, *supra* note 20, at 333 n.28; Jonathan A. Shayne & Larry D. Soderquist, *Inefficiency in the Market for Initial Public Offerings,* 48 Vand. L. Rev. 965 (1995). There are additional potential costs to purchasing securities in the secondary market. In secondary market purchases, funds would be required to pay brokerage commissions that they usually would not pay when purchasing directly in an underwritten offering. A fund that must wait until the dissolution of the underwriting syndicate to purchase more than 4% of an offering also may not have the opportunity to purchase the amount of the security that is desirable for its portfolio because of limited supply. This particularly would be the case for popular securities that are in high demand.

[26] *See, e.g.,* Letter from Alliance Capital Management Corp. to John P. Wheeler, III, Secretary, SEC, Apr. 14, 1986 (commenting on 1986 Concept Release, File No. S7–3–86); Application of First Funds, File No. 812–9248; *see also supra* note 12 and accompanying text. In the case of municipal securities, smaller blocks of securities often are more difficult to sell than larger blocks. If a fund manager is able to purchase only a small block of municipal securities because of the percentage limit in rule 10f–3, the liquidity of the fund's portfolio may be adversely affected.

[27] Rule 10f–3(e).

[28] Section 5(b)(1), 15 U.S.C. 80a–5(b)(1), of the Investment Company Act, for example, generally limits a diversified fund to investing, with respect to 75% of its assets, no more than 5% of its assets in the securities of a single issuer.

[29] The Commission notes that a factor in determining the percentage limit is the possibility that several underwriters would together agree to underwrite an offering and sell the entire offering to their affiliated funds. The higher the percentage limit, the fewer the number of underwriters necessary to make such an agreement.

[30] Letter from Smith Barney Inc. to Kenneth J. Berman, Assistant Director, Office of Regulatory Policy, Division of Investment Management, SEC, Feb. 28, 1996 (available in public file S7–7–96).

[31] *See, e.g.,* Brazilian Investment Fund, Investment Company Act Release Nos. 19301 (Mar. 1, 1993), 58 FR 12613 (Notice of Application) and 19366 (Mar. 30, 1993), 53 SEC Docket 2139 (Order); France Growth Fund, Investment Company Act Release Nos. 19097 (Nov. 13, 1992), 57 FR 54627 (Notice of Application) and 19151 (Dec. 9, 1992), 52 SEC Docket 3001 (Order). The orders granted by the Commission generally have required the applicants to comply with all of the provisions of rule 10f–3 except for the Securities Act registration requirement.

[32] *See, e.g.,* The Mexico Fund, Investment Company Act Release Nos. 20156 (Mar. 23, 1994), 59 FR 14946 (Notice of Application) and 20225 (Apr. 19, 1994), 56 SEC Docket 1455 (Order); The New Germany Fund, Investment Company Act Release Nos. 19353 (Mar. 24, 1993), 58 FR 16723 (Notice of Application) and 19421 (Apr. 20, 1993), 53 SEC Docket 2481 (Order); The First Philippine Fund, *supra* note 18.

has been that the securities were publicly offered and distributed at a uniform public offering price.[33] Another important factor has been that the applicable laws or regulations of the country in which the public offering was taking place required information about the issuer to be made available to the public. These and other factors outlined in the orders suggested that the securities would be widely distributed, that a wide range of market participants would agree that the offering price of the securities was fair, and that a secondary market for the securities would likely develop.

The Commission proposes to amend rule 10f–3 to permit purchases of foreign securities in circumstances in which the offerings have characteristics similar to those described above. The proposed amendments would permit a fund to purchase, through an affiliated underwriting syndicate, securities issued by a foreign issuer and not registered under the Securities Act if they are issued in either an ''Eligible Foreign Offering'' or a ''Foreign Issuer Rule 144A Offering,'' described below.[34] The fund also would be required to comply with all other provisions of rule 10f–3.

1. Eligible Foreign Offering

a. General. The proposed amendments would define an Eligible Foreign Offering as a public offering, conducted under the laws of a country other than the United States, of the securities of a foreign issuer.[35] The offering would be required to be subject to regulation by a Foreign Financial Regulatory Authority (''FFRA''), as defined in the Investment Company Act, in the country in which the public offering occurs.[36] Thus, an offering would meet the terms of the proposed definition if it is conducted in a country that has laws, rules or regulations regarding public offerings. An offering also would fall within the definition if an organization such as a stock exchange in that country has rules that regulate the offering of the securities. The Commission requests comment whether the proposed requirement for regulation by a FFRA appropriately recognizes that securities regulatory schemes differ among countries. Comment is requested whether a narrower definition of regulatory scheme would be appropriate for the protection of investors. Are additional or alternative provisions, such as a requirement that the country have laws imposing liability for misleading disclosure, or a requirement that the country have a system for the registration of securities, appropriate or necessary for the protection of investors?

