

Federal Register

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- FOR: Any person who uses the Federal Register and Code of Federal Regulations.
- WHO: Sponsored by the Office of the Federal Register.
- WHAT: Free public briefings (approximately 3 hours) to present:
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- WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

- WHEN: July 9, 1996 at 9:00 am, and July 23, 1996 at 9:00 am.
- WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS: 202-523-4538



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Federal Register

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Monday, July 8, 1996

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.

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA06

Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in one of the amendatory instructions of the final rule on executive branch certificates of divestiture, which was published by OGE in the Federal Register on Tuesday, June 25, 1996 (61 FR 32633-32636).

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics; telephone: 202-208-8000, extension 1110; FAX: 202-208-8000.

SUPPLEMENTARY INFORMATION: In the above-noted final rule document published by OGE, amendatory instruction 2 inadvertently indicated that it was revising portions of paragraph (b) of § 2634.1002 of 5 CFR, whereas in fact it was intended to revise portions of paragraph (b) of § 2634.1001 of 5 CFR (amendatory instruction 3 revised portions of § 2634.1002). This correction document corrects the error in amendatory instruction 2.

Approved: July 2, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is correcting the June 25, 1996 publication of the final rule on Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials, which

was the subject of FR Doc. 96-15970, as follows:

On page 32635, in the second column, in the first line of amendatory instruction 2, the reference to “§ 2634.1002” is corrected to read “§ 2634.1001”.

[FR Doc. 96-17263 Filed 7-5-96; 8:45 am]

BILLING CODE 6345-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-93-04]

Grading and Inspection, General Specification for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Instant Nonfat Dry Milk. The revision limits the use of lactose as a processing aid in the instantizing process, provides fortification levels for instant nonfat dry milk with added vitamins A and D, and deletes the optional phosphatase test. This revision was developed in cooperation with the American Dairy Products Institute and other dairy trade associations.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, 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.

The final rule also has been reviewed in accordance with the Regulatory

Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions do not increase costs to those utilizing the standards.

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

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality instant nonfat dry milk, USDA is revising the U.S. Standards for Instant Nonfat Dry Milk as follows:

1. Restrict the Amount of Lactose Used as a Processing Aid

The use of lactose as a processing aid in the production of instant nonfat dry milk is an acceptable practice provided the amount used does not exceed the amount necessary to produce the desired effect. If more lactose than necessary is added, the additional lactose serves no purpose other than to displace nonfat dry milk. The revision permits the use of lactose as a processing aid and restricts the amount added to a maximum of 2.0 percent of the weight of the nonfat dry milk.

2. Provide Fortification Levels for Instant Nonfat Dry Milk With Added Vitamins A and D

Previously, the U.S. Standards for Instant Nonfat Dry Milk have not provided fortification levels for product with added vitamins A and D. This revision incorporates fortification levels that are consistent with the Food and Drug Administration's standards of identity for nonfat dry milk fortified with vitamins A and D (21 CFR 131.127).

3. Delete the Reference to the Optional Phosphatase Test

Pasteurization destroys pathogenic organisms and occurs when milk is heated to pasteurization temperature and held at that temperature for a specified period of time. To be considered pasteurized, the heating and holding of milk must take place in properly designed and installed equipment which has been inspected and sealed by the State Regulatory Agency. Phosphatase testing confirms only that a given sample of instant

nonfat dry milk has been pasteurized but does not ensure that pasteurization has occurred for product manufactured before and after the sample tested.

Before U.S. grade can be assigned to instant nonfat dry milk, it must be produced in a dairy plant which has been inspected by USDA. When a USDA dairy plant inspection is conducted, the inspector evaluates the pasteurization system for compliance with program requirements.

The Department believes that the inspection and sealing of pasteurization equipment by the State Regulatory Agency and a review of the system by the USDA inspector provides adequate assurance that the instant nonfat dry milk has been properly pasteurized. For this reason, the Department has deleted the reference to the optional phosphatase test that appears in 7 CFR § 58.2756. This action does not prohibit using the phosphatase test upon request.

4. Update the Terminology and Format of the Standards

The current U.S. Standards for Instant Nonfat Dry Milk were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The revision updates the standards to provide consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When instant nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this revision accurately identifies quality characteristics in instant nonfat dry milk.

Corollary changes are also made for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of instant nonfat dry milk set forth therein with the revision of the United States Standards for Instant Nonfat Dry Milk.

Public Comments

On March 6, 1995, the Department published a proposed rule (60 FR

12154) to revise the United States Standards for Instant Nonfat Dry Milk. The public comment period closed on May 5, 1995. One institute representing the dry milk industry submitted comments.

Discussion of Comments

The commenter supported all of the proposed changes except for the lowering of the direct microscopic clump (DMC) count from 75 to 40 million per gram. The commenter suggested deletion of this requirement from the standard and provided the following comments in support of this position.

1. The accuracy and reproducibility of the DMC count results is unreliable.

2. A 0.1 milliliter sample of reconstituted instant nonfat dry milk is an extremely small sample to evaluate a large volume of product.

3. Grade A milk is used to manufacture most instant nonfat dry milk produced in the United States. The maximum allowable bacteria in Grade A raw milk is less than the maximum allowed in manufacturing grade milk. The production of manufacturing grade milk has decreased since the last revision of this standard and provides instant nonfat dry milk with lower DMC counts. (This fact was submitted to support the deletion of DMC count requirements.)

4. Requirements for Grade A (the designation of the National Conference on Interstate Milk Shippers, not an indication of USDA quality grade) instant nonfat dry milk do not include DMC count limits.

5. The Codex Alimentarius "Standard for Whole Milk Powder, Partly Skimmed Milk Powder and Skimmed Milk Powder" does not provide DMC count limits for product in international trade.

The comments pertaining to the accuracy, reproducibility, and small sample size become increasingly valid as DMC count limits are lowered. The Department accepts these concerns and elects not to lower the DMC count limits at this time.

The Department disagrees with the request for deletion of the DMC count requirement. U.S. Grade Standards are quality standards and differ from standards developed by the National Conference on Interstate Milk Shipments and The Codex Alimentarius Commission. The U.S. Standards for Instant Nonfat Dry Milk will retain the DMC count maximum requirement of 75 million per gram.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 58, § 58.205 paragraph (b) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(b) *Instant nonfat dry milk.* Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

* * * * *

3. In Part 58, subpart U is revised to read as follows:

Subpart U—United States Standards for Instant Nonfat Dry Milk

Definitions

Sec.

58.2750 Instant nonfat dry milk.

U.S. Grade

58.2751 Nomenclature of the U.S. grade.

58.2752 Basis for determination of the U.S. grade.

58.2753 Specifications for the U.S. grade.

58.2754 U.S. grade not assignable.

58.2756 Test methods.

Explanation of Terms

58.2759 Explanation of terms.

Subpart U—United States Standards for Instant Nonfat Dry Milk¹

Definitions

§ 58.2750 Instant nonfat dry milk.

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional processes. Instant nonfat dry milk covered by these standards shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(b) "Nonfat dry milk" is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions or 21 CFR 131 "Milk and Cream" as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grade

§ 58.2751 Nomenclature of the U.S. grade.

The nomenclature of the U.S. grade is U.S. Extra.

§ 58.2752 Basis for determination of the U.S. grade.

The U.S. grade of instant nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count and coliform count, milkfat content, moisture content, scorched

particle content, solubility index, titratable acidity, and dispersibility.

§ 58.2753 Specifications for the U.S. grade.

(a) *U.S. Extra Grade.* U.S. Extra Grade instant nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted instant nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Instant nonfat dry milk shall possess a uniform white to light cream natural color. It shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure. See Table II of this section.

(3) *Bacterial estimate.* Not more than 30,000 per gram standard plate count. See Table III of this section.

(4) *Coliform count.* Not more than 10 per gram. See Table III of this section.

(5) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

(6) *Moisture content.* Not more than 4.5 percent. See Table III of this section.

(7) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(8) *Solubility index.* Not more than 1.0 ml. See Table III of this section.

(9) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(10) *Dispersibility.* Not less than 85.0 percent. See Table III of this section.

(b) [Reserved]

TABLE I OF § 58.2753—
CLASSIFICATION OF FLAVOR

Flavor characteristics	U.S. extra grade
Chalky	Slight.
Cooked	Slight.
Feed	Slight.
Flat	Slight.

TABLE II OF § 58.2753—CLASSIFICATION OF PHYSICAL APPEARANCE

Physical appearance characteristics	U.S. extra grade
Color	White to light cream.
Free flowing	Reasonably.
Lumpy	Very slight pressure.

TABLE III OF § 58.2753—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

Laboratory tests	U.S. extra grade
Bacterial estimate; Standard plate count; per gram (max)	30,000
Coliform count; per gram (max) ...	10
Milkfat content; percent (max)	1.25
Moisture content; percent (max) ...	4.5
Scorched particle content; mg (max)	15.0
Solubility index; ml (max)	1.0
Titratable acidity (lactic acid); percent (max)	0.15
Dispersibility; percent (min)	85.0

§ 58.2754 U.S. grade not assignable.

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons:

(a) The instant nonfat dry milk fails to meet the requirements for U.S. Extra Grade.

(b) The instant nonfat dry milk has a direct microscopic clump (DMC) count exceeding 75 million per gram.

(c) The instant nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2756 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918-RL, "Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090-6456; the latest revision of "Official Methods of Analysis of the Association of Official Analytical Chemists"; or the latest edition of "Standard Methods for the Examination of Dairy Products" available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

Explanation of Terms

§ 58.2759 Explanation of terms.

(a) *With respect to flavor:*
(1) *Slight.* Detected only upon critical examination.

(2) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(3) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(4) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the instant nonfat dry milk.

(5) *Flat.* Insipid, practically devoid of any characteristic reconstituted instant nonfat dry milk flavor.

¹ Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(b) *With respect to physical appearance:*

(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(4) *Natural color.* A color that is white to light cream.

Dated: June 28, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96-17200 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 958

[FV96-958-1FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Modification of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by increasing their flexibility and efficiency in the packaging of "repacker/prepacker" size onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the change to the minimum size requirement also applies to all imported onions except white or red varieties.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503)326-2724; FAX: (503)326-7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202)690-0464; FAX: (202)720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and marketing order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule, which also affects the minimum size requirements for all varieties of imported onions, except white or red varieties, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the onion import regulations are discussed later in this final rule.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this final rule should have small entity orientation, and impact both small and large business entities in a manner comparable to those issued under marketing orders.

There are currently 34 handlers subject to regulation under the marketing order and approximately 550 onion producers in the regulated production area. In addition, at least 148 importers of onions are subject to import regulations and will be affected by this final rule. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities. The majority of importers may also be classified as small entities.

This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by allowing them to better meet the needs of their customers, who desire slightly larger "repacker/prepacker" size onions.

As provided under section 8e of the Act, the change to the minimum size requirement also applies to all imported onions except white or red varieties. The benefits to producers and handlers should apply also to importers. The slight increase in minimum size is expected also to benefit importers by recognizing recent trends in buyer preference for larger size onions.

Because this rule is expected to benefit and have a positive impact on producers, handlers, importers, and consumers of onions, the AMS has determined that the issuance of this final rule will not have a significant

economic impact on a substantial number of small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major variety produced in the regulated production area.

This final rule modifies a marketing order size category that is recognized by the onion industry as "repacker" or "prepacker" size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for "repacker/prepacker" size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer "repacker/prepacker" size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for "repacker/prepacker" size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches

to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this regulation are expected to be offset by the benefits derived from improved returns. The modification increases the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. Pursuant to section 8e of the Act, the current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of Marketing Order 958 during the June 5 through March 9 period each season (61 FR 25556; May 22, 1996), and Marketing Order 959 through the remainder of the year. The current import regulation also provides that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This final rule will change the import requirements for the period June 5 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of § 980.117, all imported onions other than white or red varieties will be required to meet the minimum size requirement herein.

The proposed rule concerning this action was published in the May 6, 1996, Federal Register (61 FR 20188), with a 30-day comment period ending June 5, 1996. No comments were received.

After consideration of all relevant matters presented, including the

information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action will provide handlers more marketing flexibility in meeting buyer preferences; (2) the 1996 crop harvest and shipments are expected to begin in August and this action needs to be effective promptly to allow handlers to make their marketing plans; and (3) interested persons were invited to submit written comments and no comments were submitted.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is hereby amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 958.328 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 958.328 Handling Regulation.

* * * * *

(a) * * *

(3) * * *

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

* * * * *

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-17197 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 997 and 998**[Docket No. FV96-998-2IFR]****Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1996-97 and subsequent crop years. The Committee is responsible for local administration of the marketing agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. Public Law 103-66 requires the Department of Agriculture (Department) to impose an administrative assessment on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, this same assessment rate established under the agreement will apply to all non-signatory handlers.

DATES: Effective on July 1, 1996. Comments received by August 7, 1996, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770, FAX 941-299-5169.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, hereinafter referred to as the "Act"; public Law 101-220, section 4(1), (2), 103 Stat. 1878, December 12, 1989; Public Law 103-66, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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.

There are approximately 45 handlers of peanuts who have not signed the agreement and, thus, will be subject to the regulations specified herein. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement and approximately 32 handlers subject to regulation under the agreement. 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 the producers and the non-

signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

The peanut marketing agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the peanut agreement program are paid to the Committee and are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The Committee met on March 19, 1996, and unanimously recommended 1996-97 administrative expenditures of \$1,025,500 and an administrative assessment rate of \$0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee met again on May 23, 1996, and with 17 favorable votes and one abstention voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1996-97 crop year. In comparison, last year's budgeted administrative expenditures were \$1,067,500. The assessment rate of \$0.70 is the same as last year's initially established rate. An interim final rule has been published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to \$0.83 per ton.

Major expenditures recommended by the Committee for the 1996-97 year include \$112,450 for executive salaries, \$131,500 for clerical salaries, \$296,700 for field representatives salaries, \$42,000 for payroll taxes, \$148,000 for employee benefits, \$40,000 for committee members travel, \$5,000 for staff travel, \$110,000 for field representatives travel, \$9,800 for insurance and bonds, \$46,200 for office rent and parking, \$14,000 for office supplies and stationery, \$13,200 for postage and mailing, \$15,000 for

telephone and telegraph, \$6,000 for repairs and maintenance agreements, \$10,400 for the audit fee, and \$10,250 for the contingency reserve. Budgeted expenses for these items in 1995-96 were \$145,051, \$138,856, \$304,344, \$44,000, \$148,000, \$40,000, \$5,000, \$110,000, \$9,500, \$44,360, \$14,000, \$13,200, \$15,000, \$6,000, \$10,400, and \$4,789, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut shipments for the year under the agreement are estimated at 1,465,000 tons, which should provide \$1,025,500 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement.

Public Law 101-220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Public Law 103-66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. This administrative assessment is required by law to be applied uniformly to all non-signatory handlers and should be of benefit to all. Therefore, the AMS has

determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Public Law 103-66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (3) the 1996-97 crop year begins on July 1, 1996, and the marketing agreement and Public Law 103-66 require that the rate of assessment for each crop year apply to all peanuts handled during such crop year; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) this interim final rule

provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

1. The authority citation for 7 CFR parts 997 and 998 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Note: These amendments will appear in the Code of Federal Regulations.

PART 997—[AMENDED]

2. In part 997, a new undesignated center heading, Assessment Rates, and § 997.101 are added to read as follows:

Assessment Rates

§ 997.101 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

PART 998—[AMENDED]

3. In part 998, a new undesignated center heading, Assessment Rates, and § 998.409 are added to read as follows:

Subpart—Assessment Rates

§ 998.409 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d) is established for handlers signatory to the agreement. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-17196 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1106

[DA-96-05]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Suspension of rule.

SUMMARY: This document suspends a portion of the supply plant shipping requirement and the touch-base requirement of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1996 through August 1998. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

EFFECTIVE DATE: September 1, 1996, through August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 9, 1996; published April 22, 1996 (61 FR 17588).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The 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 a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 provisions 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 from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the Federal Register on April 22, 1996 (61 FR 17588) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the proposed suspension was received.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the period of September 1996 through August 1998 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This rule suspends the requirement that producers "touch-base" at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants before going to unregulated manufacturing plants.

The suspension will allow a supply plant that has been associated with the Southwest Plains order during the months of September 1995 through

January 1996 to qualify as a pool plant without shipping any milk to a pool distributing plant during the months of September 1996 through August 1998. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

According to Kraft's letter requesting the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market.

Consequently, it states, there is no need to require producers located some distance from pool distributing plants to touch-base when their milk can more economically be diverted directly to manufacturing plants in the production area.

One comment letter was received in support of the suspension request; none were received in opposition to it. A letter submitted by Associated Milk Producers, Inc. (AMPI), Southern Region, states that it supports continuation of the proposed suspension. AMPI agrees with Kraft that more than sufficient supplies of local milk are readily available to meet the fluid needs of the market.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner, and to assure that producers whose milk has long been associated with the Southwest Plains marketing area will continue to benefit from pooling and pricing under the order.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1106 is amended as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 1106.6 [Suspended in part]

2. In § 1106.6, the words, "during the month" are suspended.

§ 1106.7 [Suspended in part]

3. In § 1106.7(b)(1), beginning with the words "of February through August" and continuing until the end of the paragraph are suspended.

§ 1106.13 [Suspended in part]

4. In § 1106.13, paragraph (d)(1) in its entirety is suspended.

Dated: June 28, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-17198 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1230

[Docket No. LS-96-001]

Pork Promotion, Research, and Consumer Information Order—Increase in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Agricultural Marketing Service is correcting a final rule published on June 4, 1996, 61 FR 29002 concerning the Pork Promotion, Research, and Consumer Information Order (Order).

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 (7 U.S.C. 4801-4819) and the Order (7 CFR Part 1230) issued thereunder, the final rule increased the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1995 five-market average price for domestic barrows and gilts. This action brought the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

Need for Correction

The final rule as published contains an error in the chart listing the cents per kilogram assessments for each of the 33 HTS numbers in the table listing assessments for imported pork and pork products. The proposed rule published

in the March 22, 1996, Federal Register (61 FR 11777) listed the cents per kilogram assessments correctly.

Correction of Publication

Accordingly, in FR Doc 96-13833, published June 4, 1996, on page 28003, in the second column, in § 1230.110, paragraph (b) is corrected to read as follows:

§ 1230.110 [Corrected]

* * * * *

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb.	Cents/kg.
0203.11.0000 ....	.27	.595242
0203.12.1010 ....	.27	.595242
0203.12.1020 ....	.27	.595242
0203.12.9010 ....	.27	.595242
0203.12.9020 ....	.27	.595242
0203.19.2010 ....	.31	.683426
0203.19.2090 ....	.31	.683426
0203.19.4010 ....	.27	.595242
0203.19.4090 ....	.27	.595242
0203.21.0000 ....	.27	.595242
0203.22.1000 ....	.27	.595242
0203.22.9000 ....	.27	.595242
0203.29.2000 ....	.31	.683426
0203.29.4000 ....	.27	.595242
0206.30.0000 ....	.27	.595242
0206.41.0000 ....	.27	.595242
0206.49.0000 ....	.27	.595242
0210.11.0010 ....	.27	.595242
0210.11.0020 ....	.27	.595242
0210.12.0020 ....	.27	.595242
0210.12.0040 ....	.27	.595242
0210.19.0010 ....	.31	.683426
0210.19.0090 ....	.31	.683426
1601.00.2010 ....	.37	.815702
1601.00.2090 ....	.37	.815702
1602.41.2020 ....	.41	.903886
1602.41.2040 ....	.41	.903886
1602.41.9000 ....	.27	.595242
1602.42.2020 ....	.41	.903886
1602.42.2040 ....	.41	.903886
1602.42.4000 ....	.27	.595242
1602.49.2000 ....	.37	.815702
1602.49.4000 ....	.31	.683426

Dated: June 28, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96-17199 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1692-95]

RIN 1115-AD92

Fees Assessed for Defaulted Payments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to increase the fee imposed from \$5.00 to \$30.00 when a check submitted to the Service in payment of a fee is not honored by the bank upon which it is drawn. The purpose of this change is to enable the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. This action will result in the Service no longer losing money as a result of bad check activity.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Allen H. Sinsheimer, Systems Accountant, Debt Collection and Cash Management Branch, Office of Financial Management, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 616-7715.

SUPPLEMENTARY INFORMATION:

Introduction

Changes in the current regulation are needed to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. The current bad check charge is \$5.00.

The Service has studied the costs incurred by several Administrative Centers attributable to the return of a bad check from a financial institution. The Administrative Center, Dallas and the Administrative Center, Twin Cities were asked to identify each action that must be undertaken and quantify the time and costs involved in processing a bad check. Meaningful and reliable accumulations of the time and expense involved in the average costs of processing each bad check have been gathered by these centers since they process a substantial number of financial transactions each year. For example, three employees at the Administrative Center, Dallas each spend 38 hours each month processing bad checks. Over 900 bad checks are processed each year at the Administrative Center, Dallas. Data from

the processing of over 1,800 bad checks were provided by the Administrative Centers.

As a result of our study, we have determined that the average cost to the Service to process each bad check received is \$30.11. We have rounded off the cost to \$30.00.

The Service notes that the United States Customs Service has recently completed a review of the costs incurred in processing bad checks and has also concluded that a \$30.00 fee for bad checks is appropriate compensation for the costs it incurs in processing bad checks.

On September 28, 1995, at 60 FR 50145, the Immigration and Naturalization Service published a proposed rule with request for comments in the Federal Register, to allow the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. Written comments were requested by November 27, 1995. The Service did not receive any comments to the proposed rule and is amending Section 103.7(a) to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. Accordingly, the bad check charge is being increased from "\$5.00" to "\$30.00."

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and for the reasons stated in the preamble, it is certified that the rule would not have a significant impact on a substantial number of small entities. Accordingly, this rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This rule will not result in a "significant regulatory action" under Executive Order 12866.

Executive Order 12612

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

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by:

a. Redesignating the text of paragraph (a) following the heading as paragraph (a)(1);

b. Removing in the sixth sentence of newly designated paragraph (a)(1) the term "\$5" and adding in its place the term "\$30.00"; and

c. Removing the seventh sentence of newly designated paragraph (a)(1); and

d. Adding a new paragraph (a)(2), to read as follows:

§ 103.7 Fees.

(a) * * * (1) * * *

(2) A charge of \$30.00 will be imposed if a check in payment of a fee, fine, penalty, and/or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding upon the Service if the remittance is found uncollectible. Furthermore, credit for meeting legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Service of the dishonored check.

* * * * *

Dated: April 30, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-17156 Filed 7-5-96; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 217

[INS No. 1777-96]

RIN 1115-AB93

Adding Argentina to the List of Countries Authorized to Participate in the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service ("Service") regulations by adding Argentina to the list of countries designated to participate in the Visa Waiver Pilot Program (VWPP), thereby permitting nationals of Argentina to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This action will facilitate travel to the United States and benefit United States businesses.

EFFECTIVE DATES: July 8, 1996. Written comments must be submitted on or before September 6, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536.

To ensure proper handling please reference INS number 1777-96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Tom Graber, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone number: (202) 616-7496.

SUPPLEMENTARY INFORMATION: Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service designated by regulations published in the Federal Register, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) United Kingdom	July 1, 1988	53 FR 24901, June 30, 1988.
(2) Japan	Dec. 15, 1988 ...	53 FR 50161, Dec. 13, 1988.
(3) France	July 1, 1989	54 FR 27120, June 27, 1989.
(4) Switzerland	July 1, 1989	54 FR 27120, June 27, 1989.
(5) Germany	July 15, 1989	54 FR 27120, June 27, 1989.
(6) Sweden	July 15, 1989	54 FR 27120, June 27, 1989.
(7) Italy	July 29, 1989	54 FR 27120, June 27, 1989.
(8) Netherlands	July 29, 1989	54 FR 27120, June 27, 1989.

Section 201 of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the

provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until

September 30, 1994. Subsequently, the Service designated by regulations published in the Federal Register, the following fourteen (14) additional countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) Andorra	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(2) Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(3) Belgium	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(4) Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(5) Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(6) Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(7) Liechtenstein	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(8) Luxembourg	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(9) Monaco	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(10) New Zealand	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(11) Norway	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(12) San Marino	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(13) Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(14) Brunei	July 29, 1993	58 FR 40581, July 29, 1993.

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

Addition of Argentina to the VWPP

Argentina does not require visas for citizens and nationals of the United States entering for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States citizens and nationals. Argentina also meets the statutorily prescribed limits on visa refusal rates for the prior 2-year period and for each of those two years. Argentina also has a machine-readable passport program and the Attorney General has determined that law enforcement interests would not be compromised by the designation of Argentina. Accordingly, this interim rule amends 8 CFR part 217 to extend the VWPP to include the country of Argentina, which meets all the requirements for that status. Argentina is, therefore, designated as a country participating in the VWPP by the Secretary of State and the Attorney General, acting jointly through their designees. [See the Department of State rule published elsewhere in this issue of the Federal Register.]

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: This interim rule relieves a restriction and is beneficial to both the traveling public and United States businesses.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget

has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

List of Subjects in 8 CFR Part 217

Administrative practices and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:
Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.
2. § 217.5, paragraph (a)(1) is revised to read as follows:

§ 217.5 Designated countries.

(a)(1) *Visa Waiver Pilot Program Countries*. United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); Germany and Sweden (effective July 15, 1989); Italy and the Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); and Argentina July 8, 1996, have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Dated: June 24, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-16624 Filed 7-5-96; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-AF51

Export of Nuclear Equipment and Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export of nuclear equipment and materials. These amendments are necessary to conform the export controls of the United States to the international export control guidelines of the Nuclear Suppliers Group, of which the United States is a member, and to reflect the nuclear nonproliferation policies of the Department of State.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2341, e-mail EOH@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export of nuclear materials and equipment. Cambodia and Vietnam are removed from the list of embargoed destinations; Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and Yemen Arab

Republic are removed from the list of restricted destinations; Brazil, New Zealand, Republic of Korea, South Africa, and Ukraine are added as member countries of the Nuclear Suppliers Group (NSG) eligible to receive radioactive materials under certain general licenses for export; Austria and Finland are added as eligible countries to receive nuclear reactor components under general license for export; plants for the conversion of uranium and especially designed or prepared equipment for uranium conversion are added to the export controls of the NRC; the kinds of uranium conversion equipment and uranium enrichment equipment under NRC export licensing authority are added for clarification; exports of less than one kilogram of source or special nuclear material exported under the U.S.-IAEA Agreement for Cooperation no longer require Executive Branch review before an NRC license is issued; a general license to export source material and a general license for import are amended to correct inadvertent errors; a reference is added to clarify that some imports and exports of nuclear items are under Department of State controls; and Appendices B and L to Part 110 are amended to correct errors.

Section 110.1, which describes the scope of 10 CFR Part 110, is revised to add a reference that nuclear items on the U.S. Munitions List are subject to the export controls of the Department of State.

In § 110.8, which lists the nuclear facilities and equipment under NRC export authority, and in the appendices to Part 110, which describe the especially designed and prepared equipment under NRC export controls, the word "specially" where it appears is changed to "especially" to conform to the NSG guidelines.

Section 110.8 is amended to add uranium conversion plants and especially designed or prepared equipment for uranium conversion plants to the export authority of the NRC to conform to the NSG guidelines. Recently, the United States and other member countries of the NSG agreed to add to the NSG Trigger List (INFCIRC/254/Part 1) uranium conversion plants. This includes conversion of uranium ore concentrates to UO₃, conversion of UO₃ to UO₂, conversion of uranium oxides to UF₄ or UF₆, conversion of UF₄ to UF₆, conversion of UF₆ to UF₄, conversion of UF₄ to uranium metal, and conversion of uranium fluorides to uranium oxides. The nuclear materials and equipment designated as "trigger list" items are controlled by the NRC.

Conversion of uranium is an essential step of the nuclear fuel cycle for both civil and military programs, including the production of highly enriched uranium and plutonium. In § 110.2, a definition of "conversion facility" is added for clarification.

Exports of uranium conversion plants and equipment are presently controlled by the Department of Commerce (DOC). The addition of uranium conversion plants to the NRC licensing authority will allow the DOC to remove this item from its nuclear referral list.

Accordingly, § 110.1(b)(3), which describes nuclear-related commodities that are subject to DOC export controls, is revised to remove the reference to DOC controls on conversion plants.

In § 110.22, paragraph (c) is amended to delete the word "not" where it first appears. This action is necessary to correct an inadvertent error in a final rule published July 21, 1995 (60 FR 37556). As corrected, § 110.22(c) authorizes the export of uranium or thorium, other than U-230, U-232, Th-227, or Th-228, in individual shipments of one kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country, except for source material in radioactive waste.

In § 110.26, Austria and Finland are added as eligible recipients of nuclear reactor components under the NRC's general license authority for export. These countries are now members of EURATOM. EURATOM has provided the necessary written assurances to the U.S. Government to permit these kinds of exports.

In § 110.27, which describes the general licenses for import, paragraph (4) is amended to delete the term "advance" to describe the kind of notification required. For some activities under § 73.27, advance notification would not apply.

In § 110.28, which lists the embargoed destinations, Cambodia and Vietnam are removed. Because President Clinton lifted the U.S. general trade embargo against Vietnam on February 3, 1995, and the embargo restrictions for Cambodia in 1993, the Executive Branch recently recommended that Cambodia and Vietnam be removed from the embargoed destinations. Both Cambodia and Vietnam are adherents to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Exports to Cambodia and Vietnam now qualify for the NRC general licensing authorizations specified in §§ 110.21 through 110.25.

In § 110.29, Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and Yemen Arab Republic are removed from

the restricted destinations. The Executive Branch recently recommended that these countries be removed because they are NPT adherents. Accordingly, exports to these countries now qualify for the NRC general licensing authorizations specified in §§ 110.21 through 110.25.

In § 110.30, Brazil, New Zealand, Republic of Korea, South Africa, and Ukraine are added as members of the NSG. Accordingly, these countries are eligible to receive radioactive materials under NRC general licenses.

In § 110.41, paragraph (4) is amended to reflect the Executive Branch judgment that any export of less than one kilogram of source or special nuclear material which is exported under the provisions of the U.S.-IAEA Agreement for Cooperation does not require review by the Executive Branch.

In Appendix B to Part 110, which describes the gas centrifuge equipment under NRC licensing authority, the footnote to section 1 is amended to change the specifications for filamentary materials suitable for gas centrifuge rotating components. This action is necessary to correct errors when the equations were converted from English to metric units. The current level of control catches items with a wide variety of non-nuclear, non-sensitive applications. Section 1.2 of Appendix B is amended to clarify the kinds of static components NRC controls to reflect the NSG Guidelines.

New appendices to Part 110 are added to clarify the uranium enrichment equipment and uranium conversion equipment under NRC export licensing authority to reflect the guidelines of the NSG. The appendices are illustrative only and not inclusive. Corresponding changes are made to § 110.8.

In Appendix L, which lists the byproduct materials under NRC licensing controls, the entry "Tungsten 185 (w 85)" is corrected to read "Tungsten 185 (W 185)."

The NRC has determined that this rule is necessary to reflect the Executive Branch's nuclear non-proliferation policies and to conform the export controls of the United States to the international export control guidelines of the NSG, of which the United States is a member. The rule also corrects several minor, inadvertent errors from previous rulemakings.

Because the substance of this rule involves a foreign affairs function of the United States, the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)). In addition, solicitation of public comments would delay United States conformance with its

international obligations and would thus be contrary to the public interest (5 U.S.C. 553(b)).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB. The rule is necessary to conform the nuclear nonproliferation policies of the United States with international export guidelines.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements in §§ 110.26, 110.31, 110.32, 110.53 and the use of Form NRC 7 were approved by the Office of Management and Budget, approval numbers 3150-0036 and 3150-0027.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The final rule eliminating the requirement for a specific license in some circumstances should have a positive economic effect on U.S. export business. U.S. exporters can ship nuclear equipment and materials under the NRC general license authority to additional foreign markets without the expense of license application fees, the paperwork burden, time delays, and uncertainties in delivery. For the first time, Cambodia and Vietnam are eligible to receive certain NRC nuclear materials under general license. Austria and Finland are now eligible to receive nuclear reactor equipment under NRC general license. In addition, Brazil, New Zealand, Republic of Korea, South Africa, Ukraine, Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and

Yemen Arab Republic can now receive certain nuclear materials under NRC general licenses.

In transferring export authority of uranium conversion plants and equipment from the DOC to NRC export authority, the Commission was aware of a potential detrimental impact on exporters because of the license fee imposed by NRC for each license application submitted. However, according to DOC export licensing data, the DOC issued only one export license for conversion equipment in the past five years, at a value of \$317,000. In view of this information, the NRC continues to believe that the economic impact of the rule on U.S. companies is not significant.

There are no alternatives for achieving the stated objective. This rule conforms NRC's export controls to the international export guidelines of the NSG. Thus, the regulation is required to satisfy international obligations of the United States. The foregoing discussion constitutes the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102-496 (42 U.S.C. 2151 et seq.).

2. In § 110.1, paragraph (b)(2) is revised, paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(4) and (b)(5), the redesignated paragraph (b)(4) is revised, and a new paragraph (b)(3) is added to read as follows:

§ 110.1 Purpose and scope.

* * * * *

(b) * * *

(2) Persons who export or import U.S. Munitions List nuclear items, such as uranium depleted in the isotope-235 and incorporated in defense articles. These persons are subject to the controls of the Department of State pursuant to 22 CFR 120-130 "International Traffic in Arms Regulations" (ITAR), under the Arms Export Control Act, as authorized by section 110 of the International Security and Development Cooperation Act of 1980;

(3) Persons who export uranium depleted in the isotope-235 and incorporated in commodities solely to take advantage of high density or pyrophoric characteristics. These persons are subject to the controls of the Department of Commerce under the Export Administration Act, as authorized by section 110 of the International Security and Development Cooperation Act of 1980;

(4) Persons who export nuclear referral list commodities. These persons are subject to the licensing authority of the Department of Commerce pursuant to 15 CFR part 799, such as bulk zirconium, rotor and bellows equipment, maraging steel, nuclear reactor related equipment, including process control systems and simulators; and

* * * * *

3. In § 110.2, a definition for *Conversion facility* is added in alphabetical order to read as follows:

§ 110.2 Definitions.