The public offering requirement may provide some assurance that a market for the securities will develop. The Commission requests comment whether additional conditions, such as a minimum market float or a requirement that there be no legal restrictions on transferability, are necessary to provide adequate assurance that a market for the securities will exist after the offering is complete. The Commission also requests comment whether the proposal should require all foreign securities purchased pursuant to the rule to be listed on a securities exchange, either as an alternative or an addition to the proposed provisions. Would a listing requirement provide greater assurance that the securities are widely distributed?

b. Disclosure. An offering subject to regulation by a FFRA would meet the terms of the definition of Eligible Foreign Offering only if, under applicable law or the rules of the applicable FFRA, the issuer of the securities is required to disclose information about the issuer and the offering to prospective purchasers.[37] The proposed amendments also would require that financial statements, audited in accordance with the accounting standards of the appropriate country, for the two years prior to the offering, be made available to the public and prospective purchasers in connection with the offering.[38]

The proposed rule would not set objective disclosure standards, other than the financial statement requirement, that must be met in order to comply with the rule. The Commission requests comment whether the rule should be amended to provide specific standards of disclosure that would be applicable to purchases of foreign securities made pursuant to the rule.

c. Offering Price. Under the proposed definition of Eligible Foreign Offering, the foreign securities would have to be offered at a fixed price to all purchasers in the offering. The single public offering price requirement is designed to enable a fund to comply with the provision of rule 10f–3 that requires the fund to purchase the securities at not more than the public offering price prior to the end of the first business day after the first date on which the securities are offered to the public.[39] The Commission believes the proposed single price offering requirement is consistent with the purposes of section 10(f) because it would preclude an underwriter from obtaining an advantage for the syndicate by causing an affiliated fund to purchase securities from the syndicate at a price that is higher than the price offered to unaffiliated purchasers.

An exception from the single offering price requirement would be available if applicable law requires an issuer to offer the securities at a lower price to existing securities holders.[40] The Commission requests comment whether there are other discrete classes of persons to whom discounts are offered, other than persons who may control a company through ownership or influence over the company's operations, that should be included in this exception. In privatization transactions, for example, citizens of the country that formerly owned the enterprise often are offered the securities at a discount.

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[33] At least one applicant that received a Commission order invested in securities in a country where existing shareholders could be offered securities on terms different than those offered to other potential purchasers. *See* The New Germany Fund, *supra* note 32.

[34] A ''foreign issuer'' would be defined in the same manner as it is in rule 405 under the Securities Act, 17 CFR 230.405, to mean any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

[35] The proposed amendments do not affect the obligation of any issuer, whether domestic or foreign, to comply with U.S. securities laws. The proposed definition of Eligible Foreign Offering, for example, would not affect an issuer's obligation to determine whether the offering is conducted in such a manner as to bring it within the reach of the registration requirements of section 5 of the Securities Act.

[36] Proposed rule 10f–3(k)(1)(i). ''Foreign Financial Regulatory Authority'' is defined in section 2(a)(50) of the Investment Company Act, 15 U.S.C. 80a–2(a)(50), generally as any (A) Foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to certain financial activities, or (C) membership organization a function of which is to regulate the participation of its members in such financial activities.

A ''foreign securities authority'' is defined in section 2(a)(49) of the Investment Company Act, 15 U.S.C. 80a–2(a)(49), as any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

[37] This condition would not require that the issuer become subject to an ongoing disclosure regime. The condition would be satisfied if information about the issuer and the offering were required to be disclosed to prospective purchasers in connection with the sale of the securities.

[38] Proposed rule 10f–3(k)(1)(iv). The proposed amendments would not specify the format of the financial statements that must be provided in recognition that financial reporting standards differ from country to country.

[39] *See* rule 10f–3 (a)(2) (paragraph (b) of rule 10f–3 as proposed to be amended).

[40] *See supra* note 33.

2. Foreign Issuer Rule 144A Offerings

Many fund purchases of foreign securities are made in transactions (''rule 144A placements'') that are exempt from the registration provisions of the Securities Act and that qualify the purchased securities as eligible to be resold pursuant to rule 144A under the Securities Act (''rule 144A-eligible securities'').[41] Rule 144A is a non-exclusive safe harbor that exempts from the registration provisions of the Securities Act resales of securities to certain large institutions, known as Qualified Institutional Buyers (''QIBs'').[42] Typically, a rule 144A placement involving a foreign issuer's securities is part of a larger global offering of those securities.[43] Frequently, a global offering is divided into several tranches—one for the issuer's home country, one for the United States, and one or more for other countries. The securities in the U.S. tranche are sold in either a registered public offering or an offering that is exempt from registration under the Securities Act. Often, the U.S. tranche is sold only to institutions that qualify as QIBs. Usually, the price for the securities is uniform across all the tranches and the issuer prepares an offering document that provides detailed information about the issuer and the offered securities.[44] Securities purchased by a fund in a rule 144A placement are transferable to another QIB in the United States, and may be sold freely in a foreign market (assuming foreign law permits such sale).[45]

In order to increase the flexibility of affiliated funds to purchase securities in these types of transnational offerings, the proposed amendments would permit a fund to purchase securities in a Foreign Issuer Rule 144A Offering, subject to the other conditions of rule 10f–3 (other than the Securities Act registration requirement).[46] A Foreign Issuer Rule 144A Offering generally would be a distribution of securities of a foreign issuer, made exclusively to QIBs, if the securities would be eligible to be resold pursuant to rule 144A.[47] In addition, the proposed amendments would require that securities of the same class be offered in a concurrent Eligible Foreign Offering.[48] This condition is designed to provide some assurance that there is a widespread distribution of securities that are fungible with the rule 144A securities purchased by the fund.

Consistent with the purpose of section 10(f), the proposed amendments would require a fund purchasing securities in a Foreign Issuer Rule 144A Offering to pay no more than the public offering price in the concurrent Eligible Foreign Offering or the price paid by each other QIB, whichever is lower.[49] This provision is designed to provide assurance that a fund does not pay more for the securities than it would if it could engage in arm's length negotiations as to the price of the securities.