* * * * *

Conversion facility means any facility for the transformation from one uranium

chemical species to another, including: conversion of uranium ore concentrates to UO₃, conversion of UO₃ to UO₂, conversion of uranium oxides to UF₄ or UF₆, conversion of UF₄ to UF₆, conversion of UF₆ to UF₄, conversion of UF₄ to uranium metal, and conversion of uranium fluorides to UO₂.

* * * * *

4. Section 110.8 is revised to read as follows:

§ 110.8 List of nuclear facilities and equipment under NRC export licensing authority.

(a) Nuclear reactors and especially designed or prepared equipment and components for nuclear reactors. (See appendix A to this part.)

(b) Plants for the separation of isotopes of uranium (source material or special nuclear material) including gas centrifuge plants, gaseous diffusion plants, aerodynamic enrichment plants, chemical exchange or ion exchange enrichment plants, laser based enrichment plants, plasma separation enrichment plants, electromagnetic enrichment plants, and especially designed or prepared equipment, other than analytical instruments, for the separation of isotopes of uranium. (See appendices to this part for lists of: gas centrifuge equipment—Appendix B; gaseous diffusion equipment—Appendix C; aerodynamic enrichment equipment—Appendix D; chemical exchange or ion exchange enrichment equipment—Appendix E; laser based enrichment equipment—Appendix F; plasma separation enrichment equipment—Appendix G; and electromagnetic enrichment equipment—Appendix H.)

(c) Plants for the separation of the isotopes of lithium and especially designed or prepared assemblies and components for these plants.

(d) Plants for the reprocessing of irradiated nuclear reactor fuel elements and especially designed or prepared assemblies and components for these plants. (See Appendix I to this part.)

(e) Plants for the fabrication of nuclear reactor fuel elements and especially designed or prepared assemblies and components for these plants.

(f) Plants for the conversion of uranium and especially designed or prepared assemblies and components for these plants. (See Appendix J to this part.)

(g) Plants for the production, separation, or purification of heavy water, deuterium, and deuterium compounds and especially designed or prepared assemblies and components for these plants. (See Appendix K to this part.)

(h) Other nuclear-related commodities are under the export licensing authority of the Department of Commerce.

§ 110.22 [Amended]

5. In § 110.22(c), remove the word "not" where it appears between "country" and "listed."

§ 110.23 [Amended]

6. In § 110.23, paragraph (a)(1), "Appendix F" is revised to read "Appendix L."

§ 110.26 [Amended]

7. In § 110.26, paragraph (a)(2) is amended by adding "Austria" and "Finland" in alphabetical order.

8. In § 110.27, paragraph (d) is revised to read as follows:

§ 110.27 General license for imports.

* * * * *

(d) A person importing formula quantities of strategic special nuclear material (as defined in § 73.2 of this chapter) under this general license shall provide the notifications required by § 73.27 and § 73.72 of this chapter.

§ 110.28 [Amended]

9. Section 110.28 is amended by removing "Cambodia" and "Vietnam."

§ 110.29 [Amended]

10. Section 110.29 is amended by removing "Algeria," "Comoros," "Guyana," "Mauritania," "Niger," "St. Kitts," "United Arab Emirates," "Vanuatu," and "Yemen Arab Republic."

§ 110.30 [Amended]

11. Section 110.30 is amended by adding "Brazil," "New Zealand," "Republic of Korea," "South Africa," and "Ukraine" in alphabetical order.

§ 110.41 [Amended]

12. In § 110.41, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) One kilogram or more of source or special nuclear material to be exported under the US-IAEA Agreement for Cooperation.

* * * * *

13. In § 110.44, paragraph (b)(2), "Appendix G" is revised to read "Appendix M."

Appendix A to Part 110 [Amended]

14. In Appendix A to Part 110, paragraph (9), remove the word "specially" and add in its place the word "especially."

15. In Appendix B to Part 110, paragraph (c) of the Footnote to section 1 is revised and paragraphs (e) and (f) are added to section 1.2 to read as follows:

Footnote

The materials used for centrifuge rotating components are:

* * * * *

(c) Filamentary materials suitable for use in composite structures and having a specific modulus of 3.18×10^6 m or greater and a specific ultimate tensile strength of 7.62×10^4 m or greater.

("Specific Modulus" is the Young's modulus in N/m^2 divided by the specific weight in N/m^3 when measured at a temperature of $23 \pm 20C$ and a relative humidity of $50 \pm 5\%$. "Specific tensile strength" is the ultimate tensile strength in N/m^2 divided by the specific weight in N/m^3 when measured at a temperature of $23 \pm 20C$ and a relative humidity of $50 \pm 5\%$.)

* * * * *

1.2 Static Components.

* * * * *

(e) Centrifuge housing/recipients:

Components especially designed or prepared to contain the rotor tube assembly of a gas centrifuge. The housing consists of a rigid cylinder of wall thickness up to 30 mm (1.2in) with precision machined ends to locate the bearings and with one or more flanges for mounting. The machined ends are parallel to each other and perpendicular to the cylinder's longitudinal axis to within 0.05 degrees or less. The housing may also be a honeycomb type structure to accommodate several rotor tubes. The housings are made of or protected by materials resistant to corrosion by UF6.

(f) Scoops: Especially designed or prepared tubes of up to 12 mm (0.5in) internal diameter for the extraction of UF6 gas from within the rotor tube by a Pitot tube action (that is, with an aperture facing into the circumferential gas flow within the rotor tube, for example by bending the end of a radially disposed tube) and capable of being fixed to the central gas extraction system. The tubes are made of or protected by materials resistant to corrosion by UF6.

* * * * *

Appendices D, E, F, and G to Part 110 [Redesignated as Appendix I, K through M of Part 110]

16. Appendix D to Part 110 is redesignated Appendix I to Part 110 and Appendices E through G to Part 110 are redesignated as Appendices K through M to Part 110.

17. A new Appendix D to Part 110 is added to read as follows:

Appendix D to Part 110—Illustrative List of Aerodynamic Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In aerodynamic enrichment processes, a mixture of gaseous UF6 and light gas (hydrogen or helium) is compressed and then passed through separating elements wherein isotopic separation is accomplished by the generation of high centrifugal forces over a curved-wall geometry. Two processes of this type have been successfully developed: the separation nozzle process and

the vortex tube process. For both processes the main components of a separation stage included cylindrical vessels housing the special separation elements (nozzles or vortex tubes), gas compressors and heat exchangers to remove the heat of compression. An aerodynamic plant requires a number of these stages, so that quantities can provide an important indication of end use. Because aerodynamic processes use UF6, all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF6. All surfaces which come into contact with the process gas are made of or protected by UF6-resistant materials; including copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF6-resistant fully fluorinated hydrocarbon polymers.

The following items either come into direct contact with the UF6 process gas or directly control the flow within the cascade:

(1) Separation nozzles and assemblies.

Especially designed or prepared nozzles that consist of slit-shaped, curved channels having a radius of curvature less than 1 mm (typically 0.1 to 0.05 mm). The nozzles are resistant to UF6 corrosion and have a knife-edge within the nozzle that separates the gas flowing through the nozzle into two fractions.

(2) Vortex tubes and assemblies.

Especially designed or prepared vortex tubes that are cylindrical or tapered, made of or protected by materials resistant to UF6 corrosion, have a diameter of between 0.5 cm and 4 cm, a length to diameter ratio of 20:1 or less and with one or more tangential inlets. The tubes may be equipped with nozzle-type appendages at either or both ends.

The feed gas enters the vortex tube tangentially at one end or through swirl vanes or at numerous tangential positions along the periphery of the tube.

(3) Compressors and gas blowers.

Especially designed or prepared axial, centrifugal, or positive displacement compressors or gas blowers made of or protected by materials resistant to UF6 corrosion and with a suction volume capacity of $2 m^3/min$ or more of UF6/carrier gas (hydrogen or helium) mixture. These compressors and gas blowers typically have a pressure ratio between 1.2:1 and 6:1.

(4) Rotary shaft seals.

Especially designed or prepared seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor or the gas blower rotor with the driver motor to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor or gas blower which is filled with a UF6/carrier gas mixture.

(5) Heat exchangers for gas cooling.

Especially designed or prepared heat exchangers, made of or protected by materials resistant to UF6 corrosion.

(6) Separation element housings.

Especially designed or prepared separation element housings, made of or protected by materials resistant to UF6 corrosion, for containing vortex tubes or separation nozzles.

These housings may be cylindrical vessels greater than 300 mm in diameter and greater than 900 mm in length, or may be rectangular vessels of comparable dimensions, and may be designed for horizontal or vertical installation.

(7) Feed systems/product and tails withdrawal systems.

Especially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to UF6 corrosion, including:

(i) Feed autoclaves, ovens, or systems used for passing UF6 to the enrichment process;

(ii) Desublimers (or cold traps) used to remove UF6 from the enrichment process for subsequent transfer upon heating;

(iii) Solidification or liquefaction stations used to remove UF6 from the enrichment process by compressing and converting UF6 to a liquid or solid form; and

(iv) "Product" or "tails" stations used for transferring UF6 into containers.

(8) Header piping systems.

Especially designed or prepared header piping systems, made of or protected by materials resistant to UF6 corrosion, for handling UF6 within the aerodynamic cascades.

The piping network is normally of the "double" header design with each stage or group of stages connected to each of the headers.

(9) Vacuum systems and pumps.

Especially designed or prepared vacuum systems having a suction capacity of $5 m^3/min$ or more, consisting of vacuum manifolds, vacuum headers and vacuum pumps, and designed for service in UF6-bearing atmospheres.

Especially designed or prepared vacuum pumps for service in UF6-bearing atmospheres and made of or protected by materials resistant to UF6 corrosion. These pumps may use fluorocarbon seals and special working fluids.

(10) Special shut-off and control valves.

Especially designed or prepared manual or automated shut-off and control bellows valves made of or protected by materials resistant to UF6 corrosion with a diameter of 40 to 1500 mm for installation in main and auxiliary systems of aerodynamic enrichment plants.

(11) UF6 mass spectrometers/ion sources.

Especially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, "product" or "tails", from UF6 gas streams and having all of the following characteristics:

(i) Unit resolution for mass greater than 320;

(ii) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(iii) Electron bombardment ionization sources; and

(iv) Collector system suitable for isotopic analysis.

(12) UF6/carrier gas separation systems.

Especially designed or prepared process systems for separating UF6 from carrier gas (hydrogen or helium).

These systems are designed to reduce the UF6 content in the carrier gas to 1 ppm or less and may incorporate equipment such as:

- (i) Cryogenic heat exchangers and cryoseparators capable of temperatures of -120°C or less;
- (ii) Cryogenic refrigeration units capable of temperatures of -120°C or less;
- (iii) Separation nozzle or vortex tube units for the separation of UF₆ from carrier gas; or
- (iv) UF₆ cold traps capable of temperatures of -20°C or less.

18. A new Appendix E to Part 110 is added to read as follows:

Appendix E to Part 110—Illustrative List of Chemical Exchange or Ion Exchange Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—The slight difference in mass between the isotopes of uranium causes small changes in chemical reaction equilibria that can be used as a basis for separation of the isotopes. Two processes have been successfully developed: liquid-liquid chemical exchange and solid-liquid ion exchange.

A. In the liquid-liquid chemical exchange process, immiscible liquid phases (aqueous and organic) are countercurrently contacted to give the cascading effect of thousands of separation stages. The aqueous phase consists of uranium chloride in hydrochloric acid solution; the organic phase consists of an extractant containing uranium chloride in an organic solvent. The contactors employed in the separation cascade can be liquid-liquid exchange columns (such as pulsed columns with sieve plates) or liquid centrifugal contactors. Chemical conversions (oxidation and reduction) are required at both ends of the separation cascade in order to provide for the reflux requirements at each end. A major design concern is to avoid contamination of the process streams with certain metal ions. Plastic, plastic-lined (including use of fluorocarbon polymers) and/or glass-lined columns and piping are therefore used.

(1) Liquid-liquid exchange columns.

Countercurrent liquid-liquid exchange columns having mechanical power input (i.e., pulsed columns with sieve plates, reciprocating plate columns, and columns with internal turbine mixers), especially designed or prepared for uranium enrichment using the chemical exchange process. For corrosion resistance to concentrated hydrochloric acid solutions, these columns and their internals are made of or protected by suitable plastic materials (such as fluorocarbon polymers) or glass. The stage residence time of the columns is designed to be short (30 seconds or less).

(2) Liquid-liquid centrifugal contactors.

Especially designed or prepared for uranium enrichment using the chemical exchange process. These contactors use rotation to achieve dispersion of the organic and aqueous streams and then centrifugal force to separate the phases. For corrosion resistance to concentrated hydrochloric acid solutions, the contactors are made of or are lined with suitable plastic materials (such as fluorocarbon polymers) or are lined with glass. The stage residence time of the centrifugal contactors is designed to be short (30 seconds or less).

(3) Uranium reduction systems and equipment.

(i) Especially designed or prepared electrochemical reduction cells to reduce uranium from one valence state to another for uranium enrichment using the chemical exchange process. The cell materials in contact with process solutions must be corrosion resistant to concentrated hydrochloric acid solutions.

The cell cathodic compartment must be designed to prevent re-oxidation of uranium to its higher valence state. To keep the uranium in the cathodic compartment, the cell may have an impervious diaphragm membrane constructed of special cation exchange material. The cathode consists of a suitable solid conductor such as graphite.

These systems consist of solvent extraction equipment for stripping the U+4 from the organic stream into an aqueous solution, evaporation and/or other equipment to accomplish solution pH adjustment and control, and pumps or other transfer devices for feeding to the electrochemical reduction cells. A major design concern is to avoid contamination of the aqueous stream with certain metal ions. For those parts in contact with the process stream, the system is constructed of equipment made of or protected by materials such as glass, fluorocarbon polymers, polyphenyl sulfate, polyether sulfone, and resin-impregnated graphite.

(ii) Especially designed or prepared systems at the product end of the cascade for taking the U+4 out of the organic stream, adjusting the acid concentration and feeding to the electrochemical reduction cells.

These systems consist of solvent extraction equipment for stripping the U+4 from the organic stream into an aqueous solution, evaporation and/or other equipment to accomplish solution pH adjustment and control, and pumps or other transfer devices for feeding to the electrochemical reduction cells. A major design concern is to avoid contamination of the aqueous stream with certain metal ions. For those parts in contact with the process stream, the system is constructed of equipment made of or protected by materials such as glass, fluorocarbon polymers, polyphenyl sulfate, polyether sulfone, and resin-impregnated graphite.

(4) Feed preparation systems.

Especially designed or prepared systems for producing high-purity uranium chloride feed solutions for chemical exchange uranium isotope separation plants.

These systems consist of dissolution, solvent extraction and/or ion exchange equipment for purification and electrolytic cells for reducing the uranium U+6 or U+4 to U+3. These systems produce uranium chloride solutions having only a few parts per million of metallic impurities such as chromium, iron, vanadium, molybdenum and other bivalent or higher multi-valent cations. Materials of construction for portions of the system processing high-purity U+3 include glass, fluorocarbon polymers, polyphenyl sulfate or polyether sulfone plastic-lined and resin-impregnated graphite.

(5) Uranium oxidation systems.

Especially designed or prepared systems for oxidation of U+3 to U+4 for return to the

uranium isotope separation cascade in the chemical exchange enrichment process.

These systems may incorporate equipment such as:

(i) Equipment for contacting chlorine and oxygen with the aqueous effluent from the isotope separation equipment and extracting the resultant U+4 into the stripped organic stream returning from the product end of the cascade; and

(ii) Equipment that separates water from hydrochloric acid so that the water and the concentrated hydrochloric acid may be reintroduced to the process at the proper locations.

B. In the solid-liquid ion-exchange process, enrichment is accomplished by uranium adsorption/desorption on a special, fast-acting, ion-exchange resin or adsorbent. A solution of uranium in hydrochloric acid and other chemical agents is passed through cylindrical enrichment columns containing packed beds of the adsorbent. For a continuous process, a reflux system is necessary to release the uranium from the adsorbent back in the liquid flow so that "product" and "tails" can be collected. This is accomplished with the use of suitable reduction/oxidation chemical agents that are fully regenerated in separate external circuits and that may be partially regenerated within the isotopic separation columns themselves. The presence of hot concentrated hydrochloric acid solutions in the process requires that the equipment be made of or protected by special corrosion-resistant materials.

(1) Fast reacting ion exchange resins/adsorbents.

Especially designed or prepared for uranium enrichment using the ion exchange process, including porous macroreticular resins, and/or pellicular structures in which the active chemical exchange groups are limited to a coating on the surface of an inactive porous support structure, and other composite structures in any suitable form including particles or fibers. These ion exchange resins/adsorbents have diameters of 0.2 mm or less and must be chemically resistant to concentrated hydrochloric acid solutions as well as physically strong enough so as not to degrade in the exchange columns. The resins/adsorbents are especially designed to achieve very fast uranium isotope exchange kinetics (exchange rate half-time of less than 10 seconds) and are capable of operating at a temperature in the range of 100°C to 200°C .

(2) Ion exchange columns.

Cylindrical columns greater than 1000 mm in diameter for containing and supporting packed beds of ion exchange resin/adsorbent, especially designed or prepared for uranium enrichment using the ion exchange process. These columns are made of or protected by materials (such as titanium or fluorocarbon plastics) resistant to corrosion by concentrated hydrochloric acid solutions and are capable of operating at a temperature in the range of 100°C to 200°C and pressures above 0.7 MPa (102 psia).

(3) Ion exchange reflux systems.

(i) Especially designed or prepared chemical or electrochemical reduction systems for regeneration of the chemical

reducing agent(s) used in ion exchange uranium enrichment cascades.

The ion exchange enrichment process may use, for example, trivalent titanium (Ti+3) as a reducing cation in which case the reduction system would regenerate Ti+3 by reducing Ti+4.

(ii) Especially designed or prepared chemical or electrochemical oxidation systems for regeneration of the chemical oxidizing agent(s) used in ion exchange uranium enrichment cascades.

The ion exchange enrichment process may use, for example, trivalent iron (Fe+3) as an oxidant in which case the oxidation system would regenerate Fe+3 by oxidizing Fe+2.

19. A new Appendix F to Part 110 is added to read as follows:

Appendix F to Part 110—Illustrative List of Laser-Based Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—Present systems for enrichment processes using lasers fall into two categories: the process medium is atomic uranium vapor and the process medium is the vapor of a uranium compound. Common nomenclature for these processes include: first category—atomic vapor laser isotope separation (AVLIS or SILVA); second category—molecular laser isotope separation (MLIS or MOLIS) and chemical reaction by isotope selective laser activation (CRISLA). The systems, equipment and components for laser enrichment plants include: (a) Devices to feed uranium-metal vapor for selective photo-ionization or devices to feed the vapor of a uranium compound for photo-dissociation or chemical activation; (b) devices to collect enriched and depleted uranium metal as "product" and "tails" in the first category, and devices to collect dissociated or reacted compounds as "product" and unaffected material as "tails" in the second category; (c) process laser systems to selectively excite the uranium-235 species; and (d) feed preparation and product conversion equipment. The complexity of the spectroscopy of uranium atoms and compounds may require incorporation of a number of available laser technologies.

All surfaces that come into contact with the uranium or UF6 are wholly made of or protected by corrosion-resistant materials. For laser-based enrichment items, the materials resistant to corrosion by the vapor or liquid of uranium metal or uranium alloys include yttria-coated graphite and tantalum; and the materials resistant to corrosion by UF6 include copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF6-resistant fully fluorinated hydrocarbon polymers.

Many of the following items come into direct contact with uranium metal vapor or liquid or with process gas consisting of UF6 or a mixture of UF6 and other gases:

(1) Uranium vaporization systems (AVLIS).

Especially designed or prepared uranium vaporization systems that contain high-power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

(2) Liquid uranium metal handling systems (AVLIS).

Especially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucibles and cooling equipment for the crucibles.

The crucibles and other system parts that come into contact with molten uranium or uranium alloys are made of or protected by materials of suitable corrosion and heat resistance, such as tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof.

(3) Uranium metal "product" and "tails" collector assemblies (AVLIS).

Especially designed or prepared "product" and "tails" collector assemblies for uranium metal in liquid or solid form.

Components for these assemblies are made of or protected by materials resistant to the heat and corrosion of uranium metal vapor or liquid, such as yttria-coated graphite or tantalum, and may include pipes, valves, fittings, "gutters", feed-throughs, heat exchangers and collector plates for magnetic, electrostatic or other separation methods.

(4) Separator module housings (AVLIS).

Especially designed or prepared cylindrical or rectangular vessels for containing the uranium metal vapor source, the electron beam gun, and the "product" and "tails" collectors.

These housings have multiplicity of ports for electrical and water feed-throughs, laser beam windows, vacuum pump connections and instrumentation diagnostics and monitoring with opening and closure provisions to allow refurbishment of internal components.

(5) Supersonic expansion nozzles (MLIS).

Especially designed or prepared supersonic expansion nozzles for cooling mixtures of UF6 and carrier gas to 150 K or less which are corrosion resistant to UF6.

(6) Uranium pentafluoride product collectors (MLIS).

Especially designed or prepared uranium pentafluoride (UF5) solid product collectors consisting of filter, impact, or cyclone-type collectors, or combinations thereof, which are corrosion resistant to the UF5/UF6 environment.

(7) UF6/carrier gas compressors (MLIS).

Especially designed or prepared compressors for UF6/carrier gas mixtures, designed for long term operation in a UF6 environment. Components of these compressors that come into contact with process gas are made of or protected by materials resistant to UF6 corrosion.

(8) Rotary shaft seals (MLIS).

Especially designed or prepared rotary shaft seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor with the driver motor to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor which is filled with a UF6/carrier gas mixture.

(9) Fluorination systems (MLIS).

Especially designed or prepared systems for fluorinating UF5 (solid) to UF6 (gas).

These systems are designed to fluorinate the collected UF5 powder to UF6 for subsequent collection in product containers

or for transfer as feed to MLIS units for additional enrichment. In one approach, the fluorination reaction may be accomplished within the isotope separation system to react and recover directly off the "product" collectors. In another approach, the UF5 powder may be removed/transferred from the "product" collectors into a suitable reaction vessel (e.g., fluidized-bed reactor, screw reactor or flame tower) for fluorination. In both approaches equipment is used for storage and transfer of fluorine (or other suitable fluorinating agents) and for collection and transfer of UF6.

(10) UF6 mass spectrometers/ion sources (MLIS).

Especially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, "product" or "tails", from UF6 gas streams and having all of the following characteristics:

(i) Unit resolution for mass greater than 320;

(ii) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(iii) Electron bombardment ionization sources; and

(iv) Collector system suitable for isotopic analysis.

(11) Feed systems/product and tails withdrawal systems (MLIS).

Especially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to corrosion by UF6, including:

(i) Feed autoclaves, ovens, or systems used for passing UF6 to the enrichment process;

(ii) Desublimers (or cold traps) used to remove UF6 from the enrichment process for subsequent transfer upon heating;

(iii) Solidification or liquefaction stations used to remove UF6 from the enrichment process by compressing and converting UF6 to a liquid or solid; and

(iv) "Product" or "tails" stations used to transfer UF6 into containers.

(12) UF6/carrier gas separation systems (MLIS).

Especially designed or prepared process systems for separating UF6 from carrier gas. The carrier gas may be nitrogen, argon, or other gas.

These systems may incorporate equipment such as:

(i) Cryogenic heat exchangers or cryoseparators capable of temperatures of -120°C or less;

(ii) Cryogenic refrigeration units capable of temperatures of -120°C or less; or

(iii) UF6 cold traps capable of temperatures of -20°C or less.

(13) Lasers or Laser systems (AVLIS, MLIS and CRISLA).

Especially designed or prepared for the separation of uranium isotopes. The laser system for the AVLIS process usually consists of two lasers: a copper vapor laser and a dye laser. The laser system for MLIS usually consists of a CO₂ or excimer laser and a multi-pass optical cell with revolving mirrors at both ends. Lasers or laser systems for both processes require a spectrum frequency stabilizer for operation over extended periods.

20. A new Appendix G to Part 110 is added to read as follows:

Appendix G to Part 110—Illustrative List of Plasma Separation Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In the plasma separation process, a plasma of uranium ions passes through an electric field tuned to the ²³⁵U ion resonance frequency so that they preferentially absorb energy and increase the diameter of their corkscrew-like orbits. Ions with a large-diameter path are trapped to produce a product enriched in ²³⁵U. The plasma, made by ionizing uranium vapor, is contained in a vacuum chamber with a high-strength magnetic field produced by a superconducting magnet. The main technological systems of the process include the uranium plasma generation system, the separator module with superconducting magnet, and metal removal systems for the collection of “product” and “tails”.

(1) Microwave power sources and antennae.

Especially designed or prepared microwave power sources and antennae for producing or accelerating ions having the following characteristics: greater than 30 GHz frequency and greater than 50 kW mean power output for ion production.

(2) Ion excitation coils.

Especially designed or prepared radio frequency ion excitation coils for frequencies of more than 100 kHz and capable of handling more than 40 kW mean power.

(3) Uranium plasma generation systems.

Especially designed or prepared systems for the generation of uranium plasma, which may contain high power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

(4) Liquid uranium metal handling systems.

Especially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucible and cooling equipment for the crucibles.

The crucibles and other system parts that come into contact with molten uranium or uranium alloys are made of or protected by corrosion and heat resistance materials, such as tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof.

(5) Uranium metal “product” and “tails” collector assemblies.

Especially designed or prepared “product” and “tails” collector assemblies for uranium metal in solid form. These collector assemblies are made of or protected by materials resistant to the heat and corrosion of uranium metal vapor, such as yttria-coated graphite or tantalum.

(6) Separator module housings.

Especially designed or prepared cylindrical vessels for use in plasma separation enrichment plants for containing the uranium plasma source, radio-frequency drive coil and the “product” and “tails” collectors.

These housings have a multiplicity of ports for electrical feed-throughs, diffusion pump connections and instrumentation diagnostics and monitoring. They have provisions for opening and closure to allow for refurbishment of internal components and

are constructed of a suitable non-magnetic material such as stainless steel.

21. A new Appendix H to Part 110 is added to read as follows:

Appendix H to Part 110—Illustrative List of Electromagnetic Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In the electromagnetic process, uranium metal ions produced by ionization of a salt feed material (typically UCL4) are accelerated and passed through a magnetic field that has the effect of causing the ions of different isotopes to follow different paths. The major components of an electromagnetic isotope separator include: a magnetic field for ion-beam diversion/separation of the isotopes, an ion source with its acceleration system, and a collection system for the separated ions. Auxiliary systems for the process include the magnet power supply system, the ion source high-voltage power supply system, the vacuum system, and extensive chemical handling systems for recovery of product and cleaning/recycling of components.

(1) Electromagnetic isotope separators.

Especially designed or prepared for the separation of uranium isotopes, and equipment and components therefor, including:

(i) Ion Sources—especially designed or prepared single or multiple uranium ion sources consisting of a vapor source, ionizer, and beam accelerator, constructed of materials such as graphite, stainless steel, or copper, and capable of providing a total ion beam current of 50 mA or greater;

(ii) Ion collectors—collector plates consisting of two or more slits and pockets especially designed or prepared for collection of enriched and depleted uranium ion beams and constructed of materials such as graphite or stainless steel;

(iii) Vacuum housings—especially designed or prepared vacuum housings for uranium electromagnetic separators, constructed of suitable non-magnetic materials such as stainless steel and designed for operation at pressures of 0.1 Pa or lower.

The housings are specially designed to contain the ion sources, collector plates and water-cooled liners and have provision for diffusion pump connections and opening and closure for removal and reinstallation of these components; and

(iv) Magnet pole pieces—especially designed or prepared magnet pole pieces having a diameter greater than 2 m used to maintain a constant magnetic field within an electromagnetic isotope separator and to transfer the magnetic field between adjoining separators.

(2) High voltage power supplies.

Especially designed or prepared high-voltage power supplies for ion sources, having all of the following characteristics:

- (i) Capable of continuous operation;
- (ii) Output voltage of 20,000 V or greater;
- (iii) Output current of 1 A or greater; and
- (iv) Voltage regulation of better than 0.01% over an 8 hour time period.

(3) Magnet power supplies.

Especially designed or prepared high-power, direct current magnet power supplies having all of the following characteristics:

- (i) Capable of continuously producing a current output of 500 A or greater at a voltage of 100 V or greater; and
- (ii) A current or voltage regulation better than 0.01% over an 8 hour time period.

22. A new Appendix J to Part 110 is added to read as follows:

Appendix J to Part 110—Illustrative List of Uranium Conversion Plant Equipment Under NRC Export Licensing Authority

Note—Uranium conversion plants and systems may perform one or more transformations from one uranium chemical species to another, including: conversion of uranium ore concentrates to UO₃, conversion of UO₃ to UF₄ or UF₆, conversion of UF₄ to UF₆, conversion of UF₆ to UF₄, conversion of UF₄ to uranium metal, and conversion of uranium fluorides to UO₂. Many key equipment items for uranium conversion plants are common to several segments of the chemical process industry, including furnaces, rotary kilns, fluidized bed reactors, flame tower reactors, liquid centrifuges, distillation columns and liquid-liquid extraction columns. However, few of the items are available “off-the-shelf”; most would be prepared according to customer requirements and specifications. Some require special design and construction considerations to address the corrosive properties of the chemicals handled (HF, F₂, ClF₃, and uranium fluorides). In all of the uranium conversion processes, equipment which individually is not especially designed or prepared for uranium conversion can be assembled into systems which are especially designed or prepared for uranium conversion.

(1) Especially designed or prepared systems for the conversion of uranium ore concentrates to UO₃.

Conversion of uranium ore concentrates to UO₃ can be performed by first dissolving the ore in nitric acid and extracting purified uranyl nitrate using a solvent such as tributyl phosphate. Next, the uranyl nitrate is converted to UO₃ either by concentration and denitration or by neutralization with gaseous ammonia to product ammonium diuranate with subsequent filtering, drying, and calcining.

(2) Especially designed or prepared systems for the conversion of UO₃ to UF₆.

Conversion of UO₃ to UF₆ can be performed directly by fluorination. The process requires a source of fluorine gas or chlorine trifluoride.

(3) Especially Designed or Prepared Systems for the conversion of UO₃ to UO₂.

Conversion of UO₃ to UO₂ can be performed through reduction of UO₃ with cracked ammonia gas or hydrogen.

(4) Especially Designed or Prepared Systems for the conversion of UO₂ to UF₄.

Conversion of UO₂ to UF₄ can be performed by reacting UO₂ with hydrogen fluoride gas (HF) at 300–500°C.

(5) Especially Designed or Prepared Systems for the conversion of UF₄ to UF₆.

Conversion of UF4 to UF6 is performed by exothermic reaction with fluorine in a tower reactor. UF6 is condensed from the hot effluent gases by passing the effluent stream through a cold trap cooled to -10°C. The process requires a source of fluorine gas.

(6) Especially Designed or Prepared Systems for the conversion of UF4 to U metal.

Conversion of UF4 to U metal is performed by reduction with magnesium (large batches) or calcium (small batches). The reaction is carried out at temperatures above the melting point of uranium (1130°C).

(7) Especially designed or prepared systems for the conversion of UF6 to UO2.

Conversion of UF6 to UO2 can be performed by one of three processes. In the first, UF6 is reduced and hydrolyzed to UO2 using hydrogen and steam. In the second, UF6 is hydrolyzed by solution in water, ammonia is added to precipitate ammonium diuranate, and the diuranate is reduced to UO2 with hydrogen at 820°C. In the third process, gaseous UF6, CO2, and NH3 are combined in water, precipitating ammonium uranyl carbonate. The ammonium uranyl carbonate is combined with steam and hydrogen at 500–600°C to yield UO2. UF6 to UO2 conversion is often performed as the first stage of a fuel fabrication plant.

(8) Especially Designed or Prepared Systems for the conversion of UF6 to UF4. Conversion of UF6 to UF4 is performed by reduction with hydrogen.

Appendix L to Part 110 [Amended]

23. In newly redesignated Appendix L to Part 110, the entry "Tungsten 185 (W 85)" is revised to read "Tungsten 185 (W 185)."

Dated in Rockville, MD, this 28th day of June 1996.

For the Nuclear Regulatory Commission,
James M. Taylor,

Executive Director for Operations.

[FR Doc. 96-17236 Filed 7-5-96; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

12 CFR Part 1750

RIN 2550-AA03

Office of Federal Housing Enterprise Oversight; Minimum Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation that sets forth the methodology for computing the minimum capital requirement for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The

final regulation also establishes procedures for the filing of quarterly minimum capital reports by each Enterprise. In addition, the final regulation establishes procedures under which OFHEO will determine the capital classification of each Enterprise on a quarterly basis.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel (202/414-3800); Isabella W. Sammons, Associate General Counsel (202/414-3800); Michael P. Scott, Assistant Director, Office of Research, Analysis and Capital Standards (202/414-3800), 1700 G Street, N.W., 4th Floor, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO as an independent office within the Department of Housing and Urban Development. OFHEO is responsible for ensuring that the Enterprises are adequately capitalized and operating in a safe and sound manner. Included among the express statutory authorities of the Director of OFHEO is the authority to issue regulations establishing minimum and risk-based capital standards.¹

As a separate rulemaking procedure, OFHEO published an Advance Notice of Proposed Rulemaking (ANPR)² as the first step toward developing the risk-based capital regulation required by section 1361 of the 1992 Act.³ The risk-based capital regulation will specify a stress test that will determine the amount of capital that an Enterprise must hold to maintain positive capital throughout a 10-year period of economic stress. That amount, plus an additional 30 percent to cover management and operations risk, will constitute the risk-based capital requirement of the Enterprise.

The ANPR solicited public comment on a variety of issues concerning the development of the risk-based capital regulation. In light of the complex issues, OFHEO decided to issue the proposed risk-based capital regulation in two Notices of Proposed Rulemaking (NPRs).

The first NPR addresses two key components of the stress test—the

"benchmark loss experience" (the basis for determining the extent of Enterprise credit losses during the stress test) and the use of the OFHEO House Price Index (HPI) in the stress test to estimate changes over time in the values of single-family properties securing Enterprise mortgages.⁴ A second NPR, currently being developed, will address the remaining aspects of the risk-based capital stress test and how the stress test will be used to determine the Enterprises' risk-based capital requirements.

In addition to the risk-based capital standard, the 1992 Act prescribes a minimum capital standard for the Enterprises.⁵ This final regulation implements the minimum capital standard of the 1992 Act. Unlike the risk-based capital requirement that is computed by applying the stress test, the minimum capital requirement is computed on the basis of capital ratios that are applied to certain defined on-balance sheet assets and off-balance sheet obligations of the Enterprises.