The proposed amendments would permit funds to purchase securities in rule 144A placements of foreign issuers. The Commission recognizes that rule 144A placements also often are used by U.S. issuers, and requests comment whether rule 10f–3 should permit purchases of rule 144A-eligible securities of domestic issuers, subject to conditions that protect investors by reducing the likelihood that dumping of unmarketable securities will occur.[50] The conditions applicable to Foreign Issuer Rule 144A Offerings and Eligible Foreign Offerings, however, generally could not be made applicable to domestic rule 144A placements.[51] Commentators in favor of expanding the rule to permit the purchase of securities of domestic issuers in rule 144A placements should suggest alternative conditions.

3. General Request for Comment

The Commission believes that the proposed conditions for purchases of foreign securities should provide assurance that the purposes underlying rule 10f–3 will be met in foreign offerings. Nonetheless, the Commission requests comment on its overall approach to permitting purchases of foreign securities under rule 10f–3. Commenters are encouraged to suggest specific alternatives that would provide flexibility without diminishing investor protection. The Commission also requests comment whether the proposed standards for an Eligible Foreign Offering and a Foreign Issuer Rule 144A Offering are sufficiently clear. The Commission considered alternatives to the proposed approach, such as specifically identifying countries in which purchases may be made, but believes that its proposed approach

[41] 17 CFR 230.144A. In 1993, funds purchased more foreign equity securities in rule 144A placements than did any other type of purchaser. *See* SEC, *Staff Report on Rule 144A* 15 (1994) (hereinafter *Staff Report*). The Commission has received applications from several funds requesting exemptive relief from section 10(f) for purchases of foreign securities in transactions that would produce rule 144A-eligible securities. *See, e.g.,* Application of the Brazilian Investment Fund, Inc. *et al.,* File No. 812–9676; Application of Merrill Lynch Balanced Fund For Investment and Retirement *et al.,* File No. 812–8346.

[42] Under rule 144A, the seller must reasonably believe that the purchaser is a QIB. A QIB is an institution of a type listed in rule 144A and owning or investing on a discretionary basis at least $100 million of securities. *See* 17 CFR 230.144A(a)(1). Many funds qualify as QIBs in their own right, and others qualify because they are part of a ''family'' of funds that own, in the aggregate, at least $100 million in securities. 17 CFR 230.144A(a)(1)(iv).

[43] One of the purposes of rule 144A was to encourage foreign issuers to access the U.S. capital markets. *See* Securities Act Release No. 6862 (April 30, 1990), 55 FR 17933. According to statistics compiled by the Commission's Division of Corporation Finance, from the adoption of rule 144A through December 31, 1994, approximately $39 billion of equity and debt securities relating to more than 480 foreign issuers were sold in rule 144A placements.

[44] Although most foreign rule 144A placements appear to be priced the same as concurrent foreign offerings, there is no regulatory requirement that the securities be priced in this manner. *See Staff Report, supra* note 41, at 26. It has been suggested, however, that most rule 144A transactions are sold in underwriting arrangements with terms and conditions substantially similar to those applicable to registered public offerings. 1 E. Greene et al., U.S. Regulation of the International Securities Markets: A Guide for Domestic and Foreign Issuers and Intermediaries 141 (1993). Rule 144A requires an issuer to provide certain information about the issuer that the purchaser of the securities may request, including financial information for its two most recent fiscal years of operation. *See* 17 CFR 230.144A(d)(4). The rule exempts from this information requirement foreign governments and foreign private issuers that furnish information to the Commission pursuant to rule 12g3–2(b), 17 CFR 240.12g3–2(b), under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (''Exchange Act''). *See* 17 CFR 230.144A(d)(4)(i).

[45] Regulation S under the Securities Act generally permits the sale of securities owned by a U.S. person into a foreign market if certain conditions are met. *See* 17 CFR 230.901 *et seq.*

[46] The proposed amendments would in no way affect the determination that must be made by fund boards of directors whether a security purchased by the fund in a rule 144A placement is deemed a liquid security for purposes of the fund's liquidity policies. *See* Resale of Restricted Securities, Securities Act Release No. 6862 (Apr. 23, 1990), 55 FR 17933.

[47] Rule 144A provides that a person who offers or sells securities in compliance with rule 144A is not deemed to be an underwriter of such securities for purposes of section 2(11) of the Securities Act. 17 CFR 230.144A(c). Rule 144A, however, does not limit the scope of section 10(f).

[48] Proposed rule 10f–3(k)(4). The definition of ''foreign issuer'' for purposes of rule 10f–3 would not be limited to ''foreign private issuers,'' as defined in rule 405, 17 CFR 230.405, under the Securities Act. A foreign issuer that is not a foreign private issuer may have a substantial presence in the United States (either through securities ownership or operation of business, or both). Under the amended rule, for a fund to purchase securities of that issuer in a rule 144A placement, the issuer would be required to have a concurrent Eligible Foreign Offering of securities of the same class in a foreign country.

[49] Proposed rule 10f–3(b)(2). The proposed amendments would provide that a fund will be deemed to have satisfied this condition if it reasonably relies on written statements of the seller. Proposed rule 10f–3(h).

[50] *See Staff Report, supra* note , at 3–4.

[51] The requirement that there be a concurrent public offering of securities of the same class, for example, could not be met because rule 144A is not available for transactions in securities if, at issuance, securities of the same class were listed on a national securities exchange.

would protect investors while also affording greater flexibility to funds.