OFHEO issued a proposed Minimum Capital regulation on June 8, 1995.⁶ As discussed in the preamble to the proposed regulation, the proposed regulation contained the interim administrative procedures with respect to the methodology for computing the minimum capital requirement for on- and off-balance sheet items, except for interest rate and foreign exchange rate contracts for which the methodology was modified. The proposed regulation also established procedures for the filing of minimum capital reports by the Enterprises each quarter, or at other times as required by the Director. The proposed regulation further required OFHEO to provide each Enterprise with notice and opportunity to comment on its proposed capital classification.

OFHEO received five comments in response to the proposed regulation. Comments were received from a federal government agency (Office of Thrift Supervision), both Enterprises, and two trade associations (America's Community Bankers and Mortgage Bankers Association of America). OFHEO has carefully considered the comments in developing the final regulation. A discussion of the comments received follows.

II. Comments on the Proposed Minimum Capital Regulation

General Comments

Freddie Mac commented generally on OFHEO's role with respect to the

¹ 1992 Act, section 1313(b)(1) (12 U.S.C. 4513(b)(1)).

² 60 FR 7468, Feb. 8, 1995.

³ 12 U.S.C. 4611.

⁴ 61 FR 29592, Jun. 11, 1996.

⁵ Section 1362 (12 U.S.C. 4612).

⁶ 60 FR 30201.

minimum capital standard of the 1992 Act. First, Freddie Mac noted that the 1992 Act details what the capital standard is, unlike the statutes governing the capital standards for banks and thrifts. Therefore, Freddie Mac concluded that the Minimum Capital regulation should reflect Congress' intent that OFHEO act as the implementer, rather than the creator, of the minimum capital standard.

OFHEO agrees that its role is to implement the minimum capital standard set forth in the 1992 Act. Nevertheless, Congress specifically authorized OFHEO to adjust the capital ratios that are applied to certain off-balance sheet obligations, the credit risk of which differs from that of mortgage-backed securities (MBS). Additionally, in implementing the 1992 Act, OFHEO must define those terms not defined therein. OFHEO believes that the final regulation effectively implements the minimum capital standard in a manner completely consistent with the specific provisions and overall intent of the 1992 Act.

Secondly, Freddie Mac stated that Congress recognized that the minimum capital standard would create marginal capital requirements and that marginal capital requirements tend to induce changes in the Enterprises' behavior.⁷ Therefore, Freddie Mac explained, Congress cautioned OFHEO against creating "perverse incentives" that may induce Freddie Mac to make inappropriate changes in the conduct of its businesses.⁸ Freddie Mac further noted that, in the context of OFHEO's risk-based capital standard, "OFHEO has expressed a policy of designing the [risk-based] capital regulation to reflect closely the relative risks inherent in the Enterprises' different activities, rather than setting out to encourage or discourage particular activities by means of a [risk-based] capital regulation that rewards or punishes an Enterprise that engages in such activities." Freddie Mac urged OFHEO to apply this policy to its design of the Minimum Capital regulation.

As recognized by Freddie Mac, congressional concern regarding the creation of perverse incentives was expressed in the context of the discussion of risk-based capital and the appropriate level of detail of the stress test.⁹ OFHEO has stated that, where

feasible, it will endeavor to avoid the creation of perverse incentives in its risk-based capital regulation for the Enterprises. However, this concept has little relevance to the minimum capital standard. The minimum capital requirement is computed on the basis of simple leverage ratios.

The proposed regulation deviates from the specific statutory ratios in only one area—by adjusting the statutory ratio of 0.45 percent for certain off-balance sheet obligations relative to the credit risk of MBS. The proposed regulation establishes different minimum capital ratios for collateralized and uncollateralized exposure for interest rate and foreign exchange rate contracts. Although OFHEO considered using a single capital ratio applied to all interest rate and foreign exchange rate contracts, thus treating contracts as one broad risk category, OFHEO believes that making a distinction between collateralized and uncollateralized exposure provides the Enterprises with better risk management incentives.

Section 1750.1 General

Section 1750.1 of the proposed Minimum Capital regulation provides in part that:

The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and in excess of the minimum capital level contained in this Subpart A.

Freddie Mac recommended that the phrase "is sufficient to ensure the continued financial viability of the Enterprise" be deleted from section 1750.1 because it appears to establish a new or additional capital standard not provided for in the 1992 Act. Freddie Mac stated that, in light of the comprehensive guidance in the 1992 Act as to how to determine the levels of capital that the Enterprises are required to hold, it would be inappropriate for OFHEO, by regulation, to amend the minimum capital standard of the 1992 Act by adding a financial viability standard.

OFHEO disagrees with Freddie Mac's view because OFHEO has the duty and authority to ensure the safe and sound financial operation of the Enterprises, and none of the capital levels specified in the 1992 Act represent the amount needed by an Enterprise to operate safely and soundly under all circumstances. The language in proposed section 1750.1 is consistent with OFHEO's authority under section

1313(a) of the 1992 Act,¹⁰ which provides that the duty of the Director is to ensure that the Enterprises are adequately capitalized and operating safely. OFHEO's specific authority to issue the Minimum Capital regulation is derived from section 1313(b) of the 1992 Act,¹¹ which provides the Director with the authority to issue regulations to carry out (a) part 1 of subtitle A of the 1992 Act (which establishes OFHEO and sets forth OFHEO's authorities), (b) subtitle B (which sets forth the required capital levels for the Enterprises and OFHEO's special enforcement powers with respect to capital levels), (c) subtitle C (which sets forth OFHEO's enforcement provisions), and (d) "other matters relating to safety and soundness." As explained in section 1302 of the 1992 Act,¹² Congress finds that—

* * * an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes * * *.

Section 1750.1 is also consistent with the manner in which the capitalization provisions of the 1992 Act are designed to operate. The capitalization provisions in the 1992 Act are structured in the following way. The 1992 Act provides for both "mandatory" and "discretionary" capital classifications.¹³ The 1992 Act also sets forth certain supervisory actions that are specific to each capital classification.¹⁴

Under the discretionary capital classification criteria, the Director may reclassify an Enterprise at a lower capital level than it would be classified under the mandatory classification criteria. The Director may do so if the Enterprise is engaging in conduct that could result in a rapid depletion of core capital or the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly.¹⁵

When the Enterprise is placed in a lower capital classification as a result of either a mandatory or discretionary classification, it is required to increase its capital pursuant to a mandatory capital restoration plan.¹⁶ The Director's discretionary classification authority thus could have the effect of requiring

⁷ Marginal capital requirements are incremental capital requirements for each additional dollar of business.

⁸ Freddie Mac cites S. Rep. No. 282, 102d Cong., 2d Sess. 24 (1992).

⁹ The Senate report accompanying the legislation states: "A more detailed [stress test] model will be more likely to create the right incentives and less

likely to create perverse incentives." S. Rep. No. 282, 102d Cong., 2d Sess. 24 (1992).

¹⁰ 12 U.S.C. 4513(a).

¹¹ 12 U.S.C. 4513(b).

¹² 12 U.S.C. 4501.

¹³ Section 1364 (12 U.S.C. 4614).

¹⁴ Sections 1365–1367 (12 U.S.C. 4615–4617).

¹⁵ Section 1364(b) (12 U.S.C. 4614(b)).

¹⁶ Sections 1365(a)(1) and 1369C (12 U.S.C. 4615(a)(1) and 4622).

an Enterprise that is engaging in certain types of risky activities to increase the amount of capital it holds, pursuant to a mandatory capital restoration plan, even though it meets or exceeds the minimum capital or risk-based capital requirement.¹⁷

The discretionary classification authority reflects the statutory scheme that the minimum capital ratios in the 1992 Act establishes a "floor" on capital, not a "ceiling." The legislative history of the 1992 Act indicates that there was some confusion regarding this issue that was resolved in favor of the "floor" approach. For example, during Senate consideration of the bill, Senator Metzenbaum stated to the Chairman of the Committee:

[You] said on this floor that the Director [of OFHEO] did indeed have the authority to set the required ratios above the minimum levels * * * if necessary to protect the health and security of an enterprise and that it is important that the Director act in those circumstances. Since that time, I have learned that some Senators may have a different view about the Director's authority. I would like to be assured by the chairman of the committee and the manager of this bill that the director has authority to raise capital standards, if necessary.

Senator Riegle, in replying, explained that:

[T]he Director is given the duty to ensure that the enterprises are adequately capitalized and operating safely in accordance with this act and the Charter Acts. Under section 103(a)(1) of the bill, the Director is authorized to issue regulations concerning the financial health and security of the enterprises, including the establishment of capital standards. There is no way the Director can discharge these responsibilities unless he or she has the authority to prescribe capital standards to be met by the enterprises.

* * * * *

Unless the legislation specifically and affirmatively prohibits the Director from establishing required capital ratios, it must be assumed that the Director has that authority in order to discharge his or her duties assigned under section 102 * * *. The only constraint on the Director's authority is that the required capital ratios cannot be set below the minimum levels contained in section 202.

* * * * *

If the Director believed that the minimum statutory ratios * * * should be raised, he or she would obviously have to seek a change in the law. A Director might believe an increase in the statutory minimum ratios * * * to be necessary if he or she concluded that they were clearly inadequate under all foreseeable circumstances. If the Congress were to so raise the statutory minimum ratios * * * it would establish a new and higher floor applicable to the Director's

discretionary authority to prescribe capital ratios. However, there is nothing in the legislation that would preclude the Director from setting the required rated * * * without further legislation. If the circumstances that gave rise to the need for higher ratios changed, the Director could then reduce the required capital ratios, but not lower than the minimum ratios * * *.¹⁸

In the House of Representatives, the issue of whether the minimum capital ratios constituted a floor or a ceiling was raised during the consideration of the conference report. In a discussion between the Chairman and Ranking Member of the Committee, the two members agreed that the duty of the Director to ensure that the Enterprises are adequately capitalized and operating safely in accordance with the 1992 Act authorizes the Director to require a higher ratio than the minimum ratio specified in the statute.¹⁹

Freddie Mac further questioned why the board of directors of each Enterprise is held responsible for maintaining capital at a level that is sufficient to ensure the continued viability of the Enterprise. Freddie Mac stated that the board of directors has a fiduciary duty to protect the interests of the Enterprise's shareholders, and that maintaining an adequate level of capital under varying circumstances would be one aspect of the overall set of responsibilities represented within that duty. Furthermore, Freddie Mac stated that the fiduciary duties of corporate directors are derived principally from state common law, so the adoption of a viability standard and corresponding responsibility could interfere with the subtleties and complexities of that law.

OFHEO believes that to the extent there is any conflict between state law and the 1992 Act, the conflict would be resolved in favor of the 1992 Act and implementing regulations. The Enterprises are federally-chartered entities subject to federal statutory and regulatory requirements. The 1992 Act imposes capital requirements on the Enterprises and makes clear that the board of directors of each Enterprise is responsible for the financial safety and

¹⁸ 138 Cong. Rec. S9353-54 (July 1, 1992). This colloquy was with respect to section 202, Minimum Capital Levels, of S. 2733. Although the 1992 Act was a compromise between S. 2733 and H.R. 2900, section 202 of S. 2733 is substantially similar to section 1362 of the 1992 Act. Therefore, the colloquy with respect to section 202, cited above, is relevant to the discussion of section 1362 of the 1992 Act.

¹⁹ 138 Cong. Rec. H11,102 (Oct. 3, 1992) (discussion by Mr. Gonzalez, Mr. Frank, and Mr. Leach). In response to Mr. Gonzalez' explanation, Mr. Leach stated that "I fully share with you the interpretation that would imply that the Director could go above the 2.5-percent requirement that is currently in statute [sic] * * *." *Id.*

soundness of the Enterprise. Specifically, the Director is authorized to take enforcement actions, e.g., cease and desist orders and civil money penalties, against directors of an Enterprise for actions that deplete the core capital of the Enterprise, cause a loss to the Enterprise, or violate an order or regulation of OFHEO.²⁰ In exercising its enforcement powers, OFHEO will be cognizant of all of the relevant federal and, if applicable, state requirements. However, to the extent there are any applicable state law requirements relating to the fiduciary responsibilities of the directors, they would not override the obligations created by the 1992 Act or the Minimum Capital regulation.

Freddie Mac also recommended that the phrase "in excess of the minimum capital level" be replaced by "is equal to or exceeds the minimum capital level" in order to reflect accurately the minimum capital standard set forth in the 1992 Act. OFHEO agrees and has revised section 1750.1 accordingly. OFHEO has also substituted, where appropriate, the word "requirement" for "level" to ensure consistency of terms throughout the Minimum Capital regulation.

Section 1750.1 of the proposed regulation also contains a sentence that reads: "The regulation contained in this Subpart A establishes the minimum capital requirements for each Enterprise." Freddie Mac recommended an editorial change that would clarify that the regulation sets forth the "methodology" for computing the minimum capital requirement for each Enterprise. OFHEO agrees with the need for this change and the final regulation has been revised accordingly.

Section 1750.2 Definitions

Proposed Section 1750.2 defines various terms used in the Minimum Capital regulation. OFHEO received comments on the definitions of the following terms: commitment, core capital, foreign exchange rate contract, interest rate contract, multifamily credit enhancement, off-balance sheet obligation, other off-balance sheet obligations, and qualifying collateral. The comments are discussed below.

Commitment

Freddie Mac recommended that, for the purpose of the minimum capital requirement computation, the term "commitment" should be defined as a legally binding agreement that obligates an Enterprise to purchase mortgages that

²⁰ See sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632, and 4636).

¹⁷ Section 1365 (12 U.S.C. 4615).

specify all the terms of the transaction, including price, volume, and fees.

Freddie Mac referenced its comments to OFHEO's ANPR on risk-based capital.²¹ In those comments, Freddie Mac stated that, as a matter of general contract law, an agreement is legally binding only if all of its key terms are included and agreed upon. Therefore, any definition of a contractual commitment should include a requirement that it be a binding contractual obligation of the Enterprise to purchase mortgages and specify price, volume, and fees.

OFHEO agrees that for purposes of the Minimum Capital regulation the term "commitment" should mean any legally binding agreement that obligates an Enterprise to purchase or securitize mortgages, and has defined the term as such. However, OFHEO does not believe it necessary or appropriate to restrict the definition of the term "commitment" by reference to price, volume, and fees because agreements may be legally binding even when there is a lack of specificity on all terms.²² It would not be possible for OFHEO to reflect the complexities of this area of contract law in a regulatory definition. Moreover, to do so would be inadvisable in light of Congress' specific concerns regarding the need for capital to support commitments and other off-balance sheet obligations.

For example, in discussing the need for the capital requirements of the 1992 Act, Congress expressed the concern that off-balance sheet obligations had not been previously captured under prior capital standards:

The capital provisions of the GSEs' charter Acts limit their debt to 15 times their capital unless HUD sets a higher ratio * * * This is unsatisfactory because no capital need be held against the GSEs' \$750 billion of off balance sheet guarantees * * *.²³

Recognizing this concern, it would be inappropriate for OFHEO to promulgate a narrow definition that could exempt certain legally binding commitments from the minimum capital calculation.

OFHEO has made editorial revisions to the definition of the term "commitment" by substituting the word "agreement" for "arrangement" and by deleting the phrase "for portfolio."

²¹ "Comments of the Federal Home Loan Mortgage Corporation on the Advance Notice of Proposed Rulemaking on Risk-Based Capital of the Office of Federal Housing Enterprise Oversight," 139-146 (May 9, 1995) (available at OFHEO).

²² See Restatement (Second) of Contracts section 204 (1981).

²³ S. Rep. No. 282, 102d Cong., 2d Sess. 11 (1992).

Core Capital

In drafting the definition of core capital in the proposed regulation, OFHEO made minor changes to the statutory language that were intended to improve the clarity of the provision. Freddie Mac commented that since Congress expressly defined core capital in section 1303(4) of the 1992 Act,²⁴ the regulation should use the same statutory language to avoid confusion. In light of the comment received, OFHEO wants to ensure that the regulation does not create any confusion and has revised the definition of core capital in the final regulation to mirror the statutory definition.

Foreign Exchange Rate Contracts and Interest Rate Contracts

OFHEO received a comment from Freddie Mac on the definitions of the terms "foreign exchange rate contracts" and "interest rate contracts." Freddie Mac stated that the definitions of these terms as they appear in section 1750.2 and Appendix A of the proposed regulation are not identical. To avoid any implication that the differences are intentional, Freddie Mac recommended that OFHEO define the terms only in one location, or that OFHEO conform the language of the two sets of definitions.

The different ways these terms are used in the regulation and Appendix A make it necessary to include a definition in the main body of the regulation as well as a separate discussion in Appendix A. However, in light of the comment, OFHEO has made editorial changes to conform the definitions of the terms "foreign exchange rate contracts" and "interest rate contracts" in section 1750.2 to the discussion of such terms in Appendix A.

Multifamily Credit Enhancement

Section 1750.2 of the proposed regulation defines the term multifamily credit enhancement to mean "a guarantee by an Enterprise of the payments on a multifamily mortgage revenue bond issued by a state or local housing finance agency."

Fannie Mae recommended that OFHEO revise the definition to describe more fully the routine types of transactions in which an Enterprise engages "to support multifamily bond issues." Fannie Mae stated that it normally provides credit enhancement through a collateral pledge, purchase agreement, or other contractual obligation by which the mortgage loan risk is borne by the Enterprise during a

period in which the bonds are credit enhanced by a letter of credit or surety obligation of another party.

Fannie Mae also commented that under many state laws, other state and local governmental units or instrumentalities may issue mortgage revenue bonds, not only state and local housing finance agencies. Therefore, Fannie Mae recommended that the definition should be expanded to include any state and local governmental issuers authorized to issue such revenue bonds secured by mortgages.

OFHEO agrees with the comment and has revised the definition of the term "multifamily credit enhancement" to describe more fully the routine types of transactions in which an Enterprise engages to support multifamily bond issues.

Off-balance Sheet Obligation and Other Off-Balance Sheet Obligations

OFHEO received comments from Freddie Mac on the definitions of the terms "off-balance sheet obligation" and "other off-balance sheet obligations." The term "off-balance sheet obligation" is defined in proposed section 1750.2 to mean—

* * * a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise or that effectively guarantees all or part of such payment(s) to third parties, where such agreement or contract is a source of credit risk that is not included on its balance sheet.

The term "other off-balance sheet obligations" is defined in proposed section 1750.2 to mean—

* * * all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments.

Freddie Mac noted that section 1362(a)(3) of the 1992 Act²⁵ requires the Enterprises to hold 0.45 percent core capital against other off-balance sheet obligations (excluding commitments in excess of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters), except as the Director adjusts the 0.45 percent ratio to reflect differences between the credit risk of such obligations and MBS. Freddie Mac stated that an obligation of an Enterprise does not subject the Enterprise directly to credit risk: "it is the party holding the obligation that bears the credit risk of an Enterprise obligation." However, while the obligations of an Enterprise create no

²⁴ 12 U.S.C. 4502(4).

²⁵ 12 U.S.C. 4612(a)(3).

direct credit risk for the Enterprise, certain obligations, such as MBS or commitments to purchase mortgages, involve identifiable credit risk that is related in one way or another to those obligations (the risk of the default on the associated mortgages). Freddie Mac believes that this related credit risk is what Congress intended to capture when it enacted the minimum capital requirement applicable to other off-balance sheet obligations. Therefore, Freddie Mac believes that a definition of "other off-balance sheet obligations" will not capture the related credit risk that is apparently the focus of the 1992 Act.

To resolve this concern, Freddie Mac recommended that OFHEO delete the definition of the term "off-balance sheet obligation" and take a targeted approach in the definition of the term "other off-balance sheet obligations" by identifying only those items that OFHEO intends to include within the scope of the term, *i.e.*, commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts. Freddie Mac believes that because OFHEO has considered no other items to be other off-balance sheet obligations, such a definition would fully implement section 1362(a)(3) of the 1992 Act.²⁶ Freddie Mac stated that, to the extent that the Director determines in the future that other items should be considered to be other off-balance sheet obligations, the Director should address such items in a future rulemaking proceeding to amend the Minimum Capital regulation. In connection with this recommendation, Freddie Mac also recommended that section 1750.4(a)(7) be deleted. That section provides for other off-balance sheet obligations to be included in the computation of the minimum capital requirement.

After considering Freddie Mac's comments, OFHEO has determined not to adopt the recommendations with respect to the definition of the terms "off-balance sheet obligation" and "other off-balance sheet obligations." The capital provisions of the 1992 Act require the Enterprises to hold sufficient capital to ensure against risks of both on- and off-balance sheet items. For off-balance sheet obligations, the 1992 Act specifies the ratio of 0.45 percent of the unpaid principal balance of MBS and substantially equivalent instruments issued or guaranteed by the Enterprise. The Act also specifies a ratio of 0.45 percent of other off-balance sheet obligations (excluding commitments in

excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding four quarters), except that the Director must adjust the 0.45 percent ratio to reflect differences between the credit risk of such obligations and MBS.

OFHEO believes that it is appropriate to provide for a definition of other off-balance sheet obligations, which ensures that capital will be held against all off-balance sheet obligations whether or not they are now used by the Enterprises or at any time in the future. The 1992 Act requires that OFHEO apply a ratio of 0.45 percent to other off-balance sheet obligations until OFHEO determines whether an adjustment is necessary. OFHEO has determined the appropriate ratios for commitments, multifamily credit enhancements, sold portfolio remittances pending, interest rate contracts, and foreign exchange rate contracts. When an Enterprise begins to use a new type of obligation, OFHEO will apply the statutory ratio of 0.45 percent. OFHEO will then analyze the obligation to determine whether an adjustment to the 0.45 percent ratio is necessary, and will amend the Minimum Capital regulation, as appropriate.

Freddie Mac believes that the proposed definitions could create confusion because they appear to conflict with how the term "obligation" is used elsewhere in the 1992 Act and in the Enterprises' Charter Acts. The proposed regulation defines the term "off-balance sheet obligation" as a binding agreement or contract that requires another party to make future payments in money or in kind to an Enterprise (or guarantees of such payments to a third party). In contrast, Freddie Mac stated that the term "obligation" used elsewhere in the 1992 Act and the Enterprises' Charter Acts applies only to future payments from an Enterprise to a third party—and not to future payments from another party to the Enterprise (or guarantees of such payments to a third party).

Freddie Mac also stated that the proposed definition of the term "other off-balance sheet obligations" could create confusion as to whether resecuritizations of MBS, such as real estate mortgage investment conduits and other multi-class MBS, are included in that definition. Freddie Mac believes that it was the intent of Congress that such resecuritizations should not be included and that OFHEO's interim procedures do not include resecuritizations. Also, Freddie Mac believes that the definition of the term "other off-balance sheet obligations" is too narrow because commitments,

which Congress expressly considered to be other off-balance sheet obligations, would not fall within the proposed definition of that term.

OFHEO believes that because the term "obligation" may be used differently in the 1992 Act and the Enterprises' Charter Acts, it more important to include a definition of the terms "off-balance sheet obligation" and "other off-balance sheet obligations" for purposes of the computation of the minimum capital requirement. However, to eliminate any confusion regarding the treatment of commitments, the definition of the term "off-balance sheet obligation" has been revised to include an express reference to commitments. Also, the definition of the term "other off-balance sheet obligations" has been revised to clarify that resecuritizations of MBS are not included in the definition.

Qualifying Collateral

Freddie Mac noted that the definition of the term "qualifying collateral" in section 1750.2 differs from the discussion of what constitutes qualifying collateral in paragraph 5 of Appendix A. Consistent with this comment, OFHEO has made conforming editorial changes to both the definition in section 1750.2 and the discussion in Appendix A.

OFHEO has also revised the footnote in connection with the definition of the term "qualifying collateral" by defining the term "OECD-based group of countries" to conform with the Joint Final Rule published by the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.²⁷ This final rule was promulgated after the publication of the proposed Minimum Capital regulation.

Section 1750.4 Minimum Capital Requirement Computation

Section 1750.4(a) of the proposed regulation provides that the minimum capital requirement for each Enterprise is the sum of the following amounts—

- 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;
- 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;
- 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

²⁶Id.

²⁷60 FR 66042, Dec. 20, 1995.

- 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;
- 0.45 percent of the dollar amount of sold portfolio remittances pending;
- 3.00 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts except to the extent of the current market value of posted qualifying collateral;
- 1.50 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts equal to the market value of posted qualifying collateral; and
- 0.45 percent of the outstanding amount of other off-balance sheet obligations, excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts, except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to MBS.

Section 1750.4(b) provides that any asset or financial obligation that can be properly classified in more than one of the enumerated categories shall be classified in the category that yields the highest minimum capital amount.

OFHEO received comments with respect to section 1750.4, as explained below.

Section 1750.4(a)(6) Ratios With Respect to Interest Rate and Foreign Exchange Rate Contracts

Notice of Adjustment

Freddie Mac asserted that OFHEO has not provided adequate notice to the Enterprises of the basis, in quantifiable terms, for the proposed upward adjustment it makes to the 0.45 percent ratio with respect to interest rate and foreign exchange rate contracts.

OFHEO believes that it provided adequate notice of the basis of the proposed adjustment in the preamble of the proposed Minimum Capital regulation. The preamble explained how OFHEO analyzed the relative credit risk of interest rate and foreign exchange rate contracts as compared with the credit risk of MBS. However, in light of this comment, OFHEO believes it appropriate to summarize its reasons for adjusting the 0.45 percent ratio.

The source of credit risk of MBS to the Enterprises is the risk of defaults and losses on the mortgages underlying the MBS. The aggregate credit risk associated with the underlying mortgages is low because the Enterprises require very broad geographic diversification; strict and consistent mortgage underwriting standards; minimum initial

collateralization of 125 percent (*i.e.*, maximum 80 percent loan-to-value ratio) or supplemental mortgage insurance; and increasing levels of collateralization as loans amortize and property values increase. Moreover, the credit risk of MBS is offset by the continuing source of income provided by guarantee fees.

Neither Enterprise has experienced a net credit loss on its MBS. Annual losses to date have ranged from two basis points to ten basis points (expressed as a percentage of the outstanding portfolio), and have been easily covered by guarantee fee income, which has ranged from 20 to 25 basis points.

The source of credit risk of interest rate and foreign exchange rate contracts is the risk of counterparty default. The credit risk of interest rate and foreign exchange rate contracts is greater than that of MBS, even though the Enterprises attempt to limit the credit risk of the contracts by restricting their business to high quality counterparties and adjusting collateral requirements on the basis of the counterparty credit quality and the current replacement cost of the contracts. The credit risk associated with interest rate and foreign exchange rate contracts is a result of the following characteristics:

- Large swings in market rates, on which interest rate and foreign exchange rate contracts are based, may simultaneously increase exposure to and risk of default by one or more counterparties, which are typically financial firms.

- While losses may be infrequent, the high level of interdependence of the world's major financial institutions, many of which are important interest rate and foreign exchange rate contract counterparties, could cause disproportionately high losses when they do occur. This phenomenon is often referred to as "systemic risk."

- Counterparty risk is concentrated. The loss resulting from the default of a single counterparty could be many times larger than the amount of capital that would be associated with the application of a 0.45 percent capital ratio.

- Interest rate and foreign exchange rate contract exposures are not as fully collateralized as are the mortgages underlying the Enterprises' MBS.

- The interest rate and foreign exchange rate contracts markets are comparatively new; therefore, the functioning of these markets is less predictable in terms of operational and legal risk.

- There is no current stream of fee income to offset losses on interest rate

and foreign exchange rate contracts associated with counterparty failures.

OFHEO recognizes that, although the credit risk characteristics of interest rate and foreign exchange rate contracts can be identified, they are difficult to quantify. However, the 1992 Act does not require such quantification. Rather, it requires a reasonable analysis, based on available information, of the credit risk of interest rate and foreign exchange rate contracts relative to that of MBS.

The fact that the Enterprises have not experienced a net credit loss on their MBS does not mean that there are no risks associated with these instruments. Similarly, the fact that the Enterprises have not experienced losses associated with interest rate and foreign exchange rate contracts does not mean that there are no risks associated with these contracts. In these circumstances, it is appropriate for OFHEO to analyze the relative risks of these instruments by comparing their respective credit risk characteristics. Based on an analysis of these relative credit risk characteristics, OFHEO adjusted the 0.45 percent ratio applicable to MBS upward to reflect the greater risk of interest rate and foreign exchange rate contracts. As OFHEO and the Enterprises accumulate data on the risk of, and gain experience with the application of the ratios for, interest rate and foreign exchange rate contracts, OFHEO may make adjustments to the ratios, as appropriate.

Freddie Mac also commented on the upward adjustment of ratios for interest rate and foreign exchange rate contracts in light of OFHEO's statement in the Annual Report to Congress that the credit risk of the Enterprises' derivatives (interest rate and foreign exchange rate) contracts "is very small relative to the credit risk the Enterprises face with regard to mortgages they hold or guarantee."²⁸ This statement was in the context of the notional values of the contracts. As the Annual Report to Congress notes two sentences later, the replacement cost (current credit exposure) of the contracts is relatively small. In other words, the replacement cost, which together with an amount for potential future credit exposure constitutes the credit equivalent amount, is very small in comparison with the notional amount. We note that the credit equivalent amount represents the overall credit risk of interest rate and foreign exchange rate contracts.

Lowering the Proposed Ratios

Fannie Mae recommended lowering the proposed ratios from 3.0 percent of

²⁸ OFHEO, Annual Report to Congress, 9 (June 15, 1995).

the credit equivalent amount of uncollateralized interest rate and foreign exchange rate contracts and 1.5 percent of the credit equivalent amount of collateralized contracts to 2.0 percent and 0.5 percent respectively. Fannie Mae believes that the proposed ratios are unreasonably high in relation to the historical loss experience for similar obligations.

Fannie Mae stated that the factors that determine an adequate amount of required capital for interest rate and foreign exchange rate contracts include the probability of default and the severity of possible loss. To determine the probability of default of collateralized interest rate and foreign exchange rate contracts, Fannie Mae analyzed historical default statistics from Moody's Investors Service over the past 25 years for unsecured, 5- to 9-year term senior debt of corporations with debt ratings from Aaa to Baa. Fannie Mae stated that it uses historical data for unsecured senior debt because data on interest rate and foreign exchange rate contracts is limited due to the relative newness of the market in such contracts. Fannie Mae believes that their default rates are functionally equivalent because interest rate and foreign exchange rate contracts and unsecured senior debt represent general corporate obligations.

Fannie Mae stated that the average rating of its interest rate and foreign exchange rate counterparties is Aa or A. Using the Moody's Investors Service historical data, the default rates for unsecured senior debt in those categories ranges from 0.3 percent to 1.5 percent. Thus, Fannie Mae suggested that an appropriate estimate of default incidence for its interest rate and foreign exchange rate contracts is between 0.3 and 1.5 percent.

Fannie Mae then stated that the historical data demonstrates that the average loss severity from 1974 through 1994 is 51.1 percent for all corporate unsecured senior debt, and 28.4 percent for Baa or better corporate unsecured senior debt. Multiplying the default incidence by the loss severity yields a "capital ratio." Thus, according to Fannie Mae, a default incidence in the range of 0.3 to 1.5 percent and a severity level in the range of 28.4 to 51.1 percent produces a "capital ratio" for uncollateralized interest rate and foreign exchange rate contracts in the range of 0.1 to 0.75 percent. The ratio that Fannie Mae recommended—2.0 percent for uncollateralized interest rate and foreign exchange rate contracts—is $2\frac{2}{3}$ times its estimated "worst case" ratio of 0.75 percent. Consequently, Fannie Mae believes the recommended ratio to be an

adequate and suitable minimum capital ratio for uncollateralized interest rate and foreign exchange rate contracts.

Fannie Mae further believes that the use of collateral significantly reduces the severity of loss associated with interest rate and foreign exchange rate contracts. Fannie Mae asserted that 10 percent is a reasonable estimate of expected loss severity for collateralized interest rate and foreign exchange rate contracts, because Fannie Mae evaluates the market value of collateral and exposures at least monthly, Fannie Mae requires over-collateralization if credit quality deteriorates below a specific level, and the loss severity of uncollateralized exposures is best represented by the 28.4 percent historical loss severity experience for unsecured senior debt. By multiplying the 10 percent loss severity by the 0.3 to 1.5 percent historical average default rates, Fannie Mae estimated a "capital ratio range" of 0.03 percent to 0.15 percent. Thus, Fannie Mae's recommendation of a 0.5 percent ratio for collateralized interest rate and foreign exchange rate contracts is $3\frac{1}{3}$ times its estimated "worst case."

After carefully considering Fannie Mae's arguments, OFHEO has decided not to reduce the proposed ratio for interest rate and foreign exchange rate contracts. Fannie Mae's analysis assumes that the default rate for interest rate and foreign exchange rate contracts will conform with the historical default rates for corporate unsecured senior debt. As Fannie Mae noted, interest rate and foreign exchange rate contracts are relatively new instruments and historical default rates are lacking. Therefore, OFHEO cannot assume that the default rates of unsecured senior debt and interest rate and foreign exchange rate contracts will prove to be comparable.

Even assuming the default rates would be comparable, Fannie Mae's proposal does not provide an adequate capital cushion. Fannie Mae derives what it calls "capital ratios" based on more than twenty years' experience of a national sample of corporate credits. These "capital ratios" are in fact average national loss rates for a period not marked by extreme economic stress. For minimum capital purposes, Fannie Mae proposes to apply rates to both uncollateralized and collateralized counterparty exposure that are roughly three times as high as these capital ratios. The 1992 Act requires that any adjustment to the 0.45 percent ratio reflect the credit risk relative to MBS. Fannie Mae's proposed multiples are not consistent with this requirement. As the above discussion notes, neither

Enterprise has experienced any net credit loss on its MBS. However, ignoring guarantee fee income, annual losses to date have ranged from two basis points to ten basis points. Thus the 0.45 percent statutory capital ratio for MBS ranges from 4.5 to 22.5 times the historical loss experience for MBS—higher than the $2\frac{2}{3}$ and $3\frac{1}{3}$ times the estimated "worst case" loss proposed by Fannie Mae.

Fannie Mae's analysis also ignores a number of factors which increase the potential loss associated with the credit exposure of interest rate and foreign exchange rate contracts that are not present with MBS. The credit exposures of interest rate and foreign exchange rate contracts are highly concentrated, large swings of interest rates may simultaneously increase both the credit exposure and the default risk, and systemic problems could cause disproportionately high losses when they do occur.

Furthermore, Fannie Mae predicates its proposal on its current risk management practices, with respect to counterparty creditworthiness and collateral requirements and their enforcement. OFHEO believes that a minimum capital requirement establishes an essential amount of capital that an Enterprise with given levels of business must hold to address broad categories of risk, not specific exposures. Accordingly, it should not attempt to reflect the quality of current risk management practices. For example, Fannie Mae's analysis assumes that it will continue to manage credit risk by doing business with counterparties with Aa and A ratings and that such counterparties are not subject to sudden declines in ratings. Fannie Mae also assumes that, if ratings decline, it will require and be able to obtain more collateral.

Even if these assumptions were valid, OFHEO believes that they cannot be the basis of a minimum capital requirement. The minimum capital requirement is not intended to be a risk-based capital requirement. The 1992 Act separately provides for a risk-based capital requirement in which credit, interest, and operational and management risk are calculated using a stress test. The 1992 Act requires that the 0.45 percent ratio for other off-balance sheet obligations be adjusted to reflect differences in the credit risk of the obligation and MBS. OFHEO believes that the adjustment should be for differences in risk associated with the inherent risk characteristics of different instruments, not the risk characteristics of counterparties to these obligations or

current risk management practices for these obligations.

Right to Raise the Ratio

America's Community Bankers recommended that OFHEO explicitly reserve the right to raise the ratio for uncollateralized interest rate and foreign exchange rate contracts to 4.0 percent depending on the specific counterparty risks involved. As discussed above, OFHEO believes that counterparty credit ratings are not the appropriate focus of minimum capital ratios and that it has required an adequate amount of capital for uncollateralized interest rate and foreign exchange rate contracts. If OFHEO's experience with the application of the ratio for interest rate and foreign exchange rate contracts proves otherwise, OFHEO will raise the ratio. In addition, as discussed in connection with the comments on section 1750.1, if the business practices of an Enterprise were to endanger the capital adequacy of the Enterprise, OFHEO would take any actions necessary to ensure the financial safety and soundness of the Enterprise's operations.

Avoid Changing the Capital Calculation

Mortgage Bankers Association of America (MBA) stated that the proposed change from the interim guidelines in the calculation of the capital ratio for interest rate and foreign exchange rate contracts does not appear to be so significant as to cause the Enterprises to increase current guarantee fees, which would ultimately harm consumers in the form of higher interest rates or fees. MBA understands that the Enterprises currently have sufficient capital to meet the higher capital ratios that would result from the proposal. Nevertheless, MBA urged OFHEO to remain cautious and avoid changing the capital calculation of interest rate and foreign exchange rate contracts if the calculation influences the Enterprises' selection of funding and hedging instruments in a way that affects their ability to manage risks, is detrimental to their housing mission, or increases the cost of credit to consumers.

MBA recognizes that OFHEO does not wish to jeopardize the Enterprises' ability to meet their housing mission and goals, but must ensure the safety and soundness of the Enterprises. MBA believes that OFHEO should strive to strike a balance and avoid imposing inefficient capital requirements that inhibit the management of risk.

OFHEO agrees that the capital requirements should ensure the safety and soundness of the Enterprises while not jeopardizing the Enterprises' ability

to meet their housing mission and goals. Consistent with that approach, OFHEO does not believe that the change in the calculation of the capital ratio for interest rate and foreign exchange rate contracts will adversely affect the Enterprises' ability to manage risk or increase the cost of mortgage credit to consumers. Furthermore, mindful of the need to strike a balance among competing interests, OFHEO believes that it is in the best long-term interests of consumers and the Enterprises that the Enterprises have an adequate cushion of minimum capital to ensure against loss. While a decrease in capital requirements could result in a reduction in mortgage credit costs for consumers in the short-term, the decrease would not be beneficial in the long-term if it jeopardized the financial viability of the Enterprises.

This view is consistent with the congressional findings set forth in the 1992 Act that recognize the Enterprises' important housing mission and the need to provide long-term safeguards in the form of capital requirements to reduce the risk of failure.²⁹ The congressional findings also recognize the Enterprises' obligation to facilitate the financing of affordable housing while maintaining a strong financial condition and a reasonable economic return.³⁰

"Pro Rata" Capital Charge

The Office of Thrift Supervision asked whether the proposed regulation would provide a reduced "pro rata" capital charge for partially collateralized interest rate and foreign exchange rate contracts. In response to this comment, OFHEO notes that section 1750.4(a)(6) provides a ratio of 3.00 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral; and 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts. Thus, an interest rate or foreign exchange rate contract partially collateralized with qualifying collateral will have a reduced capital charge to the extent of the qualifying collateral.

Enterprises' Right to Require Collateral

Fannie Mae and Freddie Mac both stated that the market widely perceives an agreement with a Aaa rated counterparty that agrees to post collateral if it is downgraded to be as safe as, or safer than, a comparable

agreement with a lesser-rated counterparty that posts collateral. They claimed that the proposed regulation would run counter to well-established market practices by rewarding an Enterprise with a lower capital requirement if its Aaa rated counterparties are downgraded and post collateral under their collateral agreements, or if the Enterprise avoids Aaa rated counterparties in favor of lesser-rated counterparties.

Freddie Mac recommended the following standard: The same minimum capital ratio would apply for collateralized agreements and for uncollateralized agreements where the counterparty holds the highest credit rating of any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of capital rules for broker-dealers, and has entered into a binding agreement to post qualifying collateral if and when the counterparty no longer holds the highest rating of such an entity. As an alternative, Freddie Mac recommended treating the contract as fully collateralized for purposes of computing the minimum capital requirement where a Aaa rated counterparty has agreed to post collateral when it is downgraded.

OFHEO has considered Fannie Mae's and Freddie Mac's recommendations, but has decided not to adopt them. The Enterprises' recommendations rely heavily on the credit ratings of counterparties and current Enterprise practice. In fact, Freddie Mac has noted elsewhere that credit enhancements in which the counterparty is required to post collateral only when its credit rating or capital begins to deteriorate "present some management-and-operations risk because the arrangements need to be monitored and the collateral needs to be posted in a timely fashion."³¹

OFHEO believes that reliance on the credit ratings of counterparties and current Enterprise practice should not be the basis for establishing minimum capital ratios. Even though the 1992 Act requires that credit risk be taken into account when adjusting the ratio for certain off-balance sheet obligations, the minimum capital requirement essentially is computed on the basis of simple leverage ratios. Categories of obligations that are assigned a specific ratio include obligations with a mixture

³¹ "Comments of the Federal Home Loan Mortgage Corporation on the Advance Notice of Proposed Rulemaking on Risk-Based Capital of the Office of Federal Housing Enterprise Oversight," 72 (May 9, 1995)(available at OFHEO).

²⁹ See section 1302 (12 U.S.C. 4501).

³⁰ Section 1302(7) (12 U.S.C. 4501(7)).

of greater and lesser risk, depending on borrower or counterparty characteristics.

Consistent with the concepts underlying "minimum" as opposed to "risk-based" capital, when developing the proposed regulation, OFHEO considered whether the minimum capital ratio should be the same for interest rate and foreign exchange rate contracts regardless of whether collateral was posted. In adopting the proposed regulation, OFHEO determined that a lower minimum capital ratio for the collateralized portion of an obligation was appropriate. This determination was made based on the recognition that a collateralized position affords the Enterprises greater certainty of collection than an uncollateralized position in the event of a decline in the financial condition of a counterparty. In contrast, the value of a promise by a counterparty to post collateral in the event that it is downgraded is subject to the diminished capacity of a counterparty during times of financial stress to identify and pledge adequate liquid assets to secure its contractual obligations.

OFHEO also recognizes that the value of a promise by a counterparty to post collateral when it is downgraded is influenced by the speed of the rating agency's ability to recognize changes in credit conditions. Recent incidents, such as the default of Barings from trading losses, illustrate how rapidly the financial health of a well-respected entity can deteriorate. When a decline occurs very rapidly, a promise to post collateral to secure counterparty obligations may be of little value. Finally, as a point of comparison, OFHEO notes that the risk-based capital standards for banks and thrifts do not treat agreements to post collateral as the equivalent of collateral and do not incorporate counterparty credit ratings into the determination of risk weights assigned to different counterparties.

Section 1750.4(a)(7) Ratio With Respect to Other Off-Balance Sheet Obligations

Section 1750.4(a)(7) of the proposed regulation provides the amount of other off-balance sheet obligations that is to be included in the computation of the minimum capital requirement. The amount is—

0.45 percent of the outstanding amount of other off-balance sheet obligations, excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts except as

adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

Freddie Mac recommended that proposed section 1750.4(a)(7) be deleted in connection with its comments that (1) the definition of the term "off-balance sheet obligation" be deleted and (2) the definition of the term "other off-balance sheet obligations" be defined in terms of commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts. (See the full discussion under section 1750.2, above.) If section 1750.4(a)(7) is retained, Freddie Mac recommended that OFHEO delete the phrase "the outstanding amount." Freddie Mac believes that the phrase could create confusion if, in the future, OFHEO determines that an item should be treated as an "other off-balance sheet obligation," and OFHEO also determines that the appropriate measure of credit risk should be something other than an "outstanding amount."

OFHEO agrees with Freddie Mac; however, rather than deleting the phrase "outstanding amount," OFHEO has substituted the phrase "credit equivalent amount, or other appropriate measure, as determined by the Director." This revision will clarify that, depending on the specific characteristics of the obligation, the computation of the minimum capital requirement may be based on the credit equivalent amount or other measures that the Director determines are appropriate.

OFHEO also has made a clarifying editorial revision to proposed section 1750.4(a)(6)(ii) with respect to the computation of the minimum capital amount for interest rate and exchange rate contracts.

Section 1750.4(b) Capital Treatment of On-Balance Sheet and Off-Balance Sheet Items

Section 1750.4(b) of the proposed regulation provides that, for purposes of the minimum capital requirement computation, any asset or financial obligation that is properly classifiable in more than one category of items must be classified in the category that yields the highest requirement.

Freddie Mac expressed the concern that the proposed regulation would require capital charges for foreign exchange rate contracts to be computed as if such contracts were reflected on the balance sheet, even if they are not. Freddie Mac also recommended that OFHEO clarify that the regulation will not require an Enterprise to make

adjustments to a balance sheet that has been prepared in accordance with generally accepted accounting principles (GAAP).

As noted by Freddie Mac, the Enterprises are required to prepare their balance sheets in accordance with GAAP. Consistent with that requirement, the Minimum Capital regulation does not require an Enterprise to adjust its balance sheet prepared in accordance with GAAP. The requirements of the Minimum Capital regulation relate only to the computation of the minimum capital requirement.

Under GAAP, it is possible that some assets or obligations may properly be reflected either on or off the balance sheet. OFHEO believes that, for minimum capital purposes, it is appropriate to classify any asset or obligation that may be properly reflected either on or off the balance sheet in the category that yields the highest minimum capital requirement. The purpose of capital is to serve as a cushion to absorb losses and thereby reduce the risk of failure of the Enterprise. The minimum capital requirement represents a level of capital for an Enterprise which, if not met, will result in the institution being classified as "significantly undercapitalized." Consequently, it would be inappropriate for the Minimum Capital regulation to permit an Enterprise to determine its minimum capital requirement by favoring one accounting treatment over another. The purpose of section 1750.4(b) is to avoid such a circumstance.

In addition, Freddie Mac commented on the relationship between section 1750.4(b) and paragraph 4 of Appendix A, suggesting that they articulated inconsistent requirements with respect to interest rate and foreign exchange rate contracts. In that regard, Freddie Mac recommended that OFHEO treat all foreign exchange rate contracts as other off-balance sheet obligations, and then subtract from the computed minimum capital requirement the amount, if any, that is attributable to the contracts as on-balance sheet assets.

OFHEO does not believe there is any inconsistency between section 1750.4(b) and paragraph 4 of Appendix A. The scope of the two provisions is different and, to the extent they deal with the same issue, they address different aspects of the issue. As explained above, section 1750.4(b) provides that an Enterprise's assets or obligations that may be properly classified in more than one of the on- or off-balance sheet categories will be classified according to the category that yields the highest

minimum capital requirement. The scope of section 1750.4(b) encompasses not only interest rate and foreign exchange rate contracts, but also any other assets or obligations that could be classified in more than one category.

In contrast, paragraph 4 of Appendix A, Avoidance of Double Counting, is restricted in scope to interest rate and foreign exchange rate contracts and only addresses the issue of double counting. The purpose of paragraph 4 is to ensure that the capital amount for such contracts is not double counted if the proper accounting treatment results in a portion of the credit exposure of the contract(s) being reflected on and off the balance sheet. To that end, paragraph 4 provides that the amount of credit exposure arising from interest rate and foreign exchange rate contracts may need to be excluded from on-balance sheet assets in calculating the minimum capital requirement.

Section 1750.5 Notice of Capital Classification

Section 1750.5 outlines the procedures that OFHEO will follow when notifying each Enterprise of its capital classification.

Freddie Mac noted that while the proposed regulation sets forth a process that could result in a final capital classification not being issued until a full 150 days after the end of a quarter, it hopes that a process of less than 90 days would continue to be the norm.

Section 1750.3 provides that an Enterprise has 30 days after the end of each quarter to file a minimum capital report. Section 1750.5 provides that within 60 days of receiving the minimum capital report, OFHEO will provide each Enterprise with a notice of proposed capital classification. The Enterprise has 30 days in which to respond to the proposed capital classification. The Enterprise's response period may be extended up to 30 additional calendar days, or shortened, at the sole discretion of the Director. The Director, after taking into consideration the Enterprise's response, has up to 30 calendar days following the end of the response period in which to issue a final notice of capital classification.

The time periods specified in the regulation are designed to establish the longest possible timeframes for actions by the Enterprises and OFHEO in the capital classification process. OFHEO would expect that under most circumstances the total elapsed time for a capital classification will be substantially less than the maximum period contemplated in the regulation. In that regard, the timing of the

submission of the Enterprise's minimum capital report and its response to the proposed classification will have a significant impact on the time period for receipt of the final capital classification.

Appendix A

Appendix A provides the methodology for computing the minimum capital component for interest rate and foreign exchange rate contracts.

The Office of Thrift Supervision questioned whether OFHEO had considered whether the proposed treatment of interest rate and foreign exchange rate contracts, including the bilateral netting provisions, adds unnecessary complexity to the minimum capital standard in light of the sophisticated risk-based capital regulation that OFHEO is developing.

Although the minimum capital standard is a minimum leverage ratio standard, Congress has required that OFHEO consider the credit risk of off-balance sheet obligations and adjust the 0.45 percent ratio to reflect the difference between the credit risk of interest rate and foreign exchange rate contracts and MBS. Thus, OFHEO believes that the adjusted ratios should be applied to the credit equivalent amount of interest rate and foreign exchange rate contracts because the credit equivalent amount best represents the dollar amount at risk. OFHEO also believes that bilateral netting, that is, the offsetting of positive and negative mark-to-market values in the determination of a current credit exposure used in the calculation of a credit equivalent amount, provides a more accurate representation of the dollar amount at risk. Consequently, OFHEO believes that the more complex treatment with respect to interest rate and foreign exchange rate contracts is appropriate.

Paragraph 5. Collateral

Freddie Mac noted that the definition of the term "qualifying collateral" in section 1750.2 differs from the discussion of what constitutes qualifying collateral in paragraph 5 of Appendix A. OFHEO does not intend that there be any difference and has revised the discussion in Appendix A to conform with the definition set forth in section 1750.2. (See the full discussion of this comment under section 1750.2, Qualifying collateral, above.)

Additionally, OFHEO has renumbered paragraphs 1 and 2 of Appendix A of the proposed regulation to ensure ease of reading and reference.

IV. Section-by-Section Analysis

Section 1750.1 General

This section states that the regulation sets forth the methodology for computing the minimum capital requirement for each Enterprise. It further states that the board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the minimum capital requirement.

Section 1750.2 Definitions

Section 1750.2 provides definitions for the terms used in the regulation.

The term "affiliate" is defined as to mean any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

The term "commitment" is defined to mean any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.

The term "core capital" is defined to mean the sum of (as determined in accordance with generally accepted accounting principles) the par or stated value of outstanding common stock; the par or stated value of outstanding perpetual, noncumulative preferred stock; paid-in capital; and retained earnings. This definition does not include debt instruments or any amounts an Enterprise could be required to pay at the option of an investor to retire capital instruments. The amount of retained earnings includable in the calculation of core capital is the net of the carrying value of Treasury stock. Treasury stock is stock that an Enterprise has issued and subsequently acquired, but has not retired or resold. Carrying value is typically the amount the Enterprise paid for the Treasury stock.

The term "Director" is defined to mean the Director of OFHEO.

The term "Enterprise" is defined to mean the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

The term "foreign exchange rate contracts" is defined to mean cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased (including currency options purchased over-the-counter), and any other instrument that gives rise to similar credit risks. The definition clarifies that the term "foreign exchange rate contracts" does not mean foreign exchange rate contracts with an original maturity of 14 calendar days or less and

foreign exchange rate contracts traded on exchanges that require daily payment of variation margins.

The term "interest rate contracts" is defined to mean single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), over-the-counter options purchased, and any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted). The definition of the term "interest rate contracts" does not include instruments traded on exchanges that require daily payment of variation margins.

The term "mortgage-backed security" is defined to mean a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

The term "multifamily credit enhancement" is defined to mean any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local governmental unit (including a housing finance agency) or other bond issuer.

The term "1992 Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550.

The term "notional amount" is defined to mean the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

The term "off-balance sheet obligation" is defined to mean a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise, or that effectively guarantees all or part of such payment(s) to third parties (including commitments), where such agreement or contract is a source of credit risk that is not included on its balance sheet.

The term "OFHEO" is defined to mean the Office of Federal Housing Enterprise Oversight.

The term "other off-balance sheet obligations" is defined to mean all off-

balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not securitized MBS such as real estate mortgage investment conduits or similar securitized instruments.

The term "perpetual, noncumulative preferred stock" is defined to mean preferred stock that does not have a maturity date, provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends, and that cannot be redeemed at the option of the holder. It is further defined as preferred stock that has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate, money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock. For purposes of minimum capital, perpetual, noncumulative preferred stock must provide capital that is available to absorb losses of the Enterprise from any source.

The term "qualifying collateral" is defined to mean cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,³² United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

³²The OECD-based group of countries comprises full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous 5 years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's mobility or unwillingness to meet its external debt service obligations, but generally not include any renegotiation to allow the borrower to take advantage of a decline in interest rate or other change in market conditions.

As of November 1995, the OECD countries included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

Section 1750.3 Procedures and Timing

Section 1750.3 provides that each Enterprise must file with the Director a minimum capital report each quarter, or at such other times as the Director requires, in his or her sole discretion. The report must contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to an estimate of the minimum capital requirement; an estimate of core capital coverage or shortfall relative to the estimated minimum capital requirement; and such other information as may be required by the Director.

This section further provides that the report must be submitted not later than April 30, July 30, October 30, and January 30 of each year, and that it must be in writing and in such other format as may be required by the Director.

In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested which would cause an adjustment to a minimum capital report, section 1750.3 requires that the Enterprise file an amended minimum capital report not later than 3 business days after the date of such adjustment.

Finally, section 1750.3 provides that each minimum capital report or any amended minimum capital report must contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to, a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

Section 1750.4 Minimum Capital Requirement Computation

Section 1750.4 sets forth the methodology for computing the minimum capital requirement. The minimum capital requirement is the sum of the following amounts:

- 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;
- 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;
- 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;
- 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;
- 0.45 percent of the dollar amount of sold portfolio remittances pending;

—3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral, computed in accordance with Appendix A; 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with Appendix A; and

—0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

In the event that any asset or financial obligation is properly classifiable in more than one of the above categories, section 1750.4 provides that, for minimum capital purposes, the asset or financial obligation must be classified in the category that yields the highest minimum capital requirement.

The section further explains that the term “preceding four quarters” means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

Section 1750.5 Notice of Capital Classification

Section 1750.5 states that not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a notice of proposed capital classification in accordance with section 1368 of the 1992 Act.³³ The notice of proposed capital classification includes the proposed minimum capital requirement and the summary computation of the proposed minimum capital requirement.

Each Enterprise has a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise or without such consent if the Director determines that the condition of the Enterprise requires a shorter response period.

Section 1750.5 further provides that the Director must take into consideration any response to the notice of proposed capital classification received from the Enterprise and must issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period.

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

Calculation of Credit Equivalent Amounts

Appendix A provides that the minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with Appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates as well as counterparty credit quality.

The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors for interest rate contracts are 0.0 percent for interest rate contracts with a remaining maturity of 1 year or less; 0.5 percent for interest rate contracts with a remaining maturity of over 1 year; 1.0 percent for foreign exchange rate contracts with a remaining maturity of 1 year or less; and 5.0 percent for foreign exchange rate contracts with a remaining maturity of over 1 year.

Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more

volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

Avoidance of Double Counting

Appendix A provides that, in certain cases, credit exposures arising from the interest rate and foreign exchange rate contracts covered by this Appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this Appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

Collateral

Appendix A provides that the sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.

The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

Netting

For purposes of Appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount if it meets the following requirements. Netting is

³³ 12 U.S.C. 4618.

accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

- the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;
- the law that governs the individual contracts covered by the netting contract; and
- the law that governs the netting contract.

The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law. Furthermore, the Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount. A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of Appendix A, and that all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or

any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in Appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with Appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts, and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

As stated in the preamble to the proposed regulation, in developing Appendix A, OFHEO considered

provisions of the regulations of the federal banking agencies with respect to the calculation of the credit equivalent amount for interest rate and foreign exchange rate contracts. Subsequent to the publication of the proposed Minimum Capital regulation, the federal banking agencies amended their regulations with respect to interest rate and foreign exchange rate contracts.³⁴ The amendments increase the number of credit conversion factors that are used to measure the potential future credit exposure of interest rate and foreign exchange rate contracts. They also change the way the potential future credit exposure is calculated when the interest rate and foreign exchange rate contracts are subject to a qualifying bilateral netting agreement, resulting in a reduction in the amount of capital required for the netted interest rate and foreign exchange rate contracts.

OFHEO is analyzing those amendments and considering whether to conform Appendix A to the final regulations of the federal banking agencies. Based on the results of that analysis, OFHEO will publish a proposal, as appropriate.

Regulatory Impact

Executive Order 12606, The Family

This regulation does not have potential for significant impact on family formulation, maintenance, and general well-being, and thus is not subject to review under Executive Order 12606.

Executive Order 12612, Federalism

This regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995. Assessment statements are not required for regulations that incorporate requirements specifically set forth in

³⁴ 60 FR 46170 (Sept. 5, 1995).

law. As explained in the preamble, this regulation implements the minimum capital standard contained in the 1992 Act. In addition, this regulation does not include a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.

Regulatory Flexibility Act

This regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act, and does not have a significant effect on a substantial number of small entities. Therefore, the General Counsel of OFHEO has certified that the final regulation will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This regulation contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1750

Banks, banking, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Mortgages, Securities.

Accordingly, for the reasons set forth in the preamble, OFHEO amends Chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1750 to read as follows:

PART 1750—CAPITAL

Subpart A—Minimum Capital

- Sec.
1750.1 General.
1750.2 Definitions.
1750.3 Procedure and timing.
1750.4 Minimum capital requirement computation.
1750.5 Notice of capital classification.

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

Subpart B—[Reserved]

Authority: 12 U.S.C. 4513, 4514, 4612, 4614, 4618.

Subpart A—Minimum Capital

§ 1750.1 General.

The regulation contained in this subpart A sets forth the methodology for computing the minimum capital requirement for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the

Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the minimum capital requirement contained in this subpart A.

§ 1750.2 Definitions.

For purposes of this subpart A, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

Commitment means any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.

Core Capital—(1) Means the sum of (as determined in accordance with generally accepted accounting principles)—

- (i) The par or stated value of outstanding common stock;
 - (ii) The par or stated value of outstanding perpetual, noncumulative preferred stock;
 - (iii) Paid-in capital; and
 - (iv) Retained earnings; and
- (2) Does not include debt instruments or any amounts the Enterprise could be required to pay at the option of an investor to retire capital instruments.

Director means the Director of OFHEO.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Foreign exchange rate contracts—

- (1) Means cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased (including currency options purchased over-the-counter), and any other instrument that gives rise to similar credit risks; and
- (2) Does not mean foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins.

Interest rate contracts—

- (1) Means single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), over-the-counter options purchased, and any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted); and
- (2) Does not mean such instruments traded on exchanges that require daily payment of variation margins.

Mortgage-backed security means a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

Multifamily credit enhancement means any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local governmental unit (including a housing finance agency) or other bond issuer.

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, 12 U.S.C. 4501 *et seq.*

Notional amount means the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

Off-balance sheet obligation means a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise, or that effectively guarantees all or part of such payment(s) to third parties (including commitments), where such agreement or contract is a source of credit risk that is not included on its balance sheet.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Other off-balance sheet obligations means all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not res securitized mortgage-backed securities, such as real estate mortgage investment conduits or similar res securitized instruments.

Perpetual, noncumulative preferred stock means preferred stock that—

- (1) Does not have a maturity date;
- (2) Provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends;
- (3) Cannot be redeemed at the option of the holder; and
- (4) Has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate,

money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock.

Qualifying collateral means cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,¹ United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

§ 1750.3 Procedure and timing.

(a) Each Enterprise shall file with the Director a minimum capital report each quarter or at such other times as the Director requires, in his or her sole discretion. The report shall contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to:

- (1) Estimate of the minimum capital requirement;
- (2) Estimate of core capital coverage or shortfall relative to the estimated minimum capital requirement;
- (3) Such other information as may be required by the Director.

(b) The quarterly minimum capital report shall be submitted not later than April 30, July 30, October 30, and January 30 of each year.

(c) Each minimum capital report shall be submitted in writing and in such other format as may be required by the Director.

(d) In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested, which would cause an adjustment to a minimum capital report, the Enterprise

shall file with the Director an amended minimum capital report not later than 3 business days after the date of such adjustment.

(e) Each minimum capital report or any amended minimum capital report shall contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

§ 1750.4 Minimum capital requirement computation.

(a) The minimum capital requirement for each Enterprise shall be computed by adding the following amounts:

- (1) 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;
- (2) 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;
- (3) 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;
- (4) 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;
- (5) 0.45 percent of the dollar amount of sold portfolio remittances pending;
- (6)(i) 3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral, computed in accordance with appendix A to this subpart;
- (ii) 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with appendix A to this subpart; and

(7) 0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

(b) Any asset or financial obligation that is properly classifiable in more than one of the categories enumerated in paragraphs (a) (1) through (7) of this

section shall be classified in the category that yields the highest minimum capital requirement.

(c) As used in this section, the term "preceding four quarters" means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

§ 1750.5 Notice of capital classification.

(a) Pursuant to section 1364 of the 1992 Act (12 U.S.C. 4614), OFHEO is required to determine the capital classification of each Enterprise on a not less than quarterly basis.

(b) The determination of the capital classification shall be made following a notice to, and opportunity to respond by, the Enterprise.

(1) Not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a notice of proposed capital classification in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618). The notice shall contain the following information—

- (i) The proposed capital classification;
- (ii) The proposed minimum capital requirement; and
- (iii) The summary computation of the proposed minimum capital requirement.

(2) Each Enterprise shall have a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response regarding the proposed capital classification. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise, or without such consent if the Director determines that the condition of the Enterprise requires a shorter period.

(3) The Director shall take into consideration any response to the notice of proposed capital classification received from the Enterprise and shall issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618).

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

1. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. Credit equivalent amounts are computed for each of the following off-balance sheet

¹ The OECD-based group of countries comprises full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous 5 years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's mobility or unwillingness to meet its external debt service obligations, but generally not include any renegotiation to allow the borrower to take advantage of a decline in interest rate or other change in market conditions. As of November 1995, the OECD countries included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

interest rate and foreign exchange rate contracts:

a. Interest Rate Contracts

- i. Single currency interest rate swaps.
- ii. Basis swaps.
- iii. Forward rate agreements.
- iv. Interest rate options purchased (including caps, collars, and floors purchased).
- v. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

b. Foreign Exchange Rate Contracts

- i. Cross-currency interest rate swaps.
 - ii. Forward foreign exchange rate contracts.
 - iii. Currency options purchased.
 - iv. Any other instrument that gives rise to similar credit risks.
2. Foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins are excluded from the minimum capital requirement computation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and foreign exchange rate contracts.

3. Calculation of Credit Equivalent Amounts

- a. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate and foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with this appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.
- b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.
- c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
1 year or less	0.0	1.0
Over 1 year	0.5	5.0

d. Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

e. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. Avoidance of Double Counting

In certain cases, credit exposures arising from the interest rate and foreign exchange instruments covered by this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

5. Collateral

- a. The sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.
- b. The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

6. Netting

- a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount provided that the following criteria are met:
 - i. Netting must be accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to

default, insolvency, liquidation, or similar circumstances.

ii. The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

A. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

B. The law that governs the individual contracts covered by the netting contract; and

C. The law that governs the netting contract.

iii. The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law.

iv. The Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.¹

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of this appendix A and all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with paragraph 3 of this appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts and other similar contracts in which notional principal

¹ A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for minimum capital standard netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

Subpart B—[Reserved]

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 96-17120 Filed 7-5-96; 8:45 am]

BILLING CODE 4220-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96-AWP-12]

Change Time of Designation for Restricted Area R-3107, Kaula Rock, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area 3107 (R-3107), Kaula Rock, HI, to accurately reflect actual times of use. This administrative change, initiated by the U.S. Navy, will not affect the boundaries, designated altitudes, or activities conducted within the restricted area.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for R-3107, Kaula Rock, HI, to accurately reflect actual times of use. This administrative change, initiated by the U.S. Navy, will not affect the boundaries, designated altitudes, or activities conducted within the restricted area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the restricted area’s time of designation. In accordance with FAA Order 1050.1D, “Policies and Procedures for Considering Environmental Impacts,” this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R-3107 Kaula Rock, HI. [Amended]

By removing the current time of designation and substituting the following:

Time of designation. 0700-2200 local time Monday-Friday; 0800-1600 local time Saturday-Sunday; other times by NOTAM issued at least 24 hours in advance.

Issued in Washington, DC, on June 28, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96-17231 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 97

[Docket No. 28615; Amdt. No. 1739]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW.,
Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP

as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports,
Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Aug. 15, 1996*

Goshen, IN, Goshen Muni, VOR or GPS RWY 9, Amdt 11 CANCELLED

Goshen, IN, Goshen Muni, VOR RWY 9, Amdt 11

Lovington, NM, Lea County-Zip Franklin Memorial, RNAV or GPS RWY 3, Orig CANCELLED

Lovington, NM, Lea County-Zip Franklin Memorial, RNAV RWY 3, Orig

Riverton, WY, Riverton Regional, VOR or GPS RWY 10, Amdt 8 CANCELLED

Riverton, WY, Riverton Regional, VOR RWY 10, Amdt 8

Riverton, WY, Riverton Regional, VOR or GPS RWY 28, Amdt 8 CANCELLED

Riverton, WY, Riverton Regional, VOR RWY 28, Amdt 8.

[FR Doc. 96-17229 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 28614; Amdt. No. 1738]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

*For Purchase—*Individual SIAP copies may be obtained from:

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

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

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
05/23/96	FL	Miami	Miami Intl	6/3205	ILS RWY 12 AMDT 3...

FDC Date	State	City	Airport	FDC No.	SIAP
05/23/96	GA	Reidsville	Reidsville	6/3197	NDB OR GPS RWY 11 AMDT 6A...
06/13/96	CA	Monterey	Monterey Peninsula	6/3777	LOC/DME RWY 28L AMDT 3A...
06/13/96	MN	Hibbing	Chisholm-Hibbing	6/3770	VOR OR GPS RWY 13 AMDT 11A...
06/14/96	CA	Oceanside	Oceanside Muni	6/3792	VOR OR GPS-A AMDT 3...
06/14/96	NE	Alliance	Alliance Muni	6/3801	VOR OR GPS RWY 12 AMDT 2A...
06/14/96	NE	Alliance	Alliance Muni	6/3802	NDB RWY 30 AMDT 7...
06/14/96	NE	Alliance	Alliance Muni	6/3803	VOR RWY 30 AMDT 1...
06/17/96	KS	Chanute	Chanute Martin Johnson	6/3867	VOR OR GPS-A AMDT 9...
06/17/96	KS	Chanute	Chanute Martin Johnson	6/3868	VOR/DME RNAV OR GPS RWY 36 AMDT 3...
06/17/96	NE	Sidney	Sidney Muni	6/3872	VOR RWY 12 AMDT 6...
06/17/96	NE	Sidney	Sidney Muni	6/3873	VOR/DME OR TACAN OR GPS RWY 12 AMDT 4...
06/17/96	NE	Sidney	Sidney Muni	6/3874	GPS RWY 30 ORIG...
06/17/96	NE	Sidney	Sidney Muni	6/3875	VOR RWY 30 AMDT 6...
06/17/96	NE	Tekamah	Tekamah Muni	6/3870	VOR OR GPS RWY 32 AMDT 4...
06/18/96	IL	Peoria	Greater Peoria Regional	6/3913	ILS/DME RWY 4 ORIG-A...
06/18/96	NE	Hastings	Hastings Muni	6/3898	NDB RWY 14 AMDT 12...
06/18/96	NE	Hastings	Hastings Muni	6/3900	VOR OR GPS RWY 4 AMDT 5...
06/18/96	NE	Hastings	Hastings Muni	6/3901	VOR OR GPS RWY 32 AMDT 13...
06/18/96	NE	Hastings	Hastings Muni	6/3905	VOR RWY 14 AMDT 16...
06/19/96	AR	Mountain Home	Baxter County Regional	6/3943	VOR OR GPS-A AMDT 9...
06/19/96	AR	Mountain Home	Baxter County Regional	6/3944	VOR/DME RNAV RWY 5 AMDT 1...
06/20/96	TX	Abilene	Abilene Regional	6/3952	RADAR-1 AMDT 8...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4023	ILS RWY 8R AMDT 13...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4024	VOR OR GPS RWY 8R AMDT 7A...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4025	NDB RWY 8R AMDT 11...
06/24/96	KS	Lawrence	Lawrence Muni	6/4100	NDB OR GPS RWY 33 ORIG...
06/24/96	KS	Lawrence	Lawrence Muni	6/4101	VOR/DME RNAV RWY 33 AMDT 4...
06/24/96	KS	Lawrence	Lawrence Muni	6/4102	VOR/DME OR GPS-A AMDT 9...
06/24/96	KS	Lawrence	Lawrence Muni	6/4103	ILS RWY 33 ORIG...
06/25/96	MN	Springfield	Springfield Muni	6/4150	VOR/DME OR GPS RWY 14 AMDT 2B...
06/25/96	MN	St Paul	St Paul Downtown Holman Field.	6/4148	ILS RWY 32 AMDT 3...
06/25/96	MN	St Paul	St Paul Downtown Holman Field.	6/4153	NDB OR GPS RWY 30 AMDT 7...
06/26/96	KS	Lawrence	Lawrence Muni	6/4199	ILS RWY 33, ORIG-A...
06/26/96	MT	Helena	Helena Regional	6/4193	LOC/DME BC-C AMDT 3...
06/26/96	NE	Omaha	Eppley Airfield	6/4200	NDB OR GPS RWY 14R, AMDT 23...
06/26/96	WI	Sparta	Fort McCoy	6/4183	GPS RWY 11 ORIG...
06/26/96	WI	Sparta	Fort McCoy	6/4184	GPS RWY 29 ORIG...