The proposed amendments would not differentiate between securities issued by foreign companies and those issued by foreign governments. The definition of Eligible Foreign Offering, therefore, would permit an affiliated fund to purchase foreign government securities if the offering of those securities otherwise meets the conditions of the definition. Comment is requested, however, whether these conditions are appropriate for purchases of foreign government securities that could be subject to section 10(f).

Rule 10f–3 currently requires fund directors to adopt procedures pursuant to which a fund may purchase securities in reliance on the rule.[52] The Commission requests comment on the role of fund directors in determining compliance with the proposed foreign securities provisions. In particular, the Commission asks commenters to consider whether the existing requirements for the establishment and review of procedures are sufficient to cover the new proposals.

C. Group Sales

A ''group sale'' is a sale of municipal securities resulting from a ''group order,'' which is an order for securities for the account of all members of a syndicate in proportion to their respective participations in the syndicate.[53] Rule 10f–3 prohibits a fund from purchasing a security, directly or indirectly, from its affiliated underwriter, and, in effect, provides that a purchase from a syndicate manager that is designated as a group sale is deemed a purchase from the affiliated underwriter.[54] These provisions are designed to ensure that a purchase permitted by rule 10f–3 does not violate section 17(a) of the Investment Company Act, which prohibits a fund from purchasing securities from an affiliate or an affiliate of an affiliate.[55]

The prohibition in rule 10f–3 on group sales may act to the detriment of funds that invest in municipal bonds. The rules of the Municipal Securities Rulemaking Board (''MSRB''), which govern the sale of municipal securities, require a syndicate that is offering municipal securities to establish a priority by which orders for the securities will be filled.[56] Frequently, group orders are designated to receive first priority.[57] Thus, if a municipal securities offering were oversubscribed, it is possible that only prospective purchasers who placed group orders would be able to purchase the securities being offered. A fund that is prohibited by rule 10f–3 from placing group orders would be precluded from purchasing any securities in that offering. Because of the potential cost of this prohibition to municipal bond funds and their shareholders, particularly during times in which demand for municipal securities is increasing and supply of these securities is decreasing, the Commission believes that funds subject to rule 10f–3 should be given more flexibility to place group orders for municipal securities.[58]

The proposed provision that would permit group sales contains two conditions designed to limit the likelihood that a group sale would be motivated primarily by an affiliated underwriter's intention to be the primary beneficiary of the group sale. First, a purchase designated as a group sale could be made only if the syndicate has established that orders designated as group orders have first priority, or that only group orders will be filled.[59] Second, a purchase designated as a group sale would be permitted only if, at the time of the sale, the affiliated underwriter is not committed to underwriting more than 50% of the principal amount of the offered securities.[60] In determining whether the conditions have been satisfied, the proposed amendments would permit a fund reasonably to rely upon the written statements of a member of the syndicate.[61]

Absent an exemption by order or rule, section 17(a) of the Investment Company Act could prohibit a fund from purchasing securities in a group sale. To clarify that a purchase of municipal securities in a group sale permitted by rule 10f–3 also is exempt from section 17(a), the Commission is proposing new rule 17a-10. The new rule would exempt any purchase of municipal securities in a group sale that complies with rule 10f–3 from section 17(a)(1).

The Commission requests comment whether permitting funds to purchase through group sales would give needed flexibility to funds. To further reduce the likelihood that the syndicate is giving group sales first priority to benefit the affiliated underwriter, should the proposed amendments require there to be at least a certain number of syndicate members for a fund to take advantage of the provision permitting group sales? Comment also is requested whether there are other arrangements similar to group sales with respect to securities other than municipal securities and whether rule 10f–3 should be amended to permit these types of arrangements.

D. Reporting and Recordkeeping

The Commission proposes eliminating the current requirement that funds report all rule 10f–3 transactions to the Commission in their semi-annual reports on Form N-SAR by filing an

[52] Rule 10f–3(h). The Commission proposes to amend this requirement to clarify that the board of directors must *approve*, rather than *adopt*, procedures for the purchase of securities of rule 10f–3. Proposed rule 10f–3(i)(1). The Commission believes that this change would more accurately reflect the role of the board of directors of approving policies and procedures developed by fund management.

[53] See Municipal Securities Rulemaking Board (''MSRB'') Rule G–11(a)(iii), MSRB Manual (CCH) ¶3551; *see also* The Galaxy Fund *et al.*, Investment Company Act Release No. 20660 (Oct. 26, 1994) (Notice of Application).

[54] Rule 10f–3(f) provides that a purchase from a syndicate may not be made from, or directly or indirectly benefit, an affiliated underwriter. The rule implicitly permits certain purchases of municipal securities to indirectly benefit an affiliated underwriter, however, so long as such purchases are not designated as group sales or otherwise allocated to the account of the affiliated underwriter. *See* Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10592 (Feb. 13, 1979) (proposing amendments to rule 10f–3).

[55] Rule 10f–3 currently defines ''municipal securities'' by reference to section 3(a)(29) of the Exchange Act. *See* rule 10f–3(a)(1)(ii). The proposed rule would continue to refer to the definition under the Exchange Act. *See* proposed rule 10f–3(k)(7).

[56] MSRB Rule G–11(e), MSRB Manual (CCH) ¶3551.

[57] *See, e.g.*, Public Securities Association, Fundamentals of Municipal Bonds 80 (1990). After group orders, ''designated orders'' generally are next in priority to be filled. A designated order is an order submitted by a member of the syndicate on behalf of a buyer on which all or a portion of the sale is to be credited to certain members of the syndicate. MSRB, Glossary of Municipal Securities Terms 34 (1985). Because rule 10f–3 prohibits funds that are purchasing municipal securities from placing group orders, these funds generally must place designated orders, designating underwriters other than affiliated underwriters to be credited with the sale.