[FR Doc. 96-17228 Filed 7-5-96; 8:45 am]
 BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 28612; Amdt. No. 1737]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures

(SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a

National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective July 18, 1996*

Pascagoula, MS, Trent Lott International, ILS RWY 17, Orig

* * * *Effective August 15, 1996*

Middletown, DE, Summit Airpark, GPS RWY 35, Orig

Baxley, GA, Baxley Muni, NDB RWY 8, Orig

Baxley, GA, Baxley Muni, GPS RWY 8, Orig

Hinesville, GA, Liberty County, GPS RWY 32, Orig

Sioux City, IA, Sioux Gateway, NDB RWY 35, Orig

Boise, ID, Boise Air Terminal (Gowen Field) MLS RWY 28L, Orig

Calendonia, MN, Houston County, Houston County, VOR/DME or GPS-A, Amdt 2

Rushford, MN, Rushford Muni, VOR/DME-A, Amdt-1

Warroad, MN, Warroad Intl-Swede Carlson Field, ILS RWY 31, Amdt 1

Warroad, MN, Warroad Intl-Swede Carlson Field, VOR/DME RNAV RWY 31, Amdt 4

Warroad, MN, Warroad Intl-Swede Carlson Field, NDB or GPS RWY 31, Amdt 1

Winona, MN, Winona Muni-Max Conrad Fld, VOR RWY 29, Amdt 15

Winona, MN, Winona Muni-Max Conrad Fld, VOR or GPS-A, Amdt 12

Winona, MN, Winona Muni-Max Conrad Fld, GPS RWY 29, Amdt 1

Pascagoula, MS, Trent Lott Intl, GPS RWY 17, Orig

Portland, OR, Portland Intl, ILS RWY 10L, Amdt 1

Portland, OR, Portland Intl, LOC/DME RWY 10L, Orig, CANCELLED

La Crosse, WI, La Crosse Muni, VOR RWY 13, Amdt 29

La Crosse, WI, La Crosse Muni, VOR or GPS RWY 36, Amdt 30

La Crosse, WI, La Crosse Muni, ILS RWY 18, Amdt 18

Guernsey, WY, Camp Guernsey, NDB RWY 32, Orig

* * * *Effective October 10, 1996*

Oceanside, CA, Oceanside Muni, GPS RWY 24, Orig

Fryeburg, ME, Eastern Slopes Regional, GPS RWY 32, Orig

Fryeburg, ME, Eastern Slopes Regional, NDB OR GPS-B, Amdt 1

Orange, MA, Orange Muni, GPS RWY 32, Orig
 Jackson, MS, Hawkins Field, GPS RWY 16, Orig
 Jackson, MS, Hawkins Field, GPS RWY 34, Orig
 Forsyth, MT, Tillitt Field, GPS RWY 26, Orig
 Rochester, NY, Greater Rochester International, GPS RWY 10, Orig
 Lebanon, TN, Lebanon Muni, GPS RWY 19, Orig
 [FR Doc. 96-17227 Filed 7-5-96; 8:45 am]
 BILLING CODE 4910-13-M

14 CFR Parts 119, 121, and 135

[Docket No. 28154; Amendments Nos. 119-2, 121-256, 135-65 and SFAR 38-13]

RIN 2120-AG03

Operating Requirements: Domestic Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the Federal Register on June 14, 1996 (61 FR 30432). The final rule adopted changes that were editorial or typographical in nature in parts 119, 121, and 135. The changes were necessary to correct errors or clarify the intent of the regulations published in December 20, 1996 (60 FR 65832).

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Linda William, (202) 267-9685.

Correction of Publication

In rule document 96-14565, on page 30432, in the issue of Friday, June 14, 1996, make the following correction:

On page 30432, in the first column, in the heading, Amendment No. "121-259" should read "121-256", and SFAR 38-13 should be added to the heading.

Issued in Washington, DC, on July 1, 1996.
 Joseph A. Conte,
Acting Chief Counsel for Regulations.
 [FR Doc. 96-17226 Filed 7-5-96; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2409]

VISAS: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends part 41, title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended. Section 217, as amended, extends the Visa Waiver Pilot Program to nationals of all countries that qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B-1/B-2 visa requirement. This amendment extends the Visa Waiver Pilot Program to Argentina, which has met all of the requirements for the Program.

DATES: This interim rule is effective July 8, 1996. Written comments are invited and must be received on or before August 7, 1996.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522-0113 (202) 663-1204.

SUPPLEMENTARY INFORMATION: This interim rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended by Pub. L. 103-415, 108 Stat. 4299, October 25, 1994 and Pub. L. 103-416, 108 Stat. 4305, October 25, 1994.

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, added section 217 to the INA. Section 217, 8 U.S.C. 1187, established the nonimmigrant Visa Waiver Pilot Program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. That original provision authorized the participation

of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly through their designees. These original qualifying countries included: France; the Federal Republic of Germany; Italy; Japan, the Netherlands; Sweden; Switzerland; and the United Kingdom. [See Federal Register publications 53 FR 24903-24904, June 30, 1988; 53 FR 50161-50162, December 13, 1988; and 54 FR 27120-27121, June 27, 1989.]

Pub. L. 103-415 amended section 217 of the INA to extend the Visa Waiver Pilot Program (VWPP) through September 30, 1995. Pub. L. 103-416 amended section 217 of the INA to extend the Visa Waiver Pilot Program to September 30, 1996, and to create a new probationary status for certain countries which meet the requirements for that status under the Visa Waiver Pilot Program and which are designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B-1/B-2 visa requirement.

On November 29, 1990, the President approved the Immigration Act of 1990 (Pub. L. 101-649, 104 Stat. 4978) [IA]. Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended its provisions to all countries that meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. [See 56 FR 46716-46717, September 13, 1991.] Brunei was designated as a participant in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an interim rule published at 58 FR 40581-40586 of the Federal Register of July 26, 1993. On March 28, 1995 the interim rule published at 59 FR 15872-15873 added Ireland as a Visa Waiver Pilot Program country with probationary status.

Each of the above rules amended 22 CFR 41.2. This interim rule, with request for comments, further amends Part 41, Title 22 to include Argentina as a Visa Waiver Pilot Program country

since it meets the requirements for that status under INA 217, as amended.

Argentina does not require visas for nationals of the United States entering for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States nationals. Other requirements are that the country meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; that it meet statutorily prescribed limits on rates of exclusion at port of entry and on overstay limits, and that it have a machine readable passport program. Argentina meets these additional requirements. Argentina is, therefore, added effective July 8, 1996 as a participating country in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the Federal Register.) Therefore, effective on the publication date of this interim rule, citizens of Argentina shall be eligible for participation in the Visa Waiver Pilot Program.

Interim Rule

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to both the traveling public and United States businesses. Therefore, it is being made effective thirty days after publication in the Federal Register. In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12988 and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

In view of the foregoing, 22 CFR Part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104, 66 Stat. 174; 8 U.S.C. 1187, 108 Stat. 4312 and 4313.

2. In § 41.2 the last sentence of paragraph (l)(2) is amended by removing the period and adding the following text at the end of the sentence:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) Visa Waiver Pilot Program. * * * ; and Argentina July 8, 1996.

Dated: July 13, 1996.
Mary A. Ryan,
Assistant Secretary for Consular Affairs.
[FR Doc. 96-17194 Filed 7-5-96; 8:45 am]
BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 94-30]

RIN 2125-AD43

Federal-Aid Project Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on Federal-aid program approval and project authorization. In light of changes made by the Intermodal Surface Transportation Efficiency Act of 1991, in the area of statewide planning and transportation improvement programs, and the joint FHWA/Federal Transit Administration (FTA) regulations implementing those changes, this regulation removes the obsolete project programming provisions from this part. This regulation provides more flexible funding arrangements and a more flexible Federal-aid authorization process. Changes contained in related laws are included.

EFFECTIVE DATE: This final rule is effective August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Engineering, 202-366-4658, or Wilbert Baccus, Office of the Chief Counsel, 202-366-0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The amendments in this final rule are based primarily on the notice of proposed rulemaking (NPRM) published in the February 17, 1995, Federal Register at 60 FR 9306 (FHWA Docket No. 94-30). All comments received in response to this NPRM have been considered in adopting these amendments.

The initiation of work for transportation projects funded under the Federal-aid highway program is a two-step process. First, the State, in cooperation and consultation with local officials, as appropriate, through the metropolitan and statewide planning process, determines activities which will be advanced with Federal funds made available under title 23, United States Code, and the Federal Transit Act (49 U.S.C. 5301-5338) and develops a Statewide program of projects for these activities. Prior to passage of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914) (ISTEA), the requirements for developing the program of projects were found in 23 U.S.C. 105 and the implementing regulations in 23 CFR part 630, subpart A. With passage of the ISTEA, title 23, U.S.C., was modified and the new requirements concerning development of a program of projects, now referred to as the Statewide transportation improvement program, are contained in 23 U.S.C. 135. The implementing regulation for this section is in 23 CFR part 450 and was initiated through previous rulemaking actions.

Accordingly, those requirements pertaining to a program of projects in 23 CFR part 630, subpart A, no longer need to be retained. This final rule therefore eliminates these programming references.

The second step in initiation of work is the project authorization process. The State highway agency (SHA) requests FHWA authorization to proceed with a proposed Federal-aid highway project. The FHWA authorization commits the Federal government to participate in the funding of a project, except in those instances where the State requests FHWA authorization without the commitment of Federal funds. In addition, FHWA authorization also establishes a point in time after which costs incurred on a project are eligible for Federal participation. The requirements covering project authorization are contained in this final rule. The following is a section-by-section analysis of the amendments

made by this final rule to the present regulations.

Section-by-Section Analysis

Section 630.102 Purpose

The statement of purpose is revised to eliminate the reference to programming of projects since this activity is eliminated from this subpart.

Section 630.104 Applicability

The existing § 630.104, Definitions, is replaced by a new section identifying the types of projects that are covered by this subpart. FHWA planning and research funds, as defined in 23 CFR 420.103, are authorized using the procedures in the regulations dealing specifically with these types of funded projects. Projects utilizing special funding may have unique authorization requirements, and these types of projects will be authorized as set out in implementing instructions or regulations.

Section 630.106 Authorization to Proceed

The current § 630.106, Policy, is removed. A new § 630.106, Authorization to proceed, is redesignated from current § 630.114, covering the authorization process, and it retains many of the basic principles set forth in existing § 630.114. Modifications were made to provide greater flexibility in some funding areas, and other additions were made for clarification. The following discussion breaks down new § 630.106 by individual paragraph.

Paragraph (a) retains the requirement that FHWA authorization to proceed with a Federal-aid project will only be given in response to a request from the SHA, and then only if the applicable requirements in law have been satisfied for the project.

Paragraph (b) retains the longstanding requirement that Federal-aid funds will only participate in costs incurred after the date the FHWA has authorized the State to proceed with the project. However, exceptions to this requirement are allowed under a process set forth in 23 CFR 1.9(b). For informational purposes, wording has been included in paragraph (b) to identify and cross reference the exception process.

Paragraphs (c), (d), and (e) retain the requirement that, at the time a Federal-aid project is authorized, the total amount of appropriate Federal funds for the project must be available. Four general categories of exceptions to this rule are retained from the existing regulation. A fifth category of exceptions in the existing regulation,

related to bond issue projects under 23 U.S.C. 122, has been eliminated. Section 311 of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568)(NHS Act), enacted November 28, 1995, significantly revised 23 U.S.C. 122. Previously, section 122 allowed certain types of projects to be approved as bond issue projects. Similar to advance construction, these projects were advanced as Federal-aid projects without any commitment of Federal funds until the bonds matured and the State converted the projects to regular Federal-aid. As amended, section 122 makes bond related costs eligible for Federal reimbursement on any Federal-aid project; however, the process of converting bond issue projects similar to advance construction projects is no longer set forth in the section. As a result, paragraph (c) of § 630.106 has dropped bond issue projects from the listing of exceptions.

Paragraph (f) is added for purposes of clarification. The FHWA authorization represents a contractual action by the FHWA, and the Federal share of eligible costs must be agreed upon when the authorization occurs. The Federal share may be in the form of a specified percentage of eligible costs or a lump sum amount. Use of the lump sum share is intended to accommodate those instances where there is a desire to commit a fixed amount of Federal funds to a project. The lump sum amount may not exceed the legal pro rata share for the Federal funds involved; this may require downward adjustment of the lump sum amount when costs of eligible work on a project are less than the initial estimates at the time of FHWA authorization.

The Federal share agreed to at the time of FHWA authorization is to continue through the life of the project. Manipulation of funding levels of individual projects to accommodate program funding changes or needs is not allowed. However, adjustments to the Federal share are permitted for projects where bid prices are significantly different from the estimates at the time of FHWA authorization and should be made prior to, or shortly after, contract award.

In addition, Federal participation is based on eligible costs incurred by the State. The Federal share of such costs cannot exceed the maximum share permitted by legislation.

Paragraph (g) incorporates into the regulation the provision in 23 U.S.C. 120(i) that allows a State to contribute more than the normal State match on a Federal-aid project. This provision has been interpreted to mean that a State

may overmatch and not be tied to a mandatory Federal share. However, project financing proposals that result in the Federal share representing only a minor percentage of eligible work should be avoided unless they are based on sound project management decisions.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket No. 94-30 on or before April 18, 1995. There were 10 commenters to this docket, all representing State transportation agencies.

Three State transportation agencies specifically endorsed the proposed rewrite of the regulation. The other State agencies raised several issues for consideration, which have been grouped into the following categories: (1) Third party (private) cash donations; (2) token financing; (3) the relationship of this rulemaking to FHWA's innovative financing test and evaluation project; and (4) establishing a project's Federal share.

Third Party Cash Donations

This issue received the most comments. The NPRM proposed to include a new provision in the regulation that would clearly set forth the cost sharing principles for Federal-aid highway projects, including the requirement at the time the NPRM was issued that a third party cash contribution to a specific project could not be applied to the required State matching share but instead had to be applied to reduce the overall project cost. The commenters felt the requirement on third party donations was overly restrictive, diminished the incentive for States to seek third party contributions, and could adversely affect the advancement of certain projects. Although these points are well taken, the requirement on third party cash contributions, as stated in the NPRM, reflected a legal interpretation consistent with title 23 as it existed at that time.

A significant change has occurred in Federal highway law related to third party donations since the NPRM was issued. The NHS Act amended 23 U.S.C. 322 to allow the value of third party funds, materials, or services donated to a specific Federal-aid project to be applied to the State's matching share. Thus, Congress has provided legislative relief on this matter.

The FHWA has issued implementing guidance on 23 U.S.C. 322 and the application of third party donations of

funds, materials, or services towards the State's matching share. That guidance is available for review in FHWA Docket No. 94-30 in the FHWA Docket Room at the address listed above. Accordingly, the matter of third party contributions will not be addressed in this regulation.

Token Financing

Several commenters expressed concern about the NPRM provision on "token financing" and the accompanying preamble discussion which suggested that, as a general rule of thumb, Federal funding for a specific project should represent at least 50 percent of eligible project costs. It was pointed out that the phrase "token financing" is vague and not clearly defined in the regulation. Further, the NPRM preamble discussion that suggested a project have at least a target Federal funding level of "50 percent" was interpreted as being too inflexible. Several commenters recommended a lower percentage threshold or a minimum dollar figure.

Section 630.106(g) of the final rule adds a new provision to implement 23 U.S.C. 120(i) which allows the State to contribute more than the normal State match on a project. The phrase "token financing" has not been used in the regulation. Instead, the concept of "token financing" has been expressed in the phrase, "project financing proposals that result in the Federal share representing only a minor percentage of eligible work should be avoided." The phrase "minor percentage" has not been defined, by a specific value or a general target value, in either the regulation or this preamble and considerable flexibility is intended. As expressed in § 630.106(g), this provision is to be applied based on sound project management decisions. For example, it would make little sense to place small amounts of Federal funds in a large number of projects. This could overburden the FHWA and would unnecessarily Federalize a large number of projects. It is expected that a State and FHWA division office will reach agreement on a reasonable implementation of this requirement based on project circumstances.

Relationship of This Rulemaking to FHWA's Innovative Financing Test and Evaluation Project

In 1994, the FHWA established a nationwide innovative financing test and evaluation project, known as TE-045, to evaluate new financing concepts to increase investment or reduce public agency costs on Federal-aid highway projects. Under TE-045, numerous concepts are currently being evaluated.

Two of these concepts, "phased funding" and "tapered share," were mentioned by commenters on the NPRM as issues that could be addressed in this regulation.

When the FHWA authorizes a State to proceed with a Federal-aid highway project, the FHWA is required to obligate Federal funds for the full Federal share of the cost of the work being authorized. Phased funding is an exception to this requirement. Under phased funding, the FHWA obligates an amount of Federal funds for each year a project is under construction, the annual amount obligated being equal to the estimated project construction expenditures expected in the year. Thus, phased funding is a financing technique that can accelerate project advancement because a State can proceed with project construction before the full Federal share of the cost of the work is available to the State.

Previously, under § 630.114(h)(5), the FHWA Administrator had the authority, in special cases, to allow a project to proceed without the full Federal share of costs being available to a State. This authority had been used to approve phased funding on a small number of very costly Interstate projects. Early on, TE-045 accepted proposals to experiment further with the phased funding concept; however, no additional proposals are planned for testing. This is because of the FHWA's 1995 revision of its policy on advance construction projects that now allows an advance construction project to be converted to a regular Federal-aid project in increments over time. Partial conversion of advance construction projects can accomplish much of the same flexibility that phased funding provides a State. As a result, the FHWA has decided there is no need at this time to modify the phased funding authority the Administrator has under this regulation. The provision that allows the Administrator to approve special case exceptions for phased funding is retained as § 630.106(c)(4).

Tapered share is an alternate means of making project reimbursement to a State. Under the tapered share concept, the Federal share of costs incurred can vary as reimbursement is provided to a State, as long as the overall Federal funding provided to the State does not exceed the amount of Federal funds obligated when the project was authorized. For example, on a project that is being cost shared at 80 percent Federal, 20 percent State, the State's billings to the FHWA are normally reimbursed with Federal funds at 80 percent of the billed amount. However, the tapered share concept could be

applied to allow a State to receive 100 percent Federal funds on early billings with the Federal share tapering off on later billings.

The tapered share concept is a reimbursement or payment issue, not an authorization issue. Because this regulation covers authorization requirements, the tapered share concept will not be addressed in this regulation. The FHWA continues to evaluate the tapered share concept under TE-045 and it is expected that any proposals to allow this concept, including recommendations on needed statutory changes, will emerge from TE-045.

Establishing a Project's Federal Share

In the NPRM, § 630.106(f) was proposed to clarify that the Federal share could be established either as a percentage of eligible project costs or as a lump sum amount, provided the lump sum amount did not exceed the maximum legal percentage allowed for the Federal-aid funding being used on the project.

One commenter suggested another alternative, i.e., that the authorization would specify a percentage with a maximum amount of Federal funds also specified. If a State establishes Federal share as a percentage, any decision to further impose an upper limit on additional Federal funds it will provide to a project, should overruns occur, is a State decision. This decision has no impact on the amount of Federal funds being obligated on the project when the FHWA initially authorizes the work because the amount of Federal funds obligated would still be determined based on the specified Federal share percentage. Consequently, this proposed alternative has not been incorporated into the regulation. If a State desires to set an upper limit for Federal funding on a project where Federal share has been established by percentage and desires to alert all parties involved with the project of the limit, one means of accomplishing this is with an appropriate note on the Federal-aid project agreement.

Several comments were received concerning the adjustment of Federal share during the life of a project. The authorization of a project, with the accompanying obligation of Federal funds, is a contractual action by the FHWA, which has been viewed as fixing or establishing the Federal share of the project. The FHWA's longstanding position has been that Federal share could not be adjusted after the initial project authorization. Recognizing that some flexibility is desirable, particularly in situations involving construction work where bid prices are significantly

different from the engineer's estimate on which the initial authorization of construction is based, the NPRM proposed to allow the Federal share to be adjusted after authorization to reflect bids received.

One commenter suggested eliminating the provision that Federal share is established at authorization and replacing it with a requirement that Federal share be established when the Federal-aid project agreement is executed, after which it could not be adjusted. This suggestion is not being implemented. The timing of when a Federal-aid project agreement is executed for a project can vary considerably, with it sometimes being combined directly with the authorization and sometimes following the authorization by several weeks. Keeping in mind that the FHWA's authorization is a legally binding action on the agency's part, it is at this point that the Federal share being committed to the project needs to be clearly defined.

Other commenters suggested that a State be allowed to continue to make adjustments to Federal share throughout the life of a project. Allowing these adjustments raises several concerns. How many times could changes be made? Would changes be allowed after construction is physically completed? Could changes be retroactive and applied to costs already incurred? What are the Federal fiscal implications of unrestricted changes? At this time, the decision has been made not to expand flexibility for adjusting Federal share beyond that proposed in the NPRM, namely, that Federal share could be adjusted based on the bids received. The final rule has added clarifying language to indicate that any such adjustment should occur before or shortly after award of the contract.

Another comment concerned Federal shares for various project activities. The commenter appears to be interpreting the word "project" to include all work phases of a project, such as design, right-of-way, and construction. The commenter was concerned that if a specific Federal share was established for design work, a State would be locked into using that same Federal share on all subsequent activities, such as the construction work. This is not the intent of the regulation. The term "project" is intended to mean that particular activity or phase of work for which Federal funds are being authorized. Federal share is established for each individual authorization. Design work could be authorized at one Federal share and construction work later authorized at a different Federal share.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The amendments would simply make minor changes to update the Federal-aid project authorization regulations to conform to recent laws, regulations, and guidance, and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the amendments would only clarify or simplify procedures presently being used by SHAs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would only clarify or simplify procedures used by SHAs in accordance with existing laws, regulations, or guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action merely conforms the Federal-aid project authorization regulations to recent laws, regulations, and guidance; clarifies these regulations; and gives the SHAs more flexibility in implementing them.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization.

Issued on: June 26, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, by revising part 630, subpart A to read as follows:

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Federal-Aid Project Authorization

Sec.

630.102 Purpose.

630.104 Applicability.

630.106 Authorization to proceed.

Authority: 23 U.S.C. 106, 118, 120, and 315; 49 CFR 1.48(b).

Subpart A—Federal-Aid Project Authorization

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects.

§ 630.104 Applicability.

(a) This regulation is applicable to all Federal-aid projects unless specifically exempted.

(b) Projects financed with FHWA planning and research funds, as defined in 23 CFR 420.103 are not covered by this subpart. These projects are to be handled in accordance with 23 CFR parts 420 and 450.

(c) Other projects which involve special procedures shall be authorized as set out in the implementing instructions for those projects.

§ 630.106 Authorization to proceed.

(a) The FHWA issuance of an authorization to proceed with a Federal-

aid project shall be in response to a written request from the State highway agency (SHA). Authorization can be given only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied.

(b) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed except as provided by 23 CFR 1.9(b).

(c) Authorization of a Federal-aid project shall be deemed a contractual obligation of the Federal government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the total agreed Federal share, either pro rata or lump sum, of the cost of eligible work to be incurred by the State, except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(3) Projects for ROW acquisition in hardship and protective buying situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accordance with the provisions of 23 CFR part 712.

(4) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(1) through (c)(4) shall contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal government to provide Federal funds for that portion of the undertaking not fully funded herein."

(e) When a project has received an authorization under 23 CFR 630.106(c)(2) and (c)(3), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(3) Federal participation is limited to the agreed Federal share of eligible costs incurred by the State, not to exceed the maximum permitted by enabling legislation.

(g) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. In general, financing proposals that result in only minimal amounts of Federal funds in projects should be avoided unless they are based on sound project management decisions.

[FR Doc. 96-17232 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 901

[Docket No. FR-3447-F-02]

RIN 2577-AA89

Office of the Assistant Secretary for Public and Indian Housing; Public Housing Management Assessment Program—Conforming Change

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule removes the adjustment for the heating degree day (HDD) factor from Indicator #4, Energy Consumption, of the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The effect of removing this adjustment is to conform the indicator to current HUD practice, which no longer makes use of the HDD factor.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 708-1380. A telecommunications device for hearing or speech impaired persons (TTY) is

available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On October 13, 1994 (59 FR 51852), a final rule was published in the Federal Register that eliminated the application of the HDD factor for utility consumption. That rule will first affect PHAs with fiscal year ending December 31, 1995. The PHMAP scores for these PHAs are computed as of June 30, 1996. This rule makes a conforming change to eliminate the HDD factor as an adjustment in Indicator #4, Energy Consumption.

The Department has published a proposed rule (61 FR 20358, May 6, 1996) that would revise all of the PHMAP, including the current Indicator #4. However, because a comprehensive PHMAP final rule will not be published in time to correct Indicator #4 for the June 1996 PHMAP computation, HUD is issuing this final rule to remove the HDD factor. This action will avoid confusion and permit the timely computation of PHMAP scores.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where 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) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. This rule eliminates an adjustment factor that can no longer be used because of other regulatory changes.

Environmental Impact

A Finding of No Significant Impact (FONSI) 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 FONSI made in the development of the proposed rule published on May 6, 1996 (61 FR 20358) remains applicable to this final 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 at the above address.

Regulatory Flexibility Act

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 does not have a significant economic impact on a substantial number of small entities. The rule eliminates a single adjustment factor for PHAs that has been rendered inapplicable because of other regulatory changes and HUD does not anticipate a significant economic impact on a substantial number of small entities resulting from this elimination.

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 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. The rule eliminates a single adjustment factor that has become obsolete. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact

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, and, thus, is not subject to review under the Order. The rule only involves the removal of a single, obsolete adjustment factor for management assessment of PHAs.

List of Subjects in 24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is amended as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

1. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j) and 3535(d).

2. In § 901.10, paragraph (b)(4) is revised to read as follows:

§ 901.10 Indicators.

* * * * *

(b) * * *

(4) **Energy Consumption.** The annual energy consumption. This indicator has a weight of x1.

(i) **Grade A:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased.

(ii) **Grade B:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased by more than 3%.

(iii) **Grade C:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 3% and less than or equal to 5%.

(iv) **Grade D:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 5% and less than or equal to 7%.

(v) **Grade E:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 7% and less than or equal to 9%.

(vi) **Grade F:** Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 9%.

* * * * *

Dated: June 27, 1996.

Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96-17257 Filed 7-5-96; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211 and 212

RIN 1076-AA82

Leasing of Tribal Lands for Mineral Development and Leasing of Allotted Lands for Mineral Development

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) of the Department of the Interior (Department) is promulgating regulations revising and updating regulations in 25 CFR Parts 211 and 212 that govern mineral leasing on tribal and allotted Indian lands respectively. The intent of these regulations is to ensure that Indian mineral owners, both tribes and individual owners, desiring to have their resources developed are assured that they will be developed in a manner

that maximizes their best economic interests and minimizes any adverse environmental or cultural impact resulting from such development. Further, these regulations recognize Federal government reorganization, enacted legislation, and prevailing administrative practice in the 58 years since these regulations were first promulgated.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Richard N. Wilson (303) 231-5070 or Pete C. Aguilar (303) 231-5070.

SUPPLEMENTARY INFORMATION: These final rules are published in the exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary for Indian Affairs by 209 DM 8. The principal authors of these rules are Richard N. Wilson and Pete C. Aguilar, both in the Division of Energy and Mineral Resources, Golden, Colorado.

This final rulemaking revises and updates the mineral leasing of tribally-owned minerals governed by the Act of May 11, 1938 (25 U.S.C. 396a), and the mineral leasing of allotted lands governed by the Act of March 3, 1909, as amended, (25 U.S.C. 396). The 1938 Act permits Indian tribes to elect whether they wish to offer their mineral resources for lease by competitive bidding, or enter into negotiations with prospective lessees if bids are not satisfactory. The Act of 1909 permits individual Indian mineral owners to offer their mineral resources for lease by competitive bidding under the aegis of the Secretary.

This is the first comprehensive revision of general BIA regulations governing mineral leasing of Indian lands since 1938. In the intervening period Congress has enacted many laws applicable to Indian mineral leases, including the National Environmental Policy Act of 1969 and the Federal Oil and Gas Royalty Management Act of 1982. There have also been major changes in Federal Indian policy, as reflected in the Indian Self-Determination Act of 1975 and recent amendments thereto. This revision is the product of many years of consultation with Indian tribal leaders. It is intended to update, streamline and clarify the procedures for Indian mineral leasing and administration, consistent with the Federal government's role as trustee for these mineral resources and with the modern Federal policy of self-determination. Indeed, they largely reflect current BIA practice and procedure, and are intended in part to eliminate the confusion often fostered by the existing,

outmoded regulations. Although these revised regulations include new requirements imposed by modern statutes and intervening judicial interpretations of the BIA's legal responsibilities, they are no lengthier than the existing regulations, most of which have been in place for 58 years.

Pursuant to section 8 of the Indian Mineral Development Act (IMDA) of 1982, the BIA published a notice of proposed rulemaking in the Federal Register on July 12, 1983 (48 FR 31978) to revise and reorganize the regulations governing solid mineral, oil and gas, and geothermal leasing adopted pursuant to the Acts of 1909 and 1938, last revised in their entirety on December 24, 1957 (22 FR 10588); as well as to promulgate regulations implementing the IMDA. On August 24, 1987, the BIA published final regulations (52 FR 31916) that were scheduled to become effective on October 24, 1987. Then, in response to concerns expressed by the public, the regulations were amended and republished as proposed on October 21, 1987 (52 FR 39332), and the public was notified that the regulations published on August 24, 1987 would not become effective.

Public responses to these publications contained compelling arguments for restructuring the format of the proposed regulations. Several commenters stated that the October 21, 1987 proposed regulations were confusing and ambiguous. The format of the proposed regulations, implementing the Acts of March 3, 1909 and May 11, 1938, and the IMDA; combined the regulations into two separate parts: (1) Part 211, contracts for prospecting and mining on Indian lands (except oil and gas and geothermal) and (2) Part 225, oil and gas and geothermal contracts. The most common major concern was whether provisions of the IMDA would supplant lease and regulatory conditions contained in lease contracts entered into under the authority of the 1909 and 1938 Acts. The regulatory format created confusion about contract approval procedures for leasing tribal versus allotted lands. In addition, the format created confusion between regulatory requirements for solid mineral versus fluid mineral contracts. The uncertainty expressed by Indian interests and industry on numerous issues convinced the Department that the regulations needed to be entirely reformatted and revised.

The proposed regulations were then organized under a system that would be more familiar to both Indian mineral owners and industry. The proposed regulations were organized in three

parts: (1) 25 CFR Part 211 provided the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals, on tribal lands under the Act of May 11, 1938, as amended; (2) 25 CFR Part 212 provided the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals, on allotted lands under the Act of March 3, 1909, as amended; and (3) 25 CFR Part 225 provided a new and separate part governing minerals agreements for development of Indian minerals under the IMDA.

Along with the reformatting, many changes were made to the individual parts of the regulation. Those changes reflected the Department's efforts to be responsive to the comments received in 1987, and to include the additional business and administrative experience that had been gained on several issues during the intervening years.

In order to provide Indian mineral owners and Indian-mineral operators full opportunity to review and comment on the reformatted and rewritten regulations, the Department determined that those regulations should be published as proposed rather than as final rules, and that the public should be given 90 days to review the regulations and provide written comments. The proposed rulemaking was published in the Federal Register (56 FR 58734) on November 21, 1991. The closing date for submission of review comments on the proposed rulemaking was February 19, 1992.

Comments received from Indian mineral owners, industry, and the public were directed mostly to 25 CFR Parts 211 and 212. Tribes were especially concerned that the proposed regulations did not adequately recognize tribal rules and regulations and did not provide for adequate notification and communication with tribes prior to implementation of Departmental decision and authority with respect to mineral leasing and mineral management activities. Industry expressed concern about acreage limitations in the leasing of solid minerals and oil and gas, the role of the regulatory structure of the Department and its effects on the reclamation of Indian lands mined for coal, and were still concerned about the possible effects of the proposed rules on existing mineral leases on Indian lands.

Because there were: (1) regulations formerly in place governing the mineral leasing of Indian lands (25 CFR Parts 211 and 212 as well as the regulations of other Federal agencies); (2) no regulations governing the disposition of mineral resources pursuant to the

IMDA; and (3) because the IMDA is and has been utilized by tribes to participate in minerals agreements, since 1982, without benefit of formal regulations designed specifically to implement the IMDA; the Department published separately (25 CFR Part 225, 59 FR 14960, March 30, 1994) as final rulemaking the regulations implementing the IMDA. In response to the wishes and numerous comments of Indian tribes and the public and to ensure that Indian mineral owners and lessees and the general public had adequate and full opportunity for review and comment, the Department determined that the regulations revising and updating 25 CFR Parts 211 and 212 should be published as final rulemaking only after an additional opportunity for review and comment had been provided.

Accordingly, the public comment period was reopened, public meetings scheduled, and additional opportunity provided for concerned and involved parties to further discuss and provide comments, prior to final rulemaking, on 25 CFR Parts 211 and 212 published on November 21, 1991. The comment period was reopened for 60 days by Federal Register notice (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992 to receive public comments on 25 CFR Parts 211 and 212 as proposed and published on November 21, 1991. The closing date for submission of comments on proposed rulemaking was November 2, 1992.

In reviewing all of the issues raised in the 1987, 1991 and 1992 comments and in redrafting the regulations, the goal of the BIA is to ensure that the Department is able to fulfill its trust responsibility by providing adequate provisions to ensure the protection of the trust resources and at the same time benefit the Indian mineral owners by removing unnecessary regulatory barriers and complications that could make their minerals less attractive to industry and thus frustrate development. In addition, consistent with the policy on self-determination, the Department has attempted to provide the tribes as much freedom as possible to make their own determination on issues affecting the development of their minerals.

The regulations are rewritten and restructured in response to the comments received during the comment periods of 1991 and 1992. Because of previous extensive reformatting and restructuring in response to comments received in 1987 (56 FR 58735), as well as to comments received in 1991 and

1992, the Department is of the opinion that a detailed review of comments received during a time interval of more than five years would be more confusing than helpful. Accordingly, the Department decided to provide in the preamble a listing by section of the salient changes made in the proposed regulations.

I. Changes Made to Proposed Rules

Set forth in the following list of changes are most of the clarifying changes, but not each and every minor change, made to the regulations since they were last published as proposed in the Federal Register on November 21, 1991. The proposed rules are modified: (1) in response to comments received; (2) to reflect the fact that 25 CFR Parts 211 and 212 now stand alone after separation and subsequent publication of 25 CFR Part 225 (59 FR 14960) as a final rule; and (3) in recognition of prevailing and customary business and administrative practices developed in the last 58 years (since regulations were first promulgated in 1938) under the Acts of 1909 and 1938. The salient modifications to the proposed rules are here summarized by section. Many of the changes and modifications made in 25 CFR Part 212 are the same as those made in 25 CFR Part 211 or the sections are included from 25 CFR Part 211 by reference. The changes and modifications in sections so referenced are the same in both parts. These changes and modifications as well as changes and modifications in common in the text of both parts of regulation are set forth only in the section summaries of Part 211 below, but are easily found because the numbering and designation of sections in Part 212 parallel those of Part 211. Where significant differences exist the sections of Part 212 are discussed separately (below). The section headings refer to this final rule.

Section 211.1. Purpose and Scope

Several changes are made to this section to more clearly state the general guidance of this section and to assure the Alaska native corporations that 25 CFR Parts 211 and 212 are applicable only to Indian mineral interests held in trust by the United States. In addition, a change is made to clarify that 25 CFR Parts 211 and 212 do not affect certain key provisions of existing mineral leases and permits.

Section 211.3. Definitions

The definitions section of Part 211 is modified somewhat, partly in response to comments, because permits are now specifically recognized in regulation,

and for other reasons. The necessary changes made are:

Applicant is an addition to clarify that no one is a lessee or permittee does not exist until after the issuance of a lease or permit;

Bureau is deleted from definitions because this word is no longer used specifically without qualification in the regulations;

Cooperative Agreement is added because the term is used in many places in the discussion of agreements that allocate costs and benefits among the operator(s) and the mineral owner(s).

Director's representative is added to bring the Office of Surface Mining Reclamation and Enforcement representative formally into Part 211;

In the best interest of the Indian mineral owner is modified to clarify that the Secretary shall consider any relevant factor in making a best interest determination;

Indian Surface Owner is defined in both Part 211 and Part 212 in response to comments and because this phrase is brought into Part 212 by reference to the appropriate sections of Part 211.

Minerals is modified to better define the scope and description of minerals that may be included in a mineral lease or permit on Indian lands;

Permit is added to recognize that permits, as well as leases, may be issued in the course of exploration and development of mineral resources on Indian lands;

Permittee is added to recognize one who holds a permit as compared to one who holds a lease on Indian land;

Tar sand is deleted, but tar sand is now defined as a mineral and included as a result of the modification of the definition of "minerals."

Section 211.4. Authority and Responsibility of the Bureau of Land Management (BLM)

References are added to cite the BLM regulations concerning onshore oil and gas and geothermal unitization and communitization.

Section 211.6. Authority and Responsibility of the Minerals Management Service (MMS)

This section is expanded to clarify that the Secretary may consider alternative provisions in a lease or permit with respect to the requirements found in 30 CFR Chapter II, Subchapters A and C, if they are reasonable and adequately address the royalty functions governed by MMS regulations.

Section 211.7. Environmental Studies

A change is made in this section to clarify that although compliance with

all environmental, archeological and historic preservation statutes is required, the exhaustive, site-specific analyses and surveys demanded when operations begin at a specific site are not invariably required prior to approval of a lease or permit. Rather, the degree and timing of environmental compliance activity demanded at a specific site or area is dependent upon the findings of the environmental analysis or environmental assessment.

Section 211.9. Existing Permits and Leases for Minerals Issued Pursuant to 43 CFR and Acquired for Indian Tribes

This section is modified to clarify that permits and leases issued under 43 CFR on certain Federal lands which later became Indian lands, shall be administered in accordance with the regulations set forth in 30 CFR and 43 CFR, as applicable. This section also provides guidance in the making of payments and the submittal of reports for mineral permits and leases.

Section 211.20. Leasing Procedures

Changes are made in this section to emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of, and in consultation with, the Indian mineral owner. Except for oil and gas, and with the approval of the Secretary, the Indian mineral owner and/or the Secretary may engage in private negotiations in pursuit of mineral leasing. After oil and gas lands have been considered for lease by competitive bid, the oil and gas lands may be leased by private negotiation between the Indian mineral owner and the mineral industry, subject to approval of the Secretary.

Section 211.24. Bonds

Changes in this section emphasize that bonds are payable to the Secretary or the Secretary's designee and provide minimum (nationwide and/or statewide bonds) requirements for the bonding of lessees and permittees. Current financial and business practices are now recognized in the regulations by providing for a variety of financial instruments to accompany a personal bond so that a wide variety of assets can be used to satisfy the bonding requirements.

Section 211.25. Acreage Limitation

As a result of comments, Section 211.25 is rewritten to more nearly reflect current administrative practice. In the previous proposed rulemaking, coal leases were restricted to 640 acres (56 FR 58740). In the final rule the limit is raised to 2,560 acres and may, with the consent of the Indian mineral

owner, be approved in larger acreage. This is similar to the existing regulation. For other minerals each lease may not exceed 640 acres, or the nearest aliquot portion thereof, although multiple leases of 640 acres each may be obtained by lessees. Indian mineral owners and applicants who find the acreage limitations in § 211.25 unduly restrictive may avail themselves of procedures under the IMDA (25 CFR Part 225).

Section 211.27. Duration of Leases

Rewording in this section clarifies the conditions under which a lease may be extended beyond its primary term of lease duration by drilling (oil and gas and geothermal leases) or actual production (solid minerals leases). A provision is added, in the interest of diligent development of oil and gas and geothermal leases, that provides a lease cannot be extended more than 120 days beyond its primary term by drilling activity in the absence of production or an approval of a cooperative agreement.

Section 211.28. Unitization and Communitization Agreements, and Well Spacing

Additions to this section include (1) the requirement that the Secretary consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or a well-spacing plan and (2) a clarification at § 211.28(e) that requests for approval of cooperative agreements, which must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 211.29. Exemption of Leases and Permits Made by Organized Tribes

At the suggestion of tribal commenters, the regulation currently found in 25 CFR § 211.29, acknowledging that tribal laws may supersede these regulations, has been retained in this final rule. However, for clarification purposes, a proviso has been added, stating that tribal law may not supersede the requirements of Federal statutes governing Indian mineral leasing, for example, the requirement in 25 U.S.C. § 396a that a tribal lease must be approved by the Secretary of the Interior.

Section 211.40. Manner of Payments

The change to this section clarifies the manner of payments and specifically identifies the Secretary's designees to receive payments prior to the establishment of production.

Section 211.41. Rentals and Production Royalty on Oil and Gas Leases

The change to this section: (1) raises the minimum annual rental for Indian land to \$2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land; (2) clarifies at § 211.41(c) that the Secretary may consider alternative lease or permit provisions to the requirements of 30 CFR Chapter II, Subchapters A and C, if the alternatives are reasonable and adequately address the royalty functions governed by regulations of the Minerals Management Service; and (3) restores the language in regulations formerly in place at § 211.13(b) thus removing the requirement in the proposed regulations (56 FR 58734) that lessor use of gas in excess of lessee's requirements must be provided for in lease provisions.

Section 211.42. Annual Rentals and Expenditures for Development on Leases Other Than Oil and Gas

The changes to this section increase the minimum annual development expenditure to \$20.00 per acre and increase the minimum rental to \$2.00 per acre in keeping with current rates and rentals for mineral leases on Federal land and to reflect the effects of inflation over the years.

Section 211.43. Royalty Rates for Minerals Other Than Oil and Gas

Minor changes are made to clarify that the royalty rates specified are only minimums, and that higher rates are allowed without any special approvals.

Section 211.53. Assignments, Overriding Royalties, and Operating Agreements

Changes are made in this section to clarify that: (1) the Indian mineral owner must consent to assignment or transfer of approved leases or any interest therein if such approval of the Indian mineral owner is required in the lease; (2) even if such consent is not required the Secretary shall notify the Indian mineral owner of a proposed assignment; (3) agreements creating overriding royalties or payments out of production or agreements designating operators, although not requiring the approval of the Secretary, are required to be filed with the superintendent and do not relieve the lessee from obligations imposed by the MMS for reporting, accounting, and auditing; and (4) in response to comments, the proposed restrictions concerning assignment of partial interests and assignment of stratigraphic intervals are removed from the regulations.

Section 211.54. Lease or Permit Cancellation; Bureau of Indian Affairs Notice of Noncompliance

Changes to this section include: (1) reorganization of the section in the interests of clarity of procedure in the serving of notices of noncompliance, orders of cessation, notices of cancellation, and orders of cancellation; (2) allowing a permittee or lessee thirty (30) days, rather than twenty (20) days, in which to respond to notices; and (3) clarification, by reorganization and addition of paragraphs, of BIA procedures to be followed in the event of noncompliance and necessary enforcement associated with the cancellation process which includes the option of BIA to issue a notice of non-compliance rather than to immediately start cancellation proceedings.

Section 211.55. Penalties

This section is rewritten with minor changes, including a change in section title, to clarify procedures in the event penalties are imposed on a permittee or lessee. A change is made to formally recognize the authority of the director's representative of the Office of Surface Mining Reclamation and Enforcement to impose penalties and paragraph (f) is rewritten to guard against the imposition of multiple penalties by different Federal agencies for the same violation. A penalties section in the Bureau of Indian Affairs minerals regulations continues to be necessary because the only other remedies available to the Secretary for noncompliance with permit requirements or breach of the lease are cessation of operations or cancellation of the lease, either of which may be seen as extreme measures and may cause harm to the interests of the Indian mineral owner. Also, there are no penalty provisions under any other Federal agency's regulations to provide for enforcement of provisions of a permit or lease which includes solid minerals or other mineral commodities not covered by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) or the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The new rule also provides more detail on the due process and appeal procedures available to a lessee or operator subject to a penalty assessment, than is found in the existing rule in 25 CFR § 211.22.

Section 211.56. Geological and Geophysical Permits

Change is made in § 211.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal

Government, if no time limit for the release of data is prescribed in the permit; and to provide that data release is subject to the consent of the Indian mineral owner.

Section 212.20. Leasing Procedures

Changes made in this section emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of the Indian mineral owner and that the lease or permit shall not be approved without the consent of the Indian mineral owner. After the lands have been considered for lease by competitive bid, the Secretary may engage in negotiations, at the request of, and on behalf of the Indian mineral owner, in pursuit of mineral leasing.

Section 212.21. Execution of Leases

Minor changes are made in the wording to clarify under what circumstances the Secretary may execute leases on behalf of the Indian mineral owners. A change has been made to subsection (b), in part to reflect the existence of modern tribal courts, by adding a proviso that the Secretary may exercise this authority only if there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

Section 212.28. Unitization and Communitization Agreements, and Well Spacing

This section, included in Part 212 by reference to Part 211 in proposed rules, is now specifically included in Part 212 in final rules because of necessary minor differences in the unitization and communitization of allotted versus unallotted lands. Clarification is made at § 212.28(e) that requests for approval of a cooperative agreement, that must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 212.33. Terms Applying After Relinquishment

This section is rewritten with the provision that the lessee may, after lease relinquishment by the Secretary and the reversioning of the lessor's title, withhold payment of rental and royalty until all parties agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. The provision that there must be four or more parties entitled to royalties and

rentals before withholding is permitted is removed.

Section 212.41. Rentals and Production Royalty on Oil and Gas Leases

Changes in this section (1) raise the minimum annual rental for Indian land to \$2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land and (2) clarify at § 212.41(c) that if valuation provisions in the lease are inconsistent with the regulations in 30 CFR Chapter II, Subchapters A and C, the lease provisions shall govern.

Section 212.56. Geological and Geophysical Permits

This section is reorganized in the interests of clarity of presentation and a change is made to proposed § 212.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal Government, if no time limit for the release of data is prescribed in the permit, and to provide that data release is subject to the discretion of the Secretary.

II. Comments Received on Proposed Rules

The notice of Proposed Rulemaking was published in the Federal Register on November 21, 1991 (56 FR 58734). The proposed rules provided for a 90-day comment period ending on February 19, 1992. The comment period was subsequently reopened (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992. The closing date for the submission of comments on proposed rulemaking and the reopened comment period was November 2, 1992. During the two comment periods, 27 commenters submitted written comments and/or oral statements and comments at public hearings. All comments were accepted for consideration in preparation of the final rules and are addressed in this portion of the preamble (Section II). All substantive comments applicable to sections of 25 CFR Parts 211 and 212 were considered with respect to both Parts whether or not the comments were directed to Part 212 specifically.

(1) One commenter states that the title of Part 211 creates some unnecessary confusion by referring to "Leasing" of tribal lands; that Part 225 also applies to certain "leases" of tribal lands, when negotiated under the IMDA; and that the title to Part 211 would be more accurate if it referred to "Competitive Bid Leasing" rather than just "Leasing."

Response: References to leasing are mostly removed from 25 CFR Part 225 (published separately in final rulemaking, 59 FR 14960) and efforts made to refer, where at all possible, to the disposition of mineral resources under Part 225 as disposition by minerals agreement. Also, at the request of the Indian mineral owner or in the event of waiver, rejection, or failure of the bidding process, negotiated leases may be issued under Parts 211 and 212. Thus, the present titling of Part 211 is retained without change.

(2) Several commenters stated that sufficient time for review of the proposed regulations was not initially provided and ask for extended review time as well as public hearings at locations convenient to the Indian tribes; and stated that the proposed rules should be subject to a negotiated rule-making process among interested tribes, industry, and the Bureau of Indian Affairs.

Response: As set forth in the introductory remarks (above), the Secretary reopened the period for comment for an additional 60 days and public hearings were held at Denver, Colorado and Albuquerque, New Mexico. Thus, the regulations have been subject to written oral comments twice and all interested parties have been afforded an opportunity to influence the content. Additionally, the regulations are not subject to negotiated rulemaking processes because enacted and codified legislation is not subject to subsequent unilateral negotiation to the exclusion of any concerned party.

(3) One commenter indicates that the purpose of the proposed rulemaking is to make regulations consistent with the regulations governing mineral leasing and development of Federal lands. The commenter states that mineral leasing and development on Indian lands are not sufficiently similar to mineral leasing on Federal lands to justify uniformity.

Response: One of the Department's purposes in the reformatting and changing of proposed rules is to make, *when appropriate*, these regulations consistent with the regulations governing mineral leasing and development of Federal lands (56 FR 58734). Appropriate consistency is desirable because many of the operating and reclamation regulations of other offices and bureaus of the Department of the Interior are also applicable in the day-to-day management of the mineral estate on Tribal and allotted Indian lands subject to mineral leasing and development under 25 CFR 211 and 212. The commenter is correct that in a number of important respects mineral

leasing and development on Indian lands differ from such activities on Federal lands; in such instances different treatment is required, and the regulations so provide. To the extent that Indian tribes find the Department's leasing regulations generally unuseful, they may wish to enter into minerals agreements under the IMDA (see 25 CFR Part 225).

(4) One commenter states that the rules must provide that fixed dollar amounts (in lease provisions), whether in relation to annual rental, bonds, or other fees be indexed for inflation.

Response: Although many fixed costs and charges in these regulations have been increased to offset the inflationary effects since the rules were last revised, no provision is made for indexing costs and charges to reflect the expected decrease in the purchasing power of money in future years. It is doubtful if an index (standard) or method of calculation acceptable to all parties to Indian mineral leasing can be found. Further, the IMDA provides the means by which indexing for inflation can be done for individual mineral properties and minerals agreements.

(5) One commenter states that the Department attempting to "remove unnecessary regulatory barriers and complications which could make [Indian] minerals less attractive to industry and thus frustrate development" (56 FR 59735) should be principally addressed by tribes because many of the regulatory barriers and complications exist to protect tribes.

Response: Tribes may address how best to protect their interests in minerals agreements under the IMDA (25 CFR Part 225). Also, provision is made at § 211.29 in final rules for superseding of Federal regulations by the provisions of any properly issued tribal constitution, bylaw, or charter.

(6) One commenter states that the proposed regulations should be repropoed with coal mining leases and operations addressed by separate regulations specific to coal operations because, as proposed, the regulations would impose an unnecessary and duplicate regulatory burden on coal operations on Indian lands; and further states that coal-specific regulations must avoid creating overlapping and duplicative regulatory requirements and that the mining of minerals other than coal also warrants separate treatment.

Response: The authorization for the leasing of allotted and unallotted Indian lands for mining (including oil and gas) is set forth at 25 U.S.C. § 396 and §§ 396a-396g, in which no provision is made for the promulgation of separate regulations for individual mineral

commodities. Although not prohibited, the Secretary is of the opinion that the devising of regulations for the administration of individual mineral commodities occurring in each individual land category would create a costly and unmanageable administrative situation for those engaged in the management of minerals operations and reclamation of disturbed lands. Sections 211.7, 211.24, 211.47, 211.48, 211.51, 211.54, and 211.58 have all been changed to remove the concerns of regulatory overlap and duplication.

(7) Several Alaska Native Regional Corporations ask that language be made in the rules to clarify that the Part 211 Tribal leasing regulations do not apply to lands conveyed pursuant to the Alaska Native Claims Settlement Act of 1971.

Response: Language is added in 25 CFR 211.1(a) to clarify that the rules apply only to lands which the United States holds in trust for the benefit of an Indian tribe, or which are subject to a restriction against alienation imposed by the United States.

(8) Several tribal commenters are in favor of a broader retroactive effect for the proposed regulations. One commenter stated that only the royalty rate should not be subject to retroactive change by the regulations. One industry commenter stated that the regulations should not have any retroactive effect unless agreed to by all parties.

Response: The current regulations in § 211.28 provide for an effective date and state that the current regulations supersede all former regulations. The current regulations then include a proviso, "That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental or acreage unless agreed to by both parties to the lease." This provision has been carried essentially unchanged. No attempt has been made to change this provision that has been in effect for many years and has not led to any problems in interpretation or application. Therefore, no changes were made pursuant to the comments.

(9) Several commenters state that the placement of the provisions of § 211.29, from regulations formerly in place, at proposed § 211.1(c) does not: (1) adequately recognize the regulatory authority of tribes; (2) specifically provide that the proposed regulations may be superseded by the provisions of any tribal constitution, bylaw, or ordinance; nor (3) provide the proper platform for the adoption of tribal bylaws, ordinances, and other measures governing assignments, taxation, and other matters of regulation of the Indian mineral estate.

Response: In response to this and other comments the regulation in 25 CFR § 211.29 has been reinstated in the same place, with minor revisions for clarification purposes. In addition to the tribal regulatory authority recognized in the new Section 211.1(d) (211.1(c) in the proposed rules), Section 211.29 recognizes that tribes may enact laws which supersede these regulations, but not Federal statutes.

(10) One commenter states that many tribes have adopted their own mineral leasing act, which should be noted in the new regulations.

Response: See the response to comment (9).

(11) One commenter is concerned that each part of proposed 25 CFR Parts 211, 212, and 225 have separate sets of definitions and states that only one set of definitions should be used.

Response: The commenter is correct in stating that uniformity of definition is desirable. However, with the decision to separate 25 CFR Parts 211 and 212 from Part 225 (59 FR 14960), more than one set of definitions is required for publication in the Federal Register. Also, the three parts of regulation respond to at least three different sets of empowering legislation over about an 80-year, time span such that differences of definition are unavoidable. Wherever possible terms in the three sets of regulations have the same meaning.

(12) One commenter points out that "Bureau" is specified in definition, but not used consistently in the proposed regulations and suggests usage consistent with definition.

Response: We agree. The word "Bureau" is removed from definitions and the regulations in favor of usage of the "Secretary" or the title(s) of the Secretary's designee.

(13) One commenter states that "coal" ought to be defined because it is a referenced mineral in the proposed regulations.

Response: The definition of "minerals" includes coal specifically in definition and also by virtue of including metalliferous, non-metalliferous, energy, and non-energy minerals. A definition of "coal" is not added in final rulemaking.

(14) One commenter suggests that coal be specifically included in the definition of "solid minerals."

Response: Coal is specifically included in the definition of "minerals", and by virtue of being a solid is included in the definition of "solid minerals." The definition is unchanged in final rulemaking.

(15) Several commenters are concerned that the definition of "gas": (1) may or may not include coal-bed

methane and suggest that methane gas and other "non-traditional hydrocarbons" be exempted from definitions of minerals acquired under a traditional mineral lease; and (2) should exclude those substances found in other minerals as a constituent part of other minerals.

Response: The issues raised by commenters are currently being litigated. The definition of "gas" in these regulations is consistent with the position that the Department of the Interior has taken in litigation. If necessary, distinction among gases of various origin or association may be made by the use of suitable modifiers in lease provisions (e.g., coal-bed methane, natural gas, or carbon-dioxide gas) at the time of advertisement of properties for lease and/or subsequent lease negotiation by principals. Further, the IMDA is available to tribes (and allottees if participating in a minerals agreement under the IMDA) to specifically address in minerals agreements these issues on an individual basis.

(16) One commenter states that the definition of a "gas" should make clear the meaning of "ordinary temperatures and pressure conditions" because of perceived differences in ordinary temperature and pressure in subsurface contrasted with ordinary temperature and pressure at land surface.

Response: Ordinary temperature and pressure generally means near room temperature and about one atmosphere pressure as commonly used in the calculation and handling of gases and in specified standards for the determination of quantities of materials. The specification of temperature and pressure standards for produced gas(es) are found in the operating regulations of the BLM and the production and valuation regulations of MMS. The specification of a standard, if required, should appear in lease provisions or be specified at the time of lease negotiation.

(17) One commenter suggests that the definition in proposed rules of "in the best interest of the Indian mineral owner" be dropped because an adequate and concise definition of this phrase is difficult to compose, although the concept is generally understood.

Response: The final definition includes a partial list of factors to be considered by the Secretary and is consistent with Kenai Oil and Gas, Inc. v. Department of Interior, 671, F.2d 383.

(18) One commenter suggests that the proposed definition of "in the best interest of the Indian mineral owner" be changed to require the Secretary to consider any relevant factor in the best interest determination.

Response: We agree. The definition is changed in final rulemaking.

(19) One commenter is concerned that the definition of "Indian lands" was included in proposed rulemaking with no explanation in preamble and is different than the definition used by OSM.

Response: The proposed rules state (56 FR 58735) that the definitions section of the regulations is expanded significantly to eliminate ambiguities and questions concerning the meaning of frequently used terms. The definition of "Indian lands" used by OSM is found in SMCRA, and is applicable only to the provisions of SMCRA. Indeed, that statutory definition has been the subject of varying interpretations and litigation over its meaning. The definition used in these regulations simply recognizes that Indian-owned lands held in trust or subject to Federal restrictions against alienation are within the purview of the Indian mineral leasing statutes and the Secretary's trust responsibilities.

(20) One commenter suggests that the proposed definition of "Indian lands" specifically exclude Alaska Native Regional Corporations which own land or interest in minerals.

Response: Language is added to 25 CFR 211.1(a) to specify those lands to which 25 CFR Part 211 applies, language which excludes lands or mineral interest owned by Alaska Native Regional Corporations.

(21) One commenter objects to confusing syntax in the proposed definition of "Indian lands" and suggests that such lands be defined (in part) in terms of ownership by group(s) recognized by the United States as eligible for services from the Bureau of Indian Affairs. Another commenter suggests that in use in regulation the words "trust or restricted lands" be changed to "Indian lands."

Response: See the response to comment (19).

(22) One commenter questions the need for including lands owned by any individual Indian in the definition of "Indian lands" because Part 211 deals exclusively with leasing of tribal lands.

Response: Use of the term "Indian lands" in Part 211 is very limited. See Sections 211.9 and 211.22. There the context includes allotted as well as tribal lands.

(23) Several commenters state that "Indian surface owner" needs to be defined in rulemaking.

Response: We agree. The phrase "Indian surface owner" is defined in both Part 211 and Part 212 because sections of Part 211 are referenced in Part 212.

(24) One commenter suggests that the definition of "lessee" imposes diligent development and other operating obligations (as well as the obligation of paying royalty and rental) on a designated royalty payor rather than an operator and suggests the definition be deleted whereas another commenter states that the definition should be broadened to include anyone who has been assigned any rights associated with the lease.

Response: The definition of "lessee" in Parts 211 and 212 parallels and supports similar definitions in the operating regulations of both the BLM and the MMS. The MMS definition includes those who have been assigned an obligation to make royalty or other payments as required by the lease. The definition is retained unchanged in final rulemaking.

(25) Several commenters point out that the definition of "lessee" should not include those prior to the time a lease is granted.

Response: We agree. The definition is rewritten to reflect that those who have made application for or who are negotiating for a lease are not lessees.

(26) One commenter states that the common mineral varieties should be excluded from the definition of "minerals" at § 211.3.

Response: The authority in the Act of May 11, 1938, for the leasing of tribal lands for mining purposes has been interpreted broadly since its enactment. Nothing in the Act suggests that common varieties of minerals should not be included.

(27) Two commenters object to the exclusion of materials from the definition of mining based on the type and volume of material considered for extraction and one questions if the extraction of 5,000 cubic yards of gold and silver bearing material is a non-mining venture.

Response: Common varieties of mineral resources extracted in small amounts are excluded from the definition of mining, especially because the purpose of such extraction is often for local and/or tribal use. However, permits for these small operations are still reviewed and approved at the superintendent's office. Gold and silver are not included in the extraction of small amounts of materials because gold and silver are precious metals and not common mineral varieties. The Indian mineral owner still retains the option of disposing of the common mineral varieties in whatever types and quantities specified by a minerals agreement under the provisions of the IMDA, if desired.

(28) One commenter points out that in proposed rulemaking the definitions of "oil" and "gas" are at odds with the definitions used by the Minerals Management Service and suggests that the definitions of the two Federal agencies should be more compatible.

Response: The definitions of the two Federal agencies are unavoidably different because those at 25 CFR § 211.3 are similar to those used by the Bureau of Land Management in the management of mineral leasing and production whereas the Minerals Management Service definitions are more closely tied to measurement and royalty management concerns.

(29) Three commenters suggest that a definition of "in paying quantities" be included in proposed definitions at § 211.3.

Response: The paying quantities determination is made by the Bureau of Land Management after operations commence and production begins. The definition of paying quantities is contained in 43 CFR Part 3160. The definitions of commercial quantities for geothermal resources is in 43 CFR Part 3260 and for coal is in 43 CFR Part 3480. A definition is not needed here, because this responsibility falls to the BLM to determine whether production meets the "pay quantities" criteria. Therefore no definition is included.

(30) One commenter suggests that additional definitions be added to § 211.3 including "primary term" and "maximum term" as used in § 211.27.

Response: The primary term is defined in context when used to describe the duration of a lease. No reference is made to a maximum term of lease duration in final regulation. These definitions are not added in final rulemaking.

(31) One commenter states that the definition of "tar sands" is restrictive because it is limited in definition to production by mining or quarrying.

Response: We agree. The definition is not used in regulation and is removed from § 211.3 (and § 212.3) in final rulemaking.

(32) Two commenters feel that in proposed §§ 211.4, 211.5, and 211.6 the authority and responsibility of tribal governments over operations on reservation lands should be explicitly recognized and one believes that with respect to the authority and responsibilities of the various agencies of the U.S. Government, explicit mention of the Government's trust responsibility to Indians should be included in the regulations.

Response: The authority and responsibility of tribal governments is recognized and in these rules at

§ 211.1(d), at § 211.29, and discussed above (see comment number 9 and in the summary remarks of this preamble). Insofar as the mention of the Secretary's trust responsibility is concerned all Federal agencies must recognize the trust responsibility of the United States when implementing programs for Indians.

(33) One commenter is especially concerned about § 211.5 and states that the regulations should make it clear that coal mining reclamation requirements and procedures have no application to open-pit, hard-rock operations.

Response: Section 211.5 is changed to specifically cite the Code of Federal Regulations governing coal mining and reclamation requirements and procedures.

(34) One commenter states that the regulations of the MMS recognize that Indian lessees must "dual account" for gas produced from tribal lands and states that the proposed regulations are silent on this methodology which could be viewed as a retreat from the valuation system that greatly enhances tribal income. Another commenter states that these regulations must expressly state that the trust responsibility requires the Secretary to maximize valuation on Indian lands.

Response: Under FOGRMA and the Department of the Interior Manual, the valuation of production for royalty purposes is a function of the MMS. Thus, the requirements and methodology of valuation are properly set forth in appropriate case law and Title 30 of the CFR in Chapter II, Subchapters A and C, of the MMS rules and regulations. Section 211.6 is rewritten to provide that if parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve such alternate provisions.

(35) Several tribal commenters and many industry commenters raise questions concerning the application of environmental, historic preservation and archaeological protection laws to Indian lands. One tribal commenter states that the National Historic Preservation Act does not apply to Indian lands. Another opposes the application of the National Environmental Protection Act (NEPA) to Indian lands. Industry commenters state that compliance with environmental, archaeological and historic preservation survey requirements is an extremely burdensome, expensive, and unnecessary requirement. Several industry commenters recommend that archaeological surveys be performed after approval of a lease, but prior to

approval of any surface disturbing operations.

Response: The National Environmental Protection Act and the other historic preservation and archaeological protection statutes cited in this section apply to Indian lands when activities on those lands are subject to approval by the Federal Government. Therefore, the Department has no discretion to determine whether or not to comply with those laws as they affect mineral leasing on Indian lands. It is also clear that the provisions of NEPA must be complied with at the time of lease approval. It is not possible to defer NEPA compliance until the surface disturbance phase of lease development. However, the prior proposed regulations stated that all historic preservation and archaeological surveys would be performed prior to approval of a lease. It has been determined that this statement may impose a greater burden than is actually required by applicable regulations. Therefore § 211.7 is modified to state that "the Secretary shall ensure that all clearances and surveys are performed in compliance with these laws * * *."

(36) One commenter states that the second sentence of § 211.9 should be revised to read that "Existing mineral prospecting permits, exploration and mining leases on these lands issued prior to these properties being placed in trust status or becoming Indian lands pursuant to 43 CFR * * *."

Response: We agree. Section 211.9 is rewritten to clarify that such lands, once taken into trust or becoming Indian lands, are no longer treated as public or Federal lands (recognizing pre-existing rights).

(37) Several commenters state that the leasing procedures of proposed § 211.20 are not clear and suggest that the procedures are in need of clarification.

Response: We agree. Section 211.20 is rewritten and recast to clarify procedures and to emphasize the involvement of the Indian mineral owner in the leasing process.

(38) One commenter states that § 211.20 is unclear as to amendments to existing leases and suggests that amendments to 1938 Act leases be negotiated under the 1982 Act (IMDA).

Response: Neither rules formerly in place nor final rules provide a formal regulatory scheme for amendment to existing leases because the amendments are either at the convenience of the parties to the lease or result from lease provisions to open and renegotiate a lease after a specified event occurs. Regardless of the approach to amendment, the resulting terms must be approved by the Secretary, an action

resulting in the issuance of a minerals agreement (25 CFR Part 225), a new lease, or ancillary terms appended to an existing lease; all of which are new leases that must be approved by the Secretary. Provision is made for the amendment of minerals agreements (25 CFR Part 225, 59 FR 14975). Minerals agreements are expected to be the preferred procedure for the amendment of all existing leases and agreements.

(39) One commenter states that potential lessees should be instructed to submit lease applications directly to the Indian mineral owner as well as the superintendent at the time of application.

Response: Submittal of applications to lease to multiple offices is not required in final rules. Rather, the Indian mineral owner shall be promptly notified of the lease application and the leasing alternatives. The course of action to be followed after this notification is then contingent upon the decisions of the Indian mineral owner.

(40) Several tribes comment that the royalty rate and rental as well as bonus should be included as variables in the advertisement of leases for sealed or oral bid, and that the Secretary should not unilaterally set a royalty rate and rental amount in the advertisement.

Response: Comments concerning the need for tribal input are well taken and § 211.20 is modified to require consultation with the Indian mineral owner prior to advertisement. However, the comments requesting that royalty rate and rental be variables in the sealed and oral bid process is not accepted because the procedures can be managed only with great difficulty. Past experience has shown that it is extremely difficult to compare the values of bids that are contingent upon three different variables bid separately. In addition, if an Indian mineral owner desires to receive offers to lease a land parcel or tract, the value of which is determined by the total value of a variety of considerations each of which may be dependent on another, the procedures under the IMDA or, in certain circumstances, negotiation offer flexibility to a Tribe.

(41) One commenter states that there ought to be included in § 211.20 a provision that requires BIA to issue a comprehensive analysis of the potential value of the property being considered for oil and gas development and its potential effect upon reservoir production; otherwise, tribes that do not have independent assessment capabilities will have no way of knowing what the value of properties are before they are submitted for bid.

Response: Mineral inventories and appraisals are conducted by the BLM and BIA, depending upon the resources available. Limited resources make it impossible to appraise every mineral tract prior to leasing. The best readily available measure of mineral worth of an oil and gas tract is likely the fair market value of the tract as revealed by past and present bonus bids for the tract or (if available) nearby similar tracts.