[58] The increase in the number of municipal bond funds over the past 15 years has contributed to an increase in demand for municipal securities. *See, e.g.*, Investment Company Institute, *Trends in Mutual Fund Activity*, (Sept. 1995); Investment Company Institute, 1986 Mutual Fund Fact Book; Investment Company Institute, 1982 Mutual Fund Fact Book. The supply of newly issued municipal securities varies from year to year, depending upon a number of factors, including interest rates, tax considerations and political factors. Between 1986 and 1995, for example, the annual amount of issuances of new-money municipal securities ranged from a low of approximately $59.4 billion in 1987 to a high of $119.3 billion in 1993. *See 1995 Year-End Statistics Supplement*, Bond Buy., Jan. 26, 1996, at 16A.

[59] Proposed rule 10f–3(g)(2)(i).

[60] Proposed rule 10f–3(g)(2)(ii).

[61] Proposed rule 10f–3(h). MSRB rule G–11(f) requires a member of a municipal securities syndicate, upon request, to promptly furnish in writing information about the syndicate's priority provisions. A fund attempting to comply with rule 10f–3 could therefore easily obtain the required information.

exhibit setting forth certain details about each transaction.[62] Information about transactions that rely on rule 10f–3 currently are required to be kept with other records pursuant to rule 10f–3 and is available to Commission staff during periodic on-site examinations of funds and investment advisers.[63] The Commission thus believes that it is unnecessary for funds to continue to file these reports. The Commission requests comment whether any changes to the reporting and recordkeeping requirements of rule 10f–3, other than the elimination of the requirement to report on Form N–SAR, are necessary.

III. General Request for Comments

Any interested persons wishing to submit written comments on the rule changes that are the subject of this Release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so. Comment is specifically requested whether the Commission should amend or eliminate conditions in rule 10f–3 other than those addressed in this Release. Does the requirement that the issuer have three years of operations and, in the case of municipal securities, have at least an investment grade rating, for example, continue to serve the purposes of rule 10f–3? Suggestions for such amendments should explain how they are consistent with the protection of investors and the purposes of section 10(f). The Commission also requests comments whether rule 10f–3 should be amended to permit the purchase of other classes of securities, such as U.S. government securities, that currently are not addressed by the rule, and the extent to which the conditions of the rule should apply to such purchases.[64]

IV. Cost/Benefit Analysis

The proposed amendments to rule 10f–3 would increase the flexibility for funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates. These amendments would benefit funds, which would be able to (i) purchase foreign securities in reliance upon rule 10f–3, without having to seek an exemptive order from the Commission, (ii) in many cases, purchase more desirable quantities of securities at advantageous prices, and (iii) purchase municipal securities that are in high demand. Funds also would no longer be required to file information about rule 10f–3 transactions on Form N-SAR. The potential benefits to fund investors of the proposed amendments are better investment performance, lower fund expenses, and less paperwork burden.

The costs to funds and investors of the proposed amendments are minimal. Fund advisers and boards of directors would be required to determine whether purchases of foreign securities and municipal securities in group sales comply with the proposed standards. Rule 10f–3, however, currently has standards that must be met for purchases permitted under the rule. Thus, the additional cost of determining compliance with the standards related to foreign securities and municipal securities in group sales should be minimal. These costs likely would be outweighed by the potential benefits to funds and investors described above.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 10f–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted the proposed amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is ''Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate.'' The Supporting Statement to the Paperwork Reduction Act submission notes that the proposed amendments to rule 10f–3 would permit funds to purchase foreign securities and to purchase municipal securities in group sales, if certain conditions are met. The proposed amendments also would permit funds to purchase up to the greater of 10% of the offering amount or $1,000,000 (but not greater than 15% of the offering amount).

The submission further notes that the amendments would require funds that wish to rely upon the proposed new provisions to amend the procedures that are required by the rule to account for purchases of foreign securities and municipal securities in group sales. Adoption, and occasional revision, of procedures is important to ensure continual board oversight of transactions relying upon rule 10f–3. The Division of Investment Management estimates that 600 funds rely upon rule 10f–3 each year, and that 140 of those funds purchase municipal and/or foreign securities (although not all such funds rely upon rule 10f–3 to purchase such securities). It is estimated that the proposed amendments would increase the recordkeeping burden of funds that invest in foreign and/or municipal securities by an estimated 0.50 hours per fund per year. Thus, the total additional burden of the proposed amendments is estimated to be 70 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; on the accuracy of the Commission's estimate of the burden of the proposed collection of information; on the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth St., N.W., Washington, D.C. 20549 with reference to File No. S7–7–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the Office of Management and Budget is best assured of having its full effect if the Office of Management and Budget receives it within 30 days of publication.

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding amendments to rule 10f–3 under the Investment Company Act. The analysis indicates that the proposed amendments would affect small entities in the same manner as other entities subject to section 10(f), but that the proposed amendments increase flexibility for all funds. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section

[62] *See* rule 10f–3(g).

[63] *See* rule 10f–3(i).

[64] The Commission notes that it may not be necessary for rule 10f–3 to permit the purchase of U.S. government securities because the arrangements among distributors of these securities may not always constitute underwriting or selling syndicates for purposes of section 10(f). *See* Institutional Liquid Assets (pub. avail. Dec. 16, 1981).

of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting David M. Goldenberg, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

VII. Statutory Authority

The Commission is proposing to amend rule 10f–3 pursuant to the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)]. New rule 17a-10 is proposed pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)].