(42) One commenter states that the language of § 211.20(b)(5) indicating the high bidder "may" forfeit the required 25 percent of bonus bid should be changed to "shall" and that there is no standard to establish when the forfeiture occurs.

Response: We agree. In final rules a standard is specified and the forfeiture is made certain by the use of the word "shall" in final rules.

(43) One commenter states that the successful oral bidder should be required to immediately pay 25 percent bonus [bid as] deposit at the time of the auction.

Response: The final rules continue to permit five (5) working days in which the successful oral auction high bidder will be allowed to remit the required 25 percent deposit of the bonus bid. In the event of a spirited auction, the successful high bidder may not have at the place and time of auction the requisite 25 percent of the bonus bid for the deposit.

(44) One commenter states that the required publication of a notice of sale at least thirty (30) days prior to the sale date should be sixty (60) days to give an interested party adequate time to prepare for the sale.

Response: The publication of the advertisement of lease sale thirty (30) days in advance of the sale date is a minimum time interval. The publication of the advertisement of date of lease sale and ancillary information may take place more than thirty (30) days before the sale. This minimum time has for many years proved to be a workable minimum.

(45) Two commenters are of the opinion that the proposed rules allow for competitive bonus bid and negotiated leases at the same time and object to negotiations after the potential lessor has the advantage of evaluating bids received. Further, one commenter states that the results of competitive bidding should be final and the winning bid should be awarded the lease.

Response: As owner of the property to be leased, the Indian mineral owner has wide latitude in the determination of methods of auction and conditions of lease sale. Under the trust responsibility, the Secretary must

reserve sufficient latitude to properly discharge that responsibility. Accordingly, there is no provision in final rules for lease sales and lease negotiations to be conducted at the same time for the same land tracts. In the event that the results of a lease sale are not to the liking or not in the best interest of an Indian mineral owner, action must be taken to satisfy the needs and wishes of the potential lessor. Section 211.20 therefore balances concerns of potential lessees and lessors.

(46) One commenter is uncertain why the storage option is granted at 25 CFR § 211.22 and is unsure of what benefit is derived by a lessor when a lessee produces oil and gas, but stores it for future use; and whether or not hydrocarbons not previously produced includes hydrocarbons produced, but stored; and if a lessee may store previously produced minerals indefinitely and thereby hold the lease without payments to the lessor.

Response: The storage option is included at 25 CFR § 211.22 to provide the Indian mineral owner with a mechanism to profitably participate in the demand for surge storage capacity for oil and gas (usually hydrocarbons) by underground storage. Participation is achieved by means of leasing or adjusting existing lease provisions to accommodate produced oil and gas, in existing natural or near natural underground structures (oil and gas traps comprising an oil and gas field) at or near the end of productive life; or those older, produced fields having capacity that can be used to store oil and gas. Payments to Indian mineral owners can be based on metered transfer of oil and gas in and out of the field (structure) that may provide rental in lieu of, or in addition to, royalties deriving from field production. Oil and gas stored may be from the same field or other sources (including pipelines). Usually, provision must be made in royalty, fees, and/or rentals to ensure proper accounting and payment for all oil and gas recovered from storage including quantities in excess of stored amounts and those fluid phases, produced as a result of introduction of stored hydrocarbons (say, residue gas) or other gases, that would not have been produced otherwise. Also, provision must be made in royalty, fees, and/or rentals to pay the Indian mineral owner for the use of the field (trap) for storage purposes. Section 211.22 is unchanged in final rulemaking.

(47) Two commenters representing industry interests recommend the deletion of proposed § 211.23(b) that requires: (1) the filing of a statement

showing a corporate applicant's State of incorporation; (2) that the corporation is authorized to hold interests in property in the State in which the lands are operated; and (3) a notarized statement that the corporation has the power to conduct all business and operations as described in the lease.

Response: The requirements are retained because the information required has been found to be useful to the Department, is not burdensome to industry, and is a standard requirement of long standing for all significant transactions with corporations. Therefore no changes were made in final rules.

(48) Several commenters are concerned that the dollar amounts stated in § 211.24 for bond requirements are inadequate and recommend that bonds be required in amounts sufficient to protect the interests of the Indian mineral owner and the United States.

Response: The final rule balances the high cost of bonds against potential damage to the Indian mineral owner and the United States. Section 211.24 is rewritten to permit the use of personal bonds as surety as well as the customary Statewide and Nationwide bonds and § 211.24(e) provides for increasing bond amounts in any particular case at the discretion of the Secretary. The goal in regulation remains that lessees furnish bond sufficient to ensure compliance with all lease provisions and applicable rules and statutes.

(49) One commenter states that § 211.24 should make provision for bonding to include Federal, State, or fee mineral leases, the surface of which is owned by a tribe or individual Indian, for purposes of surface reclamation as proposed in an approved plan of operation.

Response: The rules in 25 CFR Parts 211 and 212 are concerned with the leasing of minerals on Indian lands. Therefore, the requirements for leasing of Federal, State, and fee minerals must be addressed under other authority, and published elsewhere.

(50) One commenter states that proposed paragraphs 211.24(c) and 211.24(c)(3) are inconsistent in naming the payee.

Response: Although § 211.24 is rewritten the language included in these proposed paragraphs is essentially the same; the payee is the Secretary with the stipulation that the letter of credit is payable to the Bureau of Indian Affairs (the Secretary's designee) upon receipt from the Secretary of a notice of attachment stating the basis thereof.

(51) One commenter states that the Indian mineral owner should be

allowed to be named as the payee on a bond.

Response: An Indian mineral owner cannot be named as payee on Statewide or Nationwide bonds which affect more than one Indian mineral owner. In final rulemaking the Secretary remains the payee because, in the discharge of the trust responsibility, the bond must be continually and easily available to defray the cost of abandonment, reclamation and/or provide for payment of royalties, other charges, and fees in the event of default.

(52) One commenter states that the proposed § 211.24(d) should be changed to state explicitly that bonding shall be in an amount satisfactory to the Secretary and the Indian mineral owner or the Indian surface owner, in amounts sufficient to ensure compliance with the requirements of the authorized officer and the Indian mineral owner or the Indian surface owner and shall be available, in the Secretary's discretion, with concurrence by the Indian mineral or surface owner, to satisfy any unpaid debt of the lessee or assignee to the lessor or surface owner.

Response: In situations requiring complex and detailed bonding in response to many and varied interests, the prospective lessor should consider using a minerals agreement under the IMDA (25 CFR Part 225) rather than 25 CFR Part 211.

(53) One commenter points out that no definition is provided for the term "assignee" which is used in § 211.24.

Response: The paragraph (a) in § 211.24 is rewritten to clarify the use in context of the word "assignee."

(54) Two commenters recommend that proposed paragraph § 211.24(d) be revised to allow the posting of an individual lease bond is some amount not to exceed \$5,000 to encourage independent operators to invest and work on Indian land.

Response: The rule at § 211.24 is rewritten in response to comments to provide in final rulemaking the minimal requirements for the bonding (or equivalent surety) of lessees conducting mineral operations on Indian lands such that the Secretary may adequately and timely fulfill the trust responsibility.

(55) Several commenters object to the single section of land (640 acre), lease-size limitation. It is stated that smaller leases would be less attractive to industry because they would be less economic. Other commenters request that the lease-size limitation be subject to variations on a case-by-case basis to allow for irregularities in land sections.

Response: Except for coal, the lease-size limitations remain the same as in the proposed rules. Coal leases have

historically been limited to 2,560 acres with due allowances for exceptions to provide for the dedication of sufficient reserves to specific projects (powerplants) to ensure that ventures will not fail for lack of fuel. Additional language is added to § 211.25 to restore the 2,560-acre limitation (with provision for exception) for coal and to provide that the rule of approximation shall apply in the event irregular land sections are included in the leased land blocks as well as provision for lands not surveyed under the United States Governmental survey. Changes to § 211.25 are also made to emphasize that the acquisition and holding of multiple leases (both adjoining and not adjoining) of 640 acres each are not affected by the acreage limitation. In the past, large tracts of Indian land have been held by production from a small portion of a lease and in response to this concern the Department has for three decades restricted the size of offered leases (especially for oil and gas) not to exceed 640 acres or one section, with provision for irregular sections. In addition, the problems raised by commenters may easily be mitigated in several ways: (1) acquisition of multiple leases because there is no limitation on the number of leases a party may enter into; (2) inclusion of multiple leases in a unitization or communitization agreement to allow mineral development on one lease to hold more than one lease; and (3) a party desiring a larger lease may enter into negotiations with an Indian mineral owner to secure a minerals agreement in accordance with the IMDA, under which there is no provision limiting lease acreage. Finally, acreage limitations will have no retroactive effect, and so will not reduce the acreage of any current lease.

(56) One industry commenter states that the 10-year limitation on the term of any minerals lease is insufficient to permit development into production, especially for a surface coal mining operation. The commenter recommends that the 20-year time period provided in the Mineral Leasing Act of 1920, for Federal lands, be used instead. The commenter further recommends that the regulations should prevent tribes from entering into leases for periods of less than 10 years.

Response: The Indian Mineral Leasing Act of 1938, that governs leasing of tribal lands, provides a statutory 10-year limit (25 U.S.C. § 396a) with exceptions for the primary term of lease duration. This limitation is statutory and may not be waived by the parties to a lease, or altered by the Department by regulations. As an alternative, the IMDA

does not limit the time period for development and therefore, may be for any time period negotiated by the parties.

(57) One commenter believes that a primary lease term should be determined by the commodity leased, together with a term maximum, say oil and gas leases not to exceed 3 years, solid minerals other than coal not to exceed 5 years, coal not to exceed 10 years, and no lease to exceed a 20-year maximum unless agreed to between the Indian mineral owner and the lessee.

Response: Although permitted by statute, the primary term of lease duration is not specified in final rules as a result of commodity considerations. If the specific mineral commodity is regarded as a critical factor in the determination of lease duration, then this factor may be set forth at the time of advertisement of lease sale, negotiated, or the lease provisions may be determined in minerals agreements, under the IMDA (25 CFR Part 225), by the Indian mineral owner and a prospective lessee.

(58) One tribal commenter points out that some leases impose a maximum ultimate term [of lease duration] of twenty (20) to thirty (30) years. Therefore, the commenter recommends that the regulations include a provision that would defer to specific lease terms on this point.

Response: In any instance where specific lease provisions do not conflict with statutory authorities, or do not prevent the Department from exercising its trust responsibilities, the Indian mineral owners are free to negotiate specific lease provisions of their choosing. In this particular instance the limitation of lease duration by the provisions of lease is entirely appropriate. Therefore, the comment is accepted and a change was made to clarify this point.

(59) One commenter states that commencement clauses (beyond the primary lease term) should not be permitted because such clauses permit oil companies to do nothing until the last day of the primary term, and then begin drilling. Another commenter believes the proposed regulations governing the primary-term commencement clauses works contrary to the actual intent of a primary term and believes § 211.27(b) should be changed. Two commenters recommend the inclusion of the commencement clause at § 211.27 and state that a duration of extension should be included in this section and one states that a continuous drilling clause should be included.

Response: A review of comments indicate that the possibility that this provision would allow lessees to extend leases for an inordinate time period is highly unlikely. Most current leases limit the primary term of lease duration to 3 to 5 years. An extension of this term (duration) while active drilling takes place is an appropriate extension of the lease and accords with standard business practice. However, to ensure that lessees do not abuse this provision, a 120-day limitation has been added in response to concerns of Indian mineral owners. A drilling clause without limitation could extend, by mere drilling that fails to result in production, the primary term of lease duration.

(60) One commenter states that when read literally, the first sentence of § 211.27(a) is inconsistent with the provision for the suspension of operations at § 211.44.

Response: Section 211.44 makes provision for the suspension of operations on a lease after the primary term. The paragraph at § 211.27(a) speaks to the primary term of lease duration.

(61) Several commenters state that the regulations should require tribal consent to any communitization or unitization agreement whether or not such consent is required in the lease. One commenter states that the consent of the mineral owner is seldom required for the communitization of an Indian lease, and in the commenter's view, is unnecessary.

Response: Every tribal lease executed under the Indian Mineral Leasing Act of 1938 contains the following provision or a similar provision:

Unit Operation—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

This provision grants the consent of the tribe to cooperative agreements provided they are reviewed and approved by the Secretary. The Department does not intend to attempt to amend this lease provision through these regulations. Instead, the Department affirms that Indian mineral owners may require consent in any future leases or lease amendments. The Department believes that this remains the most equitable method of handling this issue. However, in response to tribal concerns, a provision has been added at § 211.28 requiring the Department to consult with the Indian mineral owner prior to making a determination concerning an operating,

unitization, or communitization agreement or well spacing plan. This will ensure that the Indian mineral owner has an opportunity to bring any relevant information concerning the proposal to the Secretary's attention prior to any cooperative action or well spacing plan being undertaken.

(62) Two commenters state that an affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent and/or area director has an address should satisfy the requirement that all Indian mineral owners will be notified by the lessee at the time a cooperative agreement is submitted to the superintendent and/or area director.

Response: We agree. Section 211.28(d) is changed in response to this comment.

(63) One commenter states that the Secretary shall approve well spacing programs, in the context of unit agreements and that it is not clear why the regulations single out well spacing in this context for Secretarial approval. Another commenter states that the well spacing program should be approved by the Secretary and the Indian mineral owner.

Response: The paragraph in § 211.28(h) is rewritten to provide that the well spacing program is subject to the approval of the authorized officer under the operating rules of the Bureau of Land Management. Provision is made at § 211.28(b) for consultation with the Indian mineral owner before approval of a well spacing plan.

(64) One commenter states that provision for lease segregation at § 211.28(g) should be included at § 211.28(f) as a specific "Pugh Clause." Such a clause provides that the effect of production constructively obtained through communitization is restricted to lands that are communitized and does not extend to other leases or to any other leased lands outside the communitized area. Another commenter states that § 211.28(g) should be deleted entirely because it provides a pugh clause in leases that are already reduced in size when issued and that segregation should only occur when the lands are partially included in Federal field-wide units. Another commenter states that provision for segregation will clearly discourage leasing and exploration activity on tribal lands.

Response: The segregation clause contained in § 211.28(g) is intended to ensure diligent development of Indian lands. If portions of a lease are not included in a communitization agreement, or within a producing or exploratory cooperative unit then there is no reason why the excluded lease

portion should be held by the unit agreement to the disadvantage of the Indian mineral owner and perhaps of no particular advantage to the lessee, regardless of whether partially within an entire field or mining district or only a portion of an entire field or just within a mining unit. Further, the segregation provision must be applicable to the lease portions both within and excluded from an exploratory or productive unit for any mineral commodity and not satisfy only the pugh clause requirements with respect to an area communitized for gas and oil.

(65) One commenter states that well spacing is governed by state oil and gas regulations and that there is no reason for the Secretary to become involved in well spacing issues.

Response: Each State issues well spacing orders that are commonly, but not necessarily, accepted as a spacing standard within the State or area in question. However, States have no authority to regulate well spacing on Indian land. The Secretary, in consultation with the Indian mineral owner, has exclusive authority with respect to the spacing of wells, as reflected in § 211.28(h).

(66) One commenter states that § 211.28 should be expanded to permit unitization or communitization of hard rock mineral leases and expresses concern about efficiency of operation in exploiting an ore body in two or more sections of land.

Response: We agree. Although § 211.28 is not greatly changed from proposed rules, provision is made for the commenter's concern by stating in final rules that a cooperative unit or other development plan means an agreement to develop a specifically designated area without regard to ownership of the land included in the agreement.

(67) Several commenters ask that various time deadlines be imposed on the superintendent or area director to review and approve or reject cooperative agreements. One commenter requests that agreements submitted after the 90 day deadline be reviewed in the discretion of the superintendent or area director.

Response: Review of these requests for a time limitation for Departmental review of proposed cooperative agreements, indicates that the issues raised in individual agreements and the problems posed in individual cases vary so widely that it was not advisable to specify a set time frame for review. However, the 90 day time period specified in the regulations in effect imposes such a limitation. Cooperative agreements submitted after the 90 day

deadline will be considered by the Department, but the lessee bears the risk that leases may expire prior to the Department being able to take action to approve the agreement.

(68) One commenter states that the existing lock-box arrangement for receipt of monies is working well and another suggests that it be stated in § 211.40 that current lock-box arrangements are not to be affected.

Response: Present lock-box arrangements for the receipt of monies are not affected by § 211.40. The final regulations merely provide for the continuation of existing and standard procedures for the receipt and handling of bonus, rent, and royalty payments.

(69) One commenter suggests that proposed § 211.40 be modified to allow lease provisions and Federal regulations to be superseded by tribal regulation and another states that the regulation should expressly authorize the Secretary to designate the tribe or the tribe's fiscal agent as the payee.

Response: Section 211.40 is rewritten to clarify that unless otherwise specifically provided for in a lease all payments after production has been established shall be made to the MMS or such other party as may be designated, and that prior to production all bonus and rental payments shall be made to the superintendent or area director. Present payment arrangements may be modified by tribal notification to the Minerals Management Service prior to the modification. All payments after production has been established are regulated in 30 CFR Chapter II, Subchapters A and C. Superseding of Federal regulations is addressed in final rules at § 211.29.

(70) One commenter points out that proposed § 211.40 is inconsistent in identifying where payments should be made and states that payments should be made to the BIA and MMS unless otherwise provided for in lease terms.

Response: We agree. Section 211.40 is rewritten to clarify where and when all payments are to be made. Also, after production has been established the payee may modify the manner of payment in accordance with 30 CFR Chapter II, Subchapters A and C.

(71) One tribal commenter requests that the minimum rental be increased from \$1.25 per acre to \$10.00 per acre with a consumer price index adjustment clause. Two industry commenters object that in the proposed regulations rentals are not credited against production royalties.

Response: The minimum rental specified in final regulations is \$2.00 per acre, an increase of \$0.75 per acre from the current rate. This increases the

rental to that presently being imposed for Federal lands leased for oil and gas, which is a standard rate throughout the industry. It is clearly stated in final regulations that the rental will be controlled by the provisions negotiated in a lease. Any Indian mineral owner who wishes to make provision for higher rental and/or adjustments as a hedge against inflation in a lease is free to do so for leases or lease provisions which are negotiated. In such cases, whether or not the rentals are credited against production royalty is entirely up to the parties. Where a lease is silent on this issue, the rentals must be paid in addition to royalties. Therefore, further changes are not made in § 211.41(a).

(72) One tribal commenter states that the minimum royalty be set at 20 percent and others do not object to the 16 $\frac{2}{3}$ percent minimum royalty. Several industry commenters state that the proposed 16 $\frac{2}{3}$ percent minimum royalty is too high and may place Indian minerals at a competitive disadvantage.

Response: The 16 $\frac{2}{3}$ percent royalty proposed in the regulations is a minimum royalty that may be raised upon agreement of the parties to a lease, or which may be reduced upon agreement of the parties and the findings of the Department that a lower rate is in the best interest of the Indian mineral owner. Although industry has objected to the increased rates this change merely brings the rates in line with general practice on Indian lands. For over twenty years the standard royalty rate for all leases on Indian lands has been 16 $\frac{2}{3}$ percent or higher. The change in the regulations will not cause any significant change in leasing procedures on Indian lands. It will not retroactively affect any current leases, and will not require applicants for Indian leases to agree to this royalty rate against their will. The minimum royalty simply requires the parties to submit a good reason why a lower royalty rate is necessary before it may be approved by the Department. This helps to ensure that the Secretary exercises his responsibility to protect trust resources.

(73) Several tribes comment that the regulations should contain provisions concerning valuation of production and other accounting issues. They are concerned that reference to the MMS regulations in 30 CFR Chapter II, Subchapters A and C, will not be sufficient to clarify that the lease provisions concerning valuation issues shall govern in the event that lease provisions are inconsistent with MMS's regulations.

Response: The valuation provisions contained in current 25 CFR § 211.13 were included in the regulations prior to

the creation of the MMS. It is appropriate, now that authority for valuation issues has been given to the MMS, that the BIA leasing regulations defer to the much more detailed treatment of this subject in the MMS regulations. However, in response to tribal concerns a sentence is added to final § 211.41(c) to clarify that the specific provisions of a lease on this issue shall govern where those provisions are inconsistent with the MMS regulations.

(74) One tribe comments that Indian mineral owners should be allowed to use gas which is in excess of the lessees needs for any purpose rather than be limited to use of excess gas for schools or other tribal buildings. Two industry commenters object to this provision and ask that it be removed entirely or that the use of excess gas for tribal buildings be treated as a taking of royalty-in-kind.

Response: The provision in the current 25 CFR § 211.13(b), which is carried over to final rules at 25 CFR § 211.41(d), provides for a reasonable and limited use of excess gas by the lessor. This provision has been included in the regulations for at least 30 years. In addition, many current leases contain a specific provision allowing such use, and all current leases contain a provision adopting regulations in effect at the time of the lease. This means that virtually all current tribal leases are subject to this provision. Also, in the many years that this provision has been either included in the leases specifically or by reference to the regulations, we know of no instance where the right to use excess gas has been abused. Therefore this section is amended to incorporate the language in § 211.13(b) of the current regulations as being clearer than the proposed language. Thus, no change is effected in final rules.

(75) One commenter states that both the annual rental and the expenditure for development on leases other than oil and gas, and geothermal resources should be not less than \$10.00 per acre and should be escalated annually based on the CPI [Consumer Price Index] for all urban consumers.

Response: In § 211.14 formerly in place the minimum annual rental is fixed at \$1.00 per acre and the minimum annual expenditure at \$10.00 per acre unless otherwise authorized by the Secretary. These minimum payments and expenditures have not been changed in many years and thus do not reflect the effects of inflation. In final rules at § 211.42 the minimum annual rental is fixed at \$2.00 per acre and the minimum annual expenditure at \$20.00 per acre, but with no provision

for the expected future decline in purchasing power of money. It is not likely that a satisfactory index or method can be identified. In those situations where escalation of payments and expenditures is an issue, the prospective lessors may, however include indexing in minerals agreements under the IMDA (25 CFR Part 225).

(76) One tribal commenter states that the value of production removed and sold from the lease should be established FOB at the mine rather than at the nearest shipping point as proposed at § 211.43. Another commenter states that the proposed rule would affect their sales (but did not elaborate) and urged deletion of specific commodities from this section.

Response: The wording of 25 CFR § 211.43(a) stating the 10 percent minimum royalty "at the nearest shipping point" is the same as that in regulations formerly in place at § 211.15. In those instances where the point of valuation is an issue or that § 211.43 is not appropriate, as written, to a specific mineral commodity the Indian mineral owner may wish to negotiate the royalty provisions or conclude a minerals agreement under the IMDA (25 CFR Part 225). Section 211.43(a) is essentially unchanged in the final rules.

(77) Two commenters indicate that certain royalty rates and royalty provisions at § 211.43 for minerals other than oil and gas are not sufficient and state that: (1) the royalty rate for byproducts from geothermal resources should not be less than 10 percent of the value of the byproducts; (2) a lower royalty rate should only be granted with the consent of the Indian mineral owner; (3) a lower royalty rate may be allowed, but not to exceed 5 years, after which the royalty rate should be adjusted upward; and (4) that this section should be revised to take into account potential unconventional means for developing coal resources, e.g., where a processed product is made out of coal, the royalty rate should be 12½ percent of the processed product, not 12½ percent of the value of what is removed.

Response: Special lease conditions and provisions for certain mineral commodities, and special and/or new technologies are best negotiated under the IMDA (25 CFR Part 225). Under Parts 211 and 212 a lower royalty rate may be approved only if it is in the best interest of the Indian mineral owner. This determination will require a higher level of analysis to assure that the tribe is receiving adequate consideration. Thus, a minimum royalty rate should

provide no barrier to mineral development. Tribes and industry are required to justify proposed lower royalty rates for leases on a case-by-case basis.

(78) One commenter states that as noted in the proposed rules (56 FR 58736) the BIA for the first time is proposing minimum royalty rates for minerals other than oil and gas with no explanation of the reasons for imposing these minimum royalty rates and urges the BIA to withdraw the minimum royalty provisions.

Response: In current regulations at § 211.15 minimum royalty rates for minerals other than oil and gas are set forth, and have been contained in regulations since 1957. The preamble of the proposed regulations (56 FR 58736), stating that a new section would provide, for the first time, minimum royalty rates for minerals other than oil and gas, was in error.

(79) One commenter states that the proposed rules (§ 211.43(b)) allow a lower royalty rate if it is determined to be in the best interest of the Indian mineral owner but that no valid criteria are established for implementing this term [in the best interest of the Indian mineral owner]. The commenter states further that the lessee has no assurance that a lower rate can be obtained in the event that he proves that a minable deposit exists that cannot profitably be mined at the rate set by regulation and that this could have a negative effect on mineral development under Indian leases.

Response: The criteria implementing the best interest determination are set forth at proposed § 211.3 (56 FR 58738). Minor change in § 211.3 is made in the final rules to require the Secretary to consider any relevant factor in the best interest determination. Special assurances that lower royalty rates can be obtained by a lessor or lessee, cast in a scenario of expected or possible future events, are best sought by negotiation of a minerals agreement under the IMDA (25 CFR Part 225).

(80) Some industry commenters object to the minimum royalty rates in proposed § 211.43 as being too high and one commenter states that 5 percent or less of net smelter returns has long been the royalty standard for base and precious metals under leases of fee simple mineral land and suggests that the regulations should allow minimum royalties more in line with market rates or should establish a royalty formula which will accommodate variances in mineral quality and quantity, mining costs, recovery rates, and the like.

Response: In the event that minimum royalty rates, as set forth in the

proposed and/or final § 211.43, are judged to be too high by the prospective parties to a minerals lease, the parties should consider negotiating an IMDA minerals agreement. Similarly, if risk sharing or royalty adjustment provisions in lease or minerals agreement instruments are contemplated, then the parties should consider negotiation rather than competitive bidding. In the final regulations, the minimum royalties for the competitive acquisition of leases from Indian mineral owners are brought into line with those prevailing on Federal lands (not fee lands). In view of the negotiation alternatives, available under both the Indian Mineral Leasing Act of 1938 and the IMDA, no further changes to § 211.43 are made.

(81) One commenter is of the opinion that proposed § 211.44 requires tribal consent to suspension of operations whereas several other commenters are concerned that suspension of operations for remedial purposes by the Secretary (§ 211.44(a)) does not require the consent of the Indian mineral owner; and another commenter states that the proposed rule would allow an operator to suspend operations without the consent of the Indian mineral owner and should not be permitted.

Response: The suspension of operations provision at § 211.44 is applicable only to leases after expiration of the primary term of lease duration and in no way affects the prerogatives of the Indian mineral owner during the primary term. Section 211.44(a) provides the Secretary the necessary latitude to act, under such provisions and conditions as may be required, in the discharge of the trust responsibility in those instances where all else has failed and remedial measures are required, usually at once, for continued production, protection of the resource, or protection of the environment. Provision is made at § 211.44(b), for mineral properties capable of production after expiration of the primary term of lease duration, such that suspension of operations requires the consent of the Indian mineral owner.

(82) One commenter states that suspension of operations should: (1) never exceed the maximum lease term; (2) require the consent of the Indian mineral owner if the suspension is longer than 90 days; and (3) result in lease cancellation if an application for suspension of operations is denied and the operator [be held] responsible for all abandonment requirements. Another commenter states that: (1) a time period for accomplishment of remedial operations is absolutely necessary; (2) the regulations should expressly define

the conditions under which suspension of operations is necessary; and (3) if suspension of operations is necessary, then the Department's current policy requiring reinstatement of production within 30 days should apply.

Response: Numerous provisions and conditions could be added to § 211.44, but are best dealt with on a case-by-case basis by the Secretary.

(83) One commenter states that § 211.44(b) has to do with suspension of operations for non-physical reasons whereas with respect to non-economic or non-marketing reasons, no tribal consent is required for suspension of operations after expiration of the primary term and there is no statutory distinction that justifies requiring tribal consent in one case but not the other.

Response: We see no way of readily or reasonably separating the subtle cause and effect of physical versus non-physical reasons for situations leading to a suspension of operations or production. In the event remedial measures are required in the proper and timely discharge of the trust responsibility and in the best interest of the Indian mineral owner, the Secretary has no choice but to take requisite remedial measures. Provision is made at § 211.44(b) for the parties to the lease to make application for permission to suspend operations on a lease capable of production after expiration of the primary term of lease duration.

(84) One commenter recommends that the extended term be referred to as either "after expiration of the primary term of the lease" or as "in the extended term of the lease" and not both.

Response: We agree. Although both phrases mean the same thing, meaning that portion of the duration of the lease, when the lease is held by production beyond the primary term of the lease. The primary lease term cannot exceed 10 years. Section 211.44 is changed so that only one phrase is used.

(85) Two commenters state that they do not understand why in proposed rules that the suspension of operations necessary for remedial operations must be approved by the Assistant Secretary and that this matter is best left to the authority of the agency office.

Response: The final regulations are changed to clarify that the suspension of operations is at the discretion of the Secretary, although the suspension action will likely be issued by the authorized officer for § 211.44(a) and for § 211.44(b) by the area director or superintendent, under authority delegated by the Secretary.

(86) One commenter states that proposed § 211.44(a) makes reference to minimum royalty requirements but

finds no minimum royalty requirement in the proposed regulations.

Response: The final regulations are clarified to provide that suspension of operations or production after expiration of the primary term of lease duration shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(87) One commenter states that proposed § 211.46 should make clear to whom the books and records will be made available.

Response: Section 211.46 is modified to provide that lessees shall allow the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purposes of inspection and audit, that lessees shall keep a full and correct account of all operations as required by the lease and applicable regulations, and that books and records shall be made available during regular business hours.

(88) One commenter states that clarification should be added under § 211.46 to indicate that under the FOGMA of 1982 a lessee is required only to maintain records of this type for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period.

Response: Record keeping requirements are set forth in the operating regulations of BLM, MMS, and OSM which are included by reference at §§ 211.4, 211.5, and 211.6.

(89) One tribal commenter signifies that proposed § 211.47 be expanded to include protection of all Indian lands from drainage, whether leased or not. Another tribal commenter states that the burden falls on the Tribe to prove that additional development of leased lands is required by the prudent operator standard. One industry commenter states that no compensatory royalties should be assessed if "the superintendent has denied approval of a cooperative agreement for any reason."

Response: These regulations only concern the leasing of tribal lands, and the requirements which are properly placed on lessees. These regulations do not properly include provisions for dealing with drainage from unleased lands. However, the standard that will be applied to lessees as concerns the leased land is clear. Lessees are required, among other requirements to exercise diligence in mining, drilling and operating wells, protect the lease from drainage. This standard imposes an affirmative duty on the lessee. No

changes in response to these tribal comments were made. Also, no changes were made in response to the industry comment seeking relief from the compensatory royalty provision in § 211.47(b). A proposed cooperative agreement may properly be rejected by the Department when such proposed agreement fails to protect the lease. If an inappropriate cooperative agreement has been rejected by the Department, the rejection should not serve to relieve the lessee from the lessee's obligations under the lease.

(90) One tribal commenter requests that the 200 feet setback requirement for well pads and operations be increased to a minimum of 500 feet.

Response: The proposed section merely carries forward the limitation contained in current § 211.19. Because the current regulation provides a minimum setback requirement, a tribe may negotiate for a greater setback whenever it deems this to be necessary. Also a greater setback may be requested by the authorized officer prior to issuance of permission to drill. For these reasons no change is made at § 211.47(f) in final regulations.

(91) One commenter advises that proposed § 211.47(j) be revised to provide that the lessee pay the surface owner or tenant all damages, including damages to crops, buildings, other improvements of the surface owner occasioned by the lessee's operations as determined by the Secretary with the consent of the Indian mineral owner.

Response: No change is made in § 211.47 in the final regulations because the suggested change would create rights that would not be authorized in law.

(92) One industry commenter states that proposed § 211.47(i) gives the superintendent sole authority to establish the payment due the Indian tribe or allottee for surface damages and expresses the opinion that this should be a matter of negotiation, or based on an independent appraisal with at most, approval of the superintendent.

Response: Authority for the determination of payment of damages to the surface owner is retained by the Secretary, who may employ a BIA appraiser in the decision making process, in this instance the superintendent, for those situations in which the mineral and surface estates have been separated and/or surface damages are at issue.

(93) One industry commenter objects to the provision that written permission must be secured from the Secretary before any operations are started on the leased premises.

Response: The applicable operating and reclamation regulations administered by the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement require prior approval for drilling or mining operations. Therefore, the only change made in this paragraph is to the authorities cited to include the Office of Surface Mining Reclamation and Enforcement. The intent of this paragraph is to alert the mineral industry that a mineral lease issued by an Indian mineral owner, still requires the approval of the Secretary. After the lease is approved, lessees are still required to secure written permission (written approval) from the appropriate agency or agencies before beginning any operations on the lease.

(94) A tribal commenter feels that § 211.48 should be amended to include the need for written permission of the Indian mineral owner before operations are started and that after permission is secured, operation must also be in accordance with all operating rules and regulations promulgated by the Secretary or the Indian mineral owner.

Response: Indian mineral owners are always consulted prior to final approval of any activity involving Indian mineral lands, if it is an action or activity that requires approval or consultation with the Indian mineral owner.

(95) Two industry commenters object to § 211.49 stating that the broad and vague language could be used to restrict or preclude a lessee from developing a lease. Both commenters suggest that any necessary restrictions be spelled out in the lease.

Response: This section carries into final rules § 211.21(a) of regulations currently in place. This provision has been contained in the Department's regulations for many years. The authority stated in this section has rarely been used, and to our knowledge, has never been used to preclude development of a lease. The section is necessary to ensure that the Secretary has the ability to fulfill the fiduciary duty to protect the trust resource.

(96) One commenter objects that proposed § 211.51 does not explicitly address the option of surrender of an operating oil and gas property to the tribe, but rather appears to be confined to lease surrenders after which all production ceases.

Response: There is no barrier in either proposed or final regulations to a request to surrender an operating property to an Indian mineral owner, subject to approval of the Secretary. There is a requirement in proposed and final regulations that the lessee

discharge all lease obligations upon surrender, as required.

(97) Several commenters state that the requirement in proposed § 211.51(d) that the original lease documents be delivered to the Department with the request to surrender is not supported by any reason and imposes an additional administrative burden without providing any benefit.