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

Section 270.10f–3 is revised to read as follows:

§ 270.10f–3. Exemption of acquisition of securities during the existence of underwriting syndicate.

Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act shall be exempt from the provisions of such section if the following conditions are met:

(a) The securities to be purchased are:

(1) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) which is being offered to the public;

(2) Municipal Securities; or

(3) Securities of a Foreign Issuer sold in either an Eligible Foreign Offering or a Foreign Issuer Rule 144A Offering.

(b) The securities are purchased at not more than the public offering price prior to the end of the first full business day after the first date on which the issue is offered to the public; *provided, however,* that:

(1) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates; and

(2) If the securities are part of a Foreign Issuer Rule 144A Offering, the securities shall be purchased at not more than the lesser of the public offering price in the concurrent Eligible Foreign Offering or the price paid by each other purchaser of securities in the Foreign Issuer Rule 144A Offering, in each case prior to the end of the first full business day after the first date on which the issue is offered.

(c)(1) If the securities to be purchased are not Municipal Securities, the issuer of such securities shall have been in continuous operation for not less than three years, including the operations of any predecessors; or

(2) If the securities to be purchased are Municipal Securities, the securities shall have received an investment grade rating from at least one NRSRO; *provided,* that if the issuer of the Municipal Securities, or the entity supplying the revenues or other payments from which the issue is to be paid, shall have been in continuous operation for less than three years, including the operation of any predecessors, the securities shall have received one of the three highest ratings from an NRSRO.

(d) The securities are offered pursuant to an underwriting or similar agreement under which the underwriters are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any thereof.

(e) The commission, spread or profit received or to be received by the principal underwriters is reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable period of time.

(f) The amount of securities of any class of such issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, shall not exceed 10 percent of the principal amount of the offering of such class, or $1,000,000 in principal amount, whichever is greater, but in no event greater than 15 percent of the principal amount of the offering of such class.

(g) Such investment company does not purchase the securities being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person; *provided*, that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter if:

(1) Such underwriter does not benefit directly or indirectly from the transaction; or

(2) In the case of a purchase of Municipal Securities that is designated as a group sale:

(i) The syndicate manager has determined that group orders for the securities will be given first priority or that only group orders for the securities will be accepted; and

(ii) At the time of the purchase by the investment company, a person referred to in the introductory sentence of paragraph (g) of this section is not obligated to underwrite more than 50 percent of the securities being offered.

(h) For purposes of determining compliance with paragraphs (b)(2) and (g)(2) of this section, an investment company may reasonably rely upon written statements made by a seller of the securities or a member of the underwriting syndicate through which the securities are purchased.

(i) The board of directors, including a majority of the directors of the investment company who are not interested persons with respect thereto:

(1) Has approved procedures, pursuant to which such purchases may be effected for the company, that are reasonably designed to provide that the purchases comply with all the conditions of this section;

(2) Makes and approves such changes as the board deems necessary; and

(3) Determines no less frequently than quarterly that all purchases made during the preceding quarter were effected in compliance with such procedures.

(j) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described in paragraph (i)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (i)(3) of this section was made.

(k) For purposes of this section:

(1) *Eligible Foreign Offering* means a public offering, conducted under the laws of a country other than the United States, of securities issued by a Foreign Issuer, meeting the following conditions:

(i) The offering is subject to regulation by a Foreign Financial Regulatory Authority in such country;

(ii) The laws of such country, or the rules and regulations of such Foreign Financial Regulatory Authority, require the issuer, in connection with the offering, to make information about the issuer and the offering available to the public;

(iii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase that are required by law to be granted to existing security holders of the issuer); and

(iv) Financial statements, audited in accordance with the accounting standards of such country, for the two years prior to the offering, are made available to the public and prospective purchasers in connection with the offering.

(2) *Foreign Financial Regulatory Authority* has the same meaning as that set forth in section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50)).

(3) *Foreign Issuer* means any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(4) *Foreign Issuer Rule 144A Offering* means a distribution of securities of a foreign issuer if such securities are offered or sold in the United States solely to persons that the seller and any person acting on behalf of the seller reasonably believe to be qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, which securities (''offered securities'') would be eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter, *provided*, that securities of the same class as the offered securities are offered in a concurrent Eligible Foreign Offering.

(5) *Group Order* means an order for securities for the account of all members of a syndicate on a pro rata basis in proportion to their respective participations in the syndicate.

(6) *Group Sale* means a sale resulting from a group order.

(7) *Municipal Securities* has the same meaning as that set forth in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)].

(8) *NRSRO* has the same meaning as that set forth in § 270.2a-7(a)(10).

3. By adding § 270.17a–10 to read as follows:

§ 270.17a–10. Exemption of certain group sales.

Any group sale of municipal securities exempted pursuant to § 270.10f-3 shall be exempt from the provisions of section 17(a)(1) of the Act [15 U.S.C. 80a-17(a)(1)].

Dated: March 21, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7335 Filed 3–26–96; 8:45 am]

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federal register

Wednesday
March 27, 1996

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Powerplant Instruments; Fuel Pressure Indication; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 28011; Amendment No. 23–52]

RIN 2120–AF41

Powerplant Instruments; Fuel Pressure Indication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the certification requirement for fuel pressure indicators on pump-fed engines of normal, utility, acrobatic, and commuter category airplanes to permit regulatory alternatives to fuel pressure indicators to warn pilots of fuel system problems. A fuel pressure indicator is not technically the only means available to the pilot of indicating a fuel system problem. The amendment allows airplanes to be certificated with a means that indicates fuel flow or that monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure. New technology incorporated as a means of compliance with the revised rule could improve engine operation and reduce airplane operating costs.

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

Statement of the Problem

The FAA proposed to amend Title 14 of the Code of Federal Regulations (CFR), Part 23, § 23.1305(b)(4), which required a fuel pressure indicator for each pump-fed engine. The pressure indicator gives continuous fuel pressure readings to the pilot. This information provides an advance warning of engine failure only when a pilot notices the pressure reading has deviated from the norm and when the pilot can diagnose what those deviations mean in terms of potential engine failure. The change would allow the options of a fuel pressure indicator, a fuel flow indicator, or a means that continuously monitors the fuel system and warns the pilot of any fuel flow trend that could cause engine failure. A fuel flow indicator would give continuous fuel flow readings to the pilot. Fuel flow information presents the fuel system status to the pilot in a manner similar to the fuel pressure indicator, but it also allows the pilot to quickly assess the engine's performance during critical phases of flight, such as takeoff. A continuous fuel system monitoring device would alert the pilot to any fuel flow trend that could lead to engine failure.

History

The Aircraft Owners and Pilots Association (AOPA) petitioned the FAA for new standards that would allow, on all pump-fed engines, a fuel flow system employing a differential pressure transducer to be accepted as a means of compliance equivalent to the current fuel pressure indicator requirements (55 FR 39299, September 26, 1990). The FAA requested that the Aviation Rulemaking Advisory Committee (ARAC) review the petition and recommend a course of action. In January 1992, the Fuel Pressure Indicators Working Group of the ARAC on General Aviation and Business Airplane Issues began a review of the AOPA's petition. As a result of the review, a Notice of Proposed Rulemaking (NPRM), Notice No. 94–37, was published on December 28, 1994 (59 FR 67114).

Discussion of Comments

General

This amendment is based on the NPRM, Notice No. 94–37, published December 28, 1994 (59 FR 67114). Interested persons were invited to participate in the development of this final rule by submitting written data, views, or arguments to the regulatory docket on or before February 27, 1995. Four comments were received on the proposal, including a letter of support from the Air Line Pilots Association.

The intent of the fuel pressure indicator requirement for pump-fed engines is to advise the pilot of a fuel pressure deficiency before total engine failure. The term ''indicator'' in § 23.1305(b)(4) implies that the fuel pressure be constantly displayed.

The FAA proposed a change to allow a fuel pressure indicator or a fuel flow indicator. The fuel flow indicator would constantly display information that the pilot could use to evaluate engine power, fuel mixture, and other engine performance factors in addition to fuel system status. It is technologically possible to have a microprocessor that monitors engine operation and triggers a warning if the fuel system operation does not match the other monitored engine trends; therefore, the FAA also proposed to change the rule to accept a means that monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure.

Accordingly, the FAA proposed to adopt a performance standard, instead of a requirement for specific equipment. An applicant could show compliance with paragraph (b) of the proposal by using any design that monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure.

Discussion of Comments to Section 23.1305

One commenter, a private individual, does not feel that § 23.1305(b)(4) should be changed as proposed. The commenter believes that ''an accurate indication is necessary for the pilot to have a situation awareness of his operating environment.'' The FAA understands and agrees with the overall basis for the comment; however, the FAA does not agree with all of the commenter's arguments and will address them individually.

First, the commenter believes the proposal implies that small airplane engines are ''antiquated'' using ''antiquated fuel flow means.'' The NPRM sections discussing the history of this rule focused on fuel pump reliability, radial engines, and diagnosing fuel pump failures, which were more frequent in the 1940's and 1950's than today. The FAA's intention in discussing the rule's history was to point out that the reliability of fuel pumps has improved since the 1940's. The FAA did not intend to imply that these engines were in some way ''antiquated.'' In fact, as the commenter points out, the basic engines used on most small airplanes are derivatives of the engines designed in the 1940's. Civil Air Regulation 3 airplanes, which constitute over 85 percent of the existing small airplanes flying today, have an excellent service history.

The commenter also points out that ''continual reference to automobile monitoring systems is well taken, except that automobiles can have a problem and pull off to the side of the road.'' Additionally, ''[a]utomobiles may have indicator lights and warnings as to the state of fule consumption, but they also have a fuel quantity gauge so the driver can monitor the system in use to also determine an accurate fuel flow.'' The FAA used the reference to automobile technology to make the point that sophisticated engine monitoring is inexpensive enough to be mass produced for automobiles. Complex fuel

monitoring systems are available in business jets and recently-certificated jet transport aircraft. This technology may soon be affordable to small airplane owners and manufacturers, and the FAA does not want to impede progress with rules offering no alternatives.

The commenter believes that the proposal would allow ''idiot lights.'' On the contrary, the FAA stated in the NPRM, ''A light that comes on at the same time that the engine quits is useless. A warning light system that would comply with this proposal would be sophisticated enough to read transients and trends, and would give a useful warning to the pilot.'' Also, the rule as proposed would require that any warning light system continuously monitor the fuel system and warn the pilot of any fuel flow trend that could lead to an engine failure.