Response: The requirement that the original lease documents be surrendered is intended, to the extent possible, to prevent any confusion as to the extent and location of lands that are leased. Additionally, surrender will prevent fraudulent assignments. This requirement has been in the Department's regulations for several decades (see § 211.27(b)(6)). Also, it is standard industry practice to require surrender of the documents. Because it is standard industry practice the requirement does not impose an additional burden on lessees.

(98) One tribal commenter questions whether this section is sufficient to ensure that all reclamation be performed in an environmentally sound manner.

Response: Section 211.51 requires that the leased land be left in an environmentally sound condition and that all environmental work, such as reclamation, be done. Changes are made in final regulations to paragraph (h) to avoid any possible conflict with this requirement.

(99) Two industry commenters seek qualification to the paragraph in this section requiring the lessee to pay for all drainage which occurs prior to acceptance of surrender of the lease. One commenter states that it is unreasonable to permit liability for compensatory royalty to continue to accrue after filing an application to surrender. One commenter asks that a provision be added to excuse the lessee from payment of compensatory royalties for drainage if a cooperative agreement has been denied "for any reason" by the Department.

Response: The provisions contained in proposed § 211.51(g) are an updated version of the current requirement found in § 211.27(b)(10). An addition to the proposed regulations is an explicit reference to compensatory royalties for drainage. Neither of the proposed changes are included in final regulations because they could permit unacceptable actions on the part of the lessee. First, it may be necessary and reasonable for the Department to assess compensatory royalties for waste or drainage, if lack of diligence or poor workmanship on the lease continues to cause the lessor damage after the date of surrender. For instance, if a lessee has

missed the opportunity to enter into a cooperative agreement, and then seeks immediately to surrender the lease, the lessor may not be able to prevent drainage immediately. The lessee may not avoid liability for the drainage by attempting to surrender the lease. Similarly, the fact that a lessee at one time submitted a cooperative agreement for approval will not relieve the lessee from responsibilities under the regulations and lease provisions. The authority reserved to the Secretary in final regulations is to "impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owner." If however, the lessee believes that provisions imposed are arbitrary or capricious, then the lessee may appeal under 25 CFR Part 2. We feel that these procedures provide adequate protection to lessees.

(100) Three industry commenters object to the increase in filing fees in proposed § 211.52, by stating that the increase is unjustified and imposes an additional burden on a struggling industry.

Response: For over four decades the BIA did not raise filing fees. The increase from \$10.00 to \$75.00 reflects inflation that has occurred during four decades and is in keeping with the current filing fees of the Bureau of Land Management, which increased the filing fees to \$75.00 on December 22, 1987. However, surrender of leases no longer must be accompanied by a filing fee, because most standard mineral leases specify a surrender fee.

(101) Both tribes and industry comment that assignments of stratigraphic horizons or intervals should be permitted. Tribes and industry indicate that this practice is common within the industry and would provide economic benefits to the Indian mineral owner.

Response: In final regulations the provisions in proposed rules at § 211.53(a) that prohibit such assignments are removed. Assignment of stratigraphic thicknesses or intervals is permitted.

(102) One commenter states that § 211.53 should be revised so that the broad definition of "assignment" that is implied in the § 211.26(b), formerly in place, is retained.

Response: Proposed § 211.53 is rewritten to be more nearly compatible with § 211.26 formerly in place and retain the existing and widely understood concept of an assignment in current use with respect to Indian mineral leases.

(103) Three commenters state that overrides and production payments may render prudent economic development,

or otherwise economic operations and proposals uneconomic or prematurely uneconomic. One commenter recommends that both the Secretary and the Indian mineral owner approve overrides, production payments, and operating agreements; one commenter recommends that overrides, production payments, and operating agreements require approval; one commenter states that at a minimum overriding royalties and operating agreements should be forwarded to the Secretary for review.

Response: The creation of overrides, production payments, and use of operating agreements have been standard business practices in the minerals industry for many years and often serve as the necessary economic incentive for the development of, and subsequent production from, mineral properties, especially for oil and gas. Commenters concerns are valid that under some conditions (e.g. a sudden decline in value of the mineral product) mineral properties can be burdened by overrides and production payments. In response to the concerns of commenters, provision is made in final regulation that the Indian mineral owner shall be notified of proposed assignments and agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent. In those instances where the overrides, production payments, and operating agreements are of concern to the Indian mineral owner during the leasing process, the prospective lessors and lessees may wish to arrive at a minerals agreement under the IMDA (25 CFR Part 225).

(104) Four tribal commenters state that the approval or consent of the Indian mineral owner should be required for all assignments; one, if required by lease or by tribal law; another, if any instrument or agreement either makes a present conveyance of an interest in the minerals or obligates one party to convey an interest in the minerals to another party upon performance of some condition; a third, regardless of whether the right of approval is retained in the lease document; and a fourth, would require approval of the Indian mineral owner for all actions regardless of whether the lease requires such approval. One industry commenter states that the language of proposed § 211.53 is appropriate but not consistent with the various tribal ordinances applicable to oil and gas leases; another perceives that proposed § 211.53 is a restatement of current regulatory practice and that new regulations should place no greater

restriction on the lessee than currently exists.

Response: Section 211.53 is rewritten in language more nearly resembling 25 CFR Part 211 and 212 formerly in place and is therefore more familiar to both Indian mineral owners and prospective lessees. There is no consensus or general agreement among Indian mineral owners and/or industry upon the conditions of approval of assignments and related agreements. Therefore, final regulations provide for a broad right of assignment of an approved lease for Indian owned minerals, so long as there is no change in the material provisions of the lease. Final regulations are applicable to existing and future leases issued under the Act of May 11, 1938 (25 U.S.C. 396a) and the Act of March 3, 1909 (25 U.S.C. 396). Indian mineral owners that wish to require consent may, under the IMDA, or by negotiated, individual (not necessarily standard) lease provisions under the Act of May 11, 1938; either of which allow the Indian mineral owner to specify the provisions under which owner consent and/or approval would be required for lease assignments, overriding royalties, and operating agreements.

(105) One industry commenter objects to proposed lease cancellation and notice of non-compliance provisions (§ 211.54) on the grounds these provisions would allow the Bureau of Indian Affairs (BIA), to "assume responsibility for enforcement not only of the provisions of the IMDA, but of other laws and regulations as well." The commenter objects to the idea that the BIA might interfere with the authorities which SMCRA vests with the Secretary, who acts through the Office of Surface Mining Reclamation and Enforcement (OSM).

Response: Nothing in this section is intended to interfere with the authority of OSM to administer SMCRA. Section 211.54 is a continuation of the cancellation provision in current 25 CFR § 211.27(a) but includes more due process procedures to protect lessees, and provides the Department with the new option of issuing a notice of non-compliance rather than threatening lease cancellation for any and all offenses, no matter how minor. This section applies to leases issued under the Act of May 11, 1938 (25 U.S.C. 396a). These regulations neither govern IMDA agreements nor purport to govern the type of activities governed by SMCRA. However, it should be clearly understood that violations of SMCRA can also be violations of the lease which, in turn, could lead to cancellation of the lease. Only the BIA,

pursuant to these regulations, has authority to cancel the lease itself. Therefore, § 211.54 does not provide the BIA with authority that overlaps over the authority of OSM.

(106) One tribal commenter asks that a procedure be added for tribes to report any non-compliance which they may observe.

Response: Because of the close working relationship between the tribes and the BIA agency and area offices, it has been determined that a formal regulatory procedure for tribes to share lease compliance information with the BIA is not necessary. Information of any type and in any format from tribes concerning lease compliance by lessees is always welcomed by the Department.

(107) One tribal commenter asks that tribes be granted a larger independent right to cancel a lease for non-compliance.

Response: The request for tribal authority to cancel leases is not included in final regulations. The mineral lease approved by the Secretary concerns lands which the Department has a statutory obligation to protect. The Secretary will review any and all information an Indian mineral owner may have concerning whether or not a lease should be cancelled but the final decision to cancel must remain with the Secretary. See *Yavapai-Prescott Indian Tribe v. Watt*, 707 F.2d 1072 (9th Cir. 1983), cert. denied 464 U.S. 1017.

(108) One tribal commenter asks that a time limit be imposed on the Secretary to issue a decision with regard to a lease cancellation.

Response: The request for a time limit for issuance of a decision on cancellation of a lease is not included in final regulations. The factors to be considered and the unique nature of most lease cancellation actions makes a time deadline for action by the Secretary inappropriate.

(109) One tribal commenter suggests that proposed § 211.54(a) be expanded to include the enabling of the noncompliance and cancellation processes in the event the Secretary determines that a lessee or permittee has failed to comply with applicable tribal laws and regulations, and mining or reclamation plans.

Response: Section 211.54(a) is rewritten in the interest of simplification and to clarify that § 211.54 is enabled in the event of noncompliance with lease provisions, these regulations, or other applicable rules and regulations. Although BLM and OSM are primarily responsible under those agencies' regulations for enforcement of mining and reclamation plans, under some circumstances it may

be appropriate for BIA officials to issue notices of non-compliance for violations of such plans. Tribal administrative and judicial remedies will often be the appropriate means for redressing violations of tribal laws and regulations. But the revised language of this regulation leaves open the possibility of enforcement under this Part when an alleged violation raises mixed issues of Federal and tribal law.

(110) One commenter suggests that service by certified mail should be deemed to occur seven (7) rather than five (5) days after the date of mailing (in both §§ 211.54 and 211.55) to be consistent with MMS regulations regarding constructive service of official correspondence.

Response: In the interest of consistency the date of service is deemed to be five (5) working days after the date of mailing in final regulations.

(111) One commenter states that in proposed § 211.54 there is no provision for a hearing before the Secretary prior to lease cancellation and that denial of the right to a hearing is the denial of the right to due process that exists in present regulations and that this right should be restored.

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures. Final regulations provide lessees and permittees adequate time for response to notices of noncompliance, orders of cessation, and notices of proposed cancellation or of cancellation. Hearings may be requested in the responses of lessees and permittees to notices and orders and the rights of lessees and permittees under 25 CFR Part 2 (§ 211.58) are not abridged. The suggested provisions are not included at § 211.54.

(112) One commenter states that in proposed § 211.54 reference is made to an "order of cessation" and it is not clear what an order of cessation is or how it differs from a notice of noncompliance. Another commenter states that BIA does not define a "cessation order."

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures.

(113) Several industry commenters object to proposed § 211.55 and request that it be removed for a number of reasons. First, several commenters challenge the authority of the Department to impose civil penalties. Second, the \$1,000.00 per day limit is challenged as unduly high. Finally, even though the commenters maintain that the Secretary lacks authority to impose civil penalties, the commenters

object to the civil penalties as duplicative of other civil penalties which the Secretary has authority to impose.

Response: The proposed civil penalties provision is not new. The current regulations contain § 211.22 that provides for a \$500.00 per day civil penalty for violations of terms of the lease, regulations or orders. Section 211.22 has been contained in the leasing regulations for unallotted lands for many years. The proposed revisions to this section do two things. First, the dollar limit for a violation is updated to accord with current penalty limits contained in other Departmental regulations (see 43 CFR § 3162 and § 3163.2). In fact this dollar figure is conservative when compared to the \$5,000.00 per violation per day limit contained in the Bureau of Land Management's regulations. The second change provides lessees and permittees with additional due process procedures to ensure that no penalty is unfairly imposed. The Department believes that the broad authority granted to the President by Congress to regulate Indian affairs (see 25 U.S.C. §§ 2 and 9), the longstanding administrative interpretation of these statutes as granting authority to assess penalties, and the unique responsibilities imposed on the Secretary to protect Indian trust resources support this section. However, in response to industry comments a provision has been added to this section in final rules to clarify that no penalty may be assessed under this section for a violation over which the BLM, OSM, or MMS have either statutory or regulatory authority to assess a penalty. This will ensure that this section does not duplicate any other penalty provision and that no duplicative penalties will be issued.

(114) Five industry commenters express concern that the language in proposed § 211.56 is not adequate to protect the rights of the data owner and more specifically that there are no requirements on the part of the Indian mineral owner to protect the confidentiality of the data provided to them. Three Indian commenters felt that the proposed regulation is too weak, because it does not provide specifically for submittal of collected data to the Indian mineral owner.

Response: The concern regarding the lack of confidentiality requirements on the part of the Indian mineral owner is best considered at the time of negotiation between the Indian mineral owner and the proponent of the permit. Therefore, no specific change is made in final regulation with respect to this item. Section 211.56 is rewritten to

reflect the major concerns of the commenters and provides that copies of collected data shall be forwarded to the Indian mineral owner, unless otherwise provided in the permit.

(115) One industry commenter expresses concern that seismic option agreements are not covered in proposed regulation.

Response: The comment regarding seismic option agreements is not considered because it is deemed that such agreements are best concluded as minerals agreements under the provisions of the IMDA (25 CFR Part 225).

(116) One of the Indian commenters requests that the regulations provide for the issuance of geological and geophysical permits by the Indian mineral owner to university students. The same commenter proposes that all collected data be submitted to the Indian mineral owner, who in turn will provide it to the Secretary and also recommends that the phrase that allows a permittee to take samples for assay and experimental purposes be deleted.

Response: The recommendation that issuance of geological and geophysical permits to universities be addressed in final regulations is not included in final regulations because such requests should be considered on a case-by-case basis by the Indian mineral owner, who has the option of requesting assistance from the Secretary if consideration of such permits pose problems in approval. The related recommendation for deletion from § 211.56(b) of the provision for the taking of assay samples for experimental purposes is also not included because, at times, the taking of experimental assay samples can be of benefit to the Indian mineral owner.

(117) One industry commenter recommends that "Indian owner" in § 211.56(a) be changed to "Indian mineral owner" in order to distinguish between the Indian surface owner and the Indian mineral owner. The same commenter recommends that the word "shall" rather than "may" (§ 211.56(c)) be used in regard to the Secretary's responsibility to maintain for a reasonable period of time the confidentiality of data submitted.

Response: The words "Indian owner" are changed to "Indian mineral owner" to aid in distinction between the Indian mineral owner and the Indian surface owner. Language in this section is unchanged in that the Secretary "may" release information after six (6) years, with the consent of the Indian mineral owner if no time period for release is prescribed in the permit. The word "may" is retained in the final regulations because the six years is a

minimum time period for information retention. It may not be in the best interest of the Indian mineral owner to release information after the prescribed retention period.

(118) One commenter states that the definition of Indian lands in § 212.3 should be limited to lands owned by any individual Indian or Alaska native. Otherwise there is no substantive provision in the regulations in Part 212 which limits their applicability to allotted lands.

Response: The Secretary does not lease Indian lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided in § 212.21. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(119) One commenter states that the definition of a lessor should be changed to read that a lessor is an Indian mineral owner who has accepted or consented to a lease or for whom the Secretary has executed a lease, and any successor in title to an original lessor.

Response: The Secretary does not lease Indian mineral lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided by specific statutory exceptions which allow the Secretary to lease allotted lands when the allottee has died and his heirs are undetermined or when the owner cannot be located. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(120) One commenter states that to receive optimal benefit for the Indian landowner, royalty rates should be considered in the bidding process.

Response: Royalty rates are considered in the bidding process in the announcement of lease sale. Royalty bidding is not customarily included in either written or oral bidding because of the difficulty in determining the total value of bid based on multiple variables of say, total value of bonus bid, plus rental bid, plus royalty bid, or any combination thereof. Royalty rates may be considered or reconsidered separately if the lease is subsequently negotiated on behalf of the Indian mineral owner.

(121) One tribal commenter recommends an addition to proposed § 212.20 to provide that prior to negotiation for lease, a mineral property must be listed but not successfully won

in the most recent lease sale of no later than the preceding 12-month period.

Response: Section 212.20 is rewritten to provide that the option in leasing procedures be decided by the Indian mineral owner. In the event that the leasing option cannot be determined by the Indian mineral owner(s) the Secretary will act on their behalf, and in the best interest of the Indian mineral owner(s).

(122) One tribal commenter suggests that proposed § 212.20 be modified to provide that if an offer to lease a mineral property is made, and no tribal property exists within the same section or spacing order, and given the approval of the Indian mineral owner, or the majority of owners; the BIA or the Indian mineral owners themselves be able to negotiate a lease agreement, subject to approval of the Secretary.

Response: The suggested modifications to § 212.20 place a great many restrictions on the leasing procedures. The required consent of all Indian mineral owners to the leasing of mineral lands composed of both tribal and individual mineral ownership could adversely affect all owners if difficulty is experienced in reaching a consensus. Thus, the suggested modifications are not made in final regulations. However, provision is made in final regulations at § 212.20 that the Indian mineral owner be advised of the results of bidding and that the lease shall not be approved until the consent of the Indian mineral owner has been obtained.

(123) One commenter suggests that a sentence be added to proposed § 212.20(b)(5) to provide that the Secretary shall not disperse any bonus money to the Indian mineral owner(s) until such time as the lease has been signed by the Indian mineral owner(s) unless otherwise agreed to by the successful bidder.

Response: Bonus monies are not dispensed until the lease is issued. Money received is placed in a special account at the BIA area or agency where it is retained until a lease number can be assigned; whereupon money is distributed after the lease is signed and a number assigned to the lease instrument.

(124) One commenter states that the language of proposed § 212.20(a) should be the same as that in proposed § 211.20(a) providing the same superintendent is meant at both places, otherwise, guidance as to the appropriate superintendent should be given.

Response: We agree. Change is made in the final regulations such that both paragraphs now include a reference to

the superintendent having jurisdiction over the lands, because the same superintendent is the same in both instances.

(125) One commenter suggests changes in § 212.30 (a) and (b) to restrict references to lessors and lessees to the mineral interest only and that there does not appear to be any good reason for relieving [from the supervision of the Secretary] the unrestricted land of an existing lease.

Response: Changes are not made in response to this comment because the references in these paragraphs are to the unrestricted owners and not to the owners under restriction. Protection for the lessee existing prior to the removal of restriction are contained in § 212.30(b) which provides that the Supervision of the Secretary shall continue until adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. The unrestricted lands must be relieved from the Supervision of the Secretary because the removal of restriction also removes the authority of the Secretary.

(126) One commenter states that the 30-day notice to lessee and lessor in proposed § 212.33(a) is not adequate for the lessee to prepare title opinions in order to timely and properly pay rentals and royalties and suggests that a 120-day notice is appropriate unless a shorter period is agreed to by the parties [to the lease instrument].

Response: The 30-day notice to principals in the event the Secretary relinquishes supervision during the life of a mineral lease instrument is standard and has been in the present regulations (§ 212.29) for many years without causing difficulty. No change is made in the final regulations.

(127) One commenter points out that the word "fee" is used in a dual sense in § 212.33 and suggests that distinction be made between monetary fees and fee simple title and also suggests other changes in this section in the interest of clarity.

Response: We agree. § 212.33(b) is rewritten in final regulation to clarify and simplify the provisions of this section.

(128) One commenter states that § 212.56(c) should be amended to state specifically that the subject section is applicable to allotted lands only.

Response: The title of 25 CFR Part 212 states that these regulations are applicable to the leasing of allotted lands for mineral development and full explanation of the purpose and scope of Parts 211 and 212 are contained in §§ 211.1 and 212.1 and to considerable

extent in preamble. This paragraph, although redesignated, remains unchanged.

(129) One commenter states that the use of the words "surface occupant" in proposed § 212.56(c) be changed to "surface owner." Otherwise the lessee may be in the position of not knowing who to negotiate with, the surface occupant or the surface owner.

Response: The lessee may have to negotiate with both the surface occupant and the surface owner depending upon land use (e.g., row crops during the growing season on leased surface) and provisions of the surface lease between the surface lessor and surface lessee. The surface occupant is oftentimes the individual easiest to find. This section is unchanged in final rules.

(130) One commenter states that proposed § 212.56 should be revised to make clear that the consent of the Indian surface owner is not required by these regulations and that the consent referred to in proposed paragraph (c) is required only if made "necessary" by some other applicable law.

Response: Section 212.56 in final regulations provides that where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant. This information is provided to lessees so that the lessee will know that under some conditions a mineral lease does not automatically authorize surface ingress and egress.

III. Conclusion

The scope and purpose of these final rules are to revise, streamline and update implementation of the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended, that provide for the leasing of Indian tribal and allotted lands, respectively, for mineral development. By means of these final rules, the Department provides, within statutory limitations, increased communication between the Indian mineral owner and the Secretary and provides the Indian mineral owner greater recognition and authority in the mineral leasing of Indian lands within the framework of the Secretary's trust responsibility and the determination of the best interest of the Indian mineral owner. The Department understands the concerns and importance to tribes of the recognition of tribal authority and responsibility in matters of the management generally of their own mineral resources. This authority and responsibility are recognized at §§ 211.1 and 211.29 in final rules. Section 211.29 specifically permits the superseding of Federal regulations by the provisions of

ordinance, resolution, or other action authorized under any properly issued tribal constitution, bylaw, or charter. Superseding provisions that: (1) nullify the provisions of enacted legislation or judicial decision that preclude the exercise of tribal authority; (2) modify the provisions of an existing lease or permit which constitute substantially the consideration of the lease or permit, or without which the lease or permit would not have been made; or (3) provide for a regulatory taking cannot be approved by the Secretary. Also, the rules formerly in place have not been revised in entirety since 1938 and therefore the action of the Department, in this revision, reflects in final regulation the enactment of legislation, court decisions, evolution of usual and common business and administrative practices, and changes and reorganizations within the Federal government that has taken place during the last 58 years.

Executive Order No. 12866 and Regulatory Flexibility Act

These rules have been reviewed under Executive Order 12866. In addition, the Department of the Interior has determined that these rules 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.).

This final rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The promulgation of final rulemaking reduces the regulatory burden imposed on such persons in several instances. This rulemaking will increase the filing fee (from \$10.00 to \$75.00) that must accompany each application for lease, permit, or assignment thereof and is no different from the filing fees presently required when filing on Federal lands. This increase is necessary to partially compensate the United States for its costs of processing those documents, but experience shows that this increase is not an amount that will discourage or prevent any small business from contracting to engage in mineral development on Indian lands. The minimum rental for mineral leases on Indian land will be increased from \$1.25 to \$2.00 per acre which is no different from the minimum rentals imposed on lessees of Federal minerals. The minimum annual development expenditure on leases other than oil and gas and geothermal resources will increase from \$10.00 to \$20.00 per acre. The increases in minimum rental and annual development expenditure reflect

the effects of inflation during the last several years on the cost of doing business, helps ensure diligent development of the Indian mineral estate, and helps to protect the Indian mineral owner against the decline through time in purchasing power of dollars received from the Indian mineral leases. These rules promote economic growth by providing tribes and individual Indian mineral owners greater opportunity to negotiate or participate in the negotiation of leases and permits that maximize their best economic interest and minimize any adverse environmental and cultural impact and at the same time enhance economic growth by allowing wise use of a portion of the National mineral reserve base that might not be otherwise available.

Executive Order No. 12612

The Department has determined that these rules do not have significant federalism effects. These rules support the goals of E.O. No. 12612 by enhancing self determination among the Indian communities by encouraging tribes to responsibly and independently achieve their personal, cultural, and economic objectives through their own efforts.

Executive Order No. 12630

In accordance with E.O. 12630, the Department has determined that these rules do not have significant takings implications.

Executive Order No. 12988

The Department has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b) (2) of Executive Order No. 12988.

National Environmental Policy Act of 1969

The changes made in this final rulemaking are for the purpose of streamlining and updating the regulations implementing the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended. These rules constitute an administrative action and do not impact on the physical environment. The approval of mineral leases, permits, and assignments will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in previously proposed rulemaking that were made, the Bureau of Indian Affairs considered the changes to be of such minor variation and degree that the impacts

were deemed equal to or less than the changes made by the previously proposed rulemaking. The Department of the Interior has determined therefore, that there will be no significant impact to the human environment.

Paperwork Reduction Act of 1980

This rule is exempt from the information collections requirement under the Paperwork Reduction Act, Pub. L. 95-511 (44 U.S.C. 3501 et seq.).

List of Subjects in 25 CFR Parts 211 and 212

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

Words of Issuance

For the reasons set out in the preamble, Parts 211 and 212 of Title 25, Chapter I of the Code of Federal Regulations are revised as set forth below.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.

- 211.1 Purpose and scope.
- 211.2 Information collection.
- 211.3 Definitions.
- 211.4 Authority and responsibility of the Bureau of Land Management (BLM).
- 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).
- 211.6 Authority and responsibility of the Minerals Management Service (MMS).
- 211.7 Environmental studies.
- 211.8 Government employees cannot acquire leases.
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Subpart B—How To Acquire Leases

- 211.20 Leasing procedures.
- 211.21 [Reserved]
- 211.22 Leases for subsurface storage of oil or gas.
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- 211.25 Acreage limitation.
- 211.26 [Reserved]
- 211.27 Duration of leases.
- 211.28 Unitization and communitization agreements, and well spacing.
- 211.29 Exemption of leases and permits made by organized tribes.

Subpart C—Rents, Royalties, Cancellations and Appeals

- 211.40 Manner of payments.
- 211.41 Rentals and production royalty on oil and gas leases.
- 211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

- 211.43 Royalty rates for minerals other than oil and gas.
- 211.44 Suspension of operations.
- 211.45 [Reserved]
- 211.46 Inspection of premises, books and accounts.
- 211.47 Diligence, drainage and prevention of waste.
- 211.48 Permission to start operations.
- 211.49 Restrictions on operations.
- 211.50 [Reserved]
- 211.51 Surrender of leases.
- 211.52 Fees.
- 211.53 Assignments, overriding royalties, and operating agreements.
- 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.
- 211.55 Penalties.
- 211.56 Geological and geophysical permits.
- 211.57 Forms.
- 211.58 Appeals.

Authority: Sec. 4, Act of May 11, 1938, (52 Stat. 347); Act of August 1, 1956 (70 Stat. 774); 25 U.S.C. 396a-g; and 25 U.S.C. 2 and 9.

Subpart A—General

§ 211.1 Purpose and scope.

(a) The regulations in this part govern leases and permits for the development of Indian tribal oil and gas, geothermal, and solid mineral resources except as provided under paragraph (e) of this section. These regulations are applicable to lands or interests in lands the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to the regulations in this part, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(d) Nothing in the regulations in this part is intended to prevent Indian tribes

from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 211.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 211.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indians Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in this part and in 43 CFR Parts 3160, 3180, 3260, 3280, 3480 and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns land or interests in the land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian mineral owner means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other tribal group which owns mineral interests in oil and gas, geothermal or solid mineral resources, title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract approved by the United States under the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a-396g), as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity that has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; Provided, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil, gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 211.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas

Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations; and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, apply to leases and permits approved under this part.

§ 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases approved under this part.

§ 211.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which, apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 211.7 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ), found in 40 CFR parts 1500 through 1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), The American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). If these surveys indicate that a mineral development will have an

adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or;

(3) Ensure that appropriate excavations or other related research is conducted and ensure that complete data describing the historic property is preserved.

§ 211.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

§ 211.9 Existing permits or leases for minerals issued pursuant to 43 CFR chapter II and acquired for Indian tribes.

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands, issued prior to these lands being placed in trust status or becoming Indian lands, pursuant to 43 CFR chapter II (and its predecessor regulations), and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR chapters II and VII and 43 CFR chapter II, as applicable, provided, that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR chapter II, shall be made to the superintendent having administrative jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II, subchapters A and C.

(b) Administrative actions regarding an existing lease or permit under this section, may be appealed pursuant to 25 CFR part 2.

Subpart B—How to Acquire Leases

§ 211.20 Leasing procedures.

(a) Indian mineral owners may, with the approval of the superintendent or area director, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered for bidding at an advertised lease sale in accordance with this section. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in this section unless the Secretary grants the Indian mineral owners written permission to negotiate for lease. Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate (if the requirements of this section have been met) mineral leases on their behalf. If requested by an applicant interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary shall consult with the Indian mineral owner concerning the appropriate royalty rate and rental. The Secretary may then undertake the responsibility to advertise and lease in accordance with the following procedures:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements of lease sales should send their mailing information to the appropriate superintendent or area director for future reference.

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The Secretary, after consultation with the Indian mineral owner, shall establish the rental and

royalty rates which shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by the Indian mineral owner is required.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time.

However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for the approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the lease for sale, or, subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained.

(d) The Indian mineral owner may also submit negotiated leases to the Secretary for review and approval.

§ 211.21 [Reserved]

§ 211.22 Leases for subsurface storage of oil or gas.

(a) The Secretary, with the consent of the Indian mineral owners, may approve

storage leases, or modifications, amendments, or extensions of existing leases, on Indian lands to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary, with consent of the Indian mineral owners, may approve a provision in an oil and gas lease under which storage of oil and gas is authorized, for continuance of the lease at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the authorized officer and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 211.23 Corporate qualifications and requests for information.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, mineral leases, or assignments, bonds, or other instruments required by the regulations in this part constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a power of attorney.

(b) A corporate applicant proposing to acquire an interest in a permit or lease shall have on file with the superintendent or area director a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated; and

(2) A notarized statement that the corporation has power to conduct all business and operations as described in the lease or permit.

(c) The Secretary may, either before or after the approval of a permit, mineral lease, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

§ 211.24 Bonds.

(a) The lessee, permittee or prospective lessee acquiring a lease, or any interest therein, by assignment shall furnish with each lease, permit or assignment a surety bond or personal bond in an amount sufficient to ensure compliance with all of the terms and conditions of the lease(s), permit(s), or assignment(s) and the statutes and regulations applicable to the lease, permit, or assignment. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a \$75,000 bond for all geothermal, mining, or oil and gas leases, permits, or assignments in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds are subject to approval in the discretion of the Secretary.

(c) An operator may file a \$150,000 bond for full nationwide coverage to cover all geothermal or oil and gas leases, permits, or assignments without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds are subject to approval in the discretion of the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the lease or permit. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond.

Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a lease or permit; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose

deposits are federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a lease or permit.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs upon demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the lease or permit provisions and conditions or failure to file a replacement in accordance with paragraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any lease or permit upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of bonds may be increased in any particular case at the discretion of the Secretary.

§ 211.25 Acreage limitation.

A lessee may acquire more than one lease but no single lease shall be granted for mineral leasing purposes on Indian tribal or restricted lands in excess of the following acreage except where the rule of approximation applies:

(a) Leases for oil and gas and all other minerals except coal are to be contained within one United States Governmental survey section of land and shall be described by legal subdivisions including lots or tract equivalents not to exceed 640 acres; in instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof;

(b) Leases for coal shall ordinarily be limited to 2,560 acres in a reasonably compact form and shall be described by legal subdivisions including lots or tract equivalents. In instances of irregular surveys, including lands not surveyed

under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof. The Secretary may, upon application and with the consent of the Indian mineral owner, approve the issuance of a single lease for more than 2,560 acres, in a reasonably compact form, upon a finding that the issuance is in the best interest of the lessor.

§ 211.26 [Reserved]

§ 211.27 Duration of leases.

(a) All leases shall be for a term not to exceed a primary term of lease duration of ten (10) years and, absent specific lease provisions to the contrary, shall continue as long thereafter as the minerals specified in the lease are produced in paying quantities. Absent specific lease provisions to the contrary, all provisions in leases governing their duration shall be measured from the date of approval by the Secretary.

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration ("commencement clause") if drilling operations have commenced during the primary term, shall be valid and shall hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has commenced actual drilling by midnight of the last day of the primary term of the lease with a drilling rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. However, in no case shall such drilling hold the lease longer than 120 days past the primary term of lease duration without actual production of oil, gas, or geothermal resources. *Provided*, that this extension does not allow a lease to continue past the 10-year statutory limitation. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is committed shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration if mining operations have commenced during the primary term (commencement clause), shall be valid and hold the lease beyond the primary term of lease duration if the lessee or the

lessee's designee has by midnight of the last day of the primary term of the lease commenced actual removal of mineral materials intended for sale and upon which royalties will be paid. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

§ 211.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease. However, the Secretary shall consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or well spacing plan.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 211.29 Exemption of leases and permits made by organized tribes.

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362,258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501-509), or by ordinance, resolution, or other action authorized under such constitution, bylaw or charter; Provided, that such tribal law may not supersede the requirements of Federal statutes applicable to Indian mineral leases. The regulations in this part, in so far as they are not so superseded, shall apply to leases and permits made by organized tribes if the validity of the lease or permit depends upon the approval of the Secretary of the Interior.

Subpart C—Rents, Royalties, Cancellations and Appeals

§ 211.40 Manner of payments.

Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the superintendent or area director.

§ 211.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of \$2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the

rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16-²/₃ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and by the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

(d) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil, gas and geothermal resources shall provide for a yearly development expenditure of not less than \$20 per acre. All such leases shall provide for a rental payment of not less than \$2.00 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within twenty (20) days after the lease year, an itemized statement, in duplicate, of the expenditure for development under a lease for minerals other than oil and gas shall be filed with the superintendent or area director. The lessee must certify the statement under oath.

§ 211.43 Royalty rates for minerals other than oil and gas.

(a) Except as provided in paragraph (b) of this section, the minimum rates for leases of minerals other than oil and gas shall be as follows:

(1) For substances other than coal, the royalty rate shall be 10 percent of the value of production produced and sold

from the lease at the nearest shipping point.

(2) For coal to be strip or open pit mined the royalty rate shall be 12¹/₂ percent of the value of production produced and sold from the lease, and for coal removed from an underground mine, the royalty rate shall be 8 percent of the value of production produced and sold from the lease.

(3) For geothermal resources, the royalty rate shall be 10 percent of the amount or value of steam, or any other form of heat or energy derived from production of geothermal resources under the lease and sold or utilized by the lessee. In addition, the royalty rate shall be 5 percent of the value of any byproduct derived from production of geothermal resources under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that the royalty for any mineral byproduct shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner. Approval of a lower rate may only be granted by the area director if the approving official is the superintendent or by the Assistant Secretary for Indian Affairs, if the approving official is the area director.

§ 211.44 Suspension of operations.

(a) After the expiration of the primary term of the lease the Secretary may approve suspension of operations for remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons. *Provided*, that such remedial operations are conducted in accordance with 43 CFR part 3160, subpart 3165 and under such stipulations and conditions as may be prescribed by the Secretary and are conducted with reasonable diligence. Any suspension shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(b) An application for permission to suspend operations or production for economic or marketing reasons on a lease capable of production after the expiration of the primary term of lease duration must be accompanied by the written consent of the Indian