Transport Canada questions the ability to show compliance with the requirement in § 23,1549 to identify maximum and, if applicable, minimum safe operating limits as well as the normal operating range of the instrument. This commenter points out that the typical fuel flow meter is a digital type, and it would be difficult for the applicant to provide equivalent markings, Engine manufacturers provide the information required by § 23.1549, which is then usually transcribed to the installed fuel pressure gauge. It appears that this information would not be presented through the use of typical digital fuel flow meters. The commenter offers the following suggestion: ''FAR 23.1549 was written with a traditional dial instrument in mind where the engine limitations could be easily displayed on the face of the unit and monitored by the crew. To allow flow meters or other fuel system monitors to satisfy the requirements of § 23.1549 where such a gauge no longer exists, compliance could be shown by (1) different colors to indicate changing trends in system performance (e.g., amber color for a low pressure/flow condition, red for impending engine failure), or (2) placarding, if appropriate, to indicate the normal and abnormal operating ranges.''

The FAA agrees with the commenter's suggestions as an acceptable means of compliance with § 23.1549. Suggested items (1) and (2) above offer the pilot a means to determine fuel flow limitations, which may be needed if a fuel flow meter is installed.

A commenter from Australia supports the proposal; however, the commenter feels that the proposed text would require a monitoring system that provides a warning of any trend that could lead to engine failure, which is an extremely difficult compliance requirement. The commenter further states: ''The historic requirement, and the NRPM preamble, clearly addresses fuel pressure (as an indication of the availability of fuel flow) or fuel flow only. Such wording may stifle the development of monitoring instrumentation for small airplanes.'' The commenter suggests that, for clarification, the proposed text for § 23.1305(b)(4)(ii), be amended to read as follows: ''That continuously monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure.''

The FAA agrees with the commenter that the proposed wording may be too broad, making compliance difficult or the system unnecessarily complex. The FAA encourages ''smart'' systems; however, the intent of the proposal was to warn the pilot of any fuel flow trend and, for that reason, the final rule and the preamble adopt the commenter's language.

Section 23.1305 is adopted with the change in paragraph (b)(4)(ii) to add the words ''fuel flow'' before the word ''trend.''

International Compatibility

The agency has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements for compatibility. The FAA has determined that this final rule, if adopted, would not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 et seq.), there are no reporting or recordkeeping requirements associated with this rule.

Regulatory Evaluation Summary

Economic Evaluation, Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits exceeding its costs and is not significant as defined in Executive Order 12866; (2) is not significant as defined in DOT's Policies and Procedures; (3) will not have a significant economic impact on small entities; and (4) will not affect international trade. These analyses, available in the docket, are summarized below.

Economic Evaluation

The rule adopts a performance standard instead of requiring specific equipment. In this way, manufacturers can develop any design that monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure. The objective of imposing a performance standard could be met in this case by any means that ''continuously indicates to the pilot fuel pressure or fuel flow, or that continuously monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure.'' This will maintain the level of safety intended by the original requirement, without imposing any additional costs. For example, a warning light system could possibly alert the pilot sooner than if the pilot relied on an instrument panel scan to notice a trend in the fuel pressure indication alone (as is currently the case).

A fuel flow indicator offers additional benefits compared to a fuel pressure indicator in that it enables the pilot to monitor the engine's fuel consumption and compare it to fuel consumption listed in the airplane flight manual. Consequently, engine operation could be improved, resulting in reduced fuel consumption and operating costs. In addition, continual fuel flow readings are useful during critical phases of flight, such as takeoff and climb. Thus, flight safety could be enhanced. The other alternative, a means to continuously monitor the fuel system, will also enhance safety by alerting the pilot to any fuel flow trend that could lead to engine failure.

Since the rule will permit but not require alternative means of warning pilots of fuel system problems, it is inherently cost-beneficial. To the extent that it encourages the future development and utilization of comprehensive engine control, monitoring, and diagnostic systems, it will generate benefits in the form of enhanced safety, improved fuel efficiency, power output, and engine life.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed or final rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size, ''significant economic impact'' in terms of annualized costs, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed of final rule.

The rule will affect manufacturers of future part 23 airplanes. For manufacturers, Order 2100.14A defines a small entity as one with 75 or fewer employees and a significant economic impact as annualized costs of $19,000 or more. The FAA has determined that the rule will not have a significant economic impact on a substantial number of small manufacturers since the annualized certification costs of the rule are less than $19,000.

International Trade Impact Assessment

The rule will not constitute a barrier to international trade, including the export of U.S. airplanes and airplane parts to foreign markets or the import of foreign airplanes and airplane parts in the United States.

Federalism Implications

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

Conclusion

The FAA amends the airworthiness standards to allow airplane manufacturers to utilize new technology for fuel system monitoring to improve the operation and economy of part 23 airplanes powered by pump-fed engines. The current rule requires a fuel pressure indication; thus, it limits the means of compliance. The advances in engines monitoring systems and electronics offer technology that should be utilized by the aviation community. By broadening this airworthiness standard, fuel flow indicators or new fuel system monitors may provide better information to the pilot.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this regulation 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. The regulation is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 23 as follows:

PART 23—AIRWORTHINESS STANDARDS; NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 23.1305 is amended by revising paragraph (b)(4) to read as follows:

§ 23.1305 Powerplant instruments.

* * * * *

(b) * * *

(4) For each pump-fed engine, a means:

(i) That continuously indicates, to the pilot, the fuel pressure or fuel flow; or

(ii) That continuously monitors the fuel system and warns the pilot of any fuel flow trend that could lead to engine failure.

* * * * *

Issued in Washington, D.C. on March 21, 1996.

David R. Hinson,

Administrator.

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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.

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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**.

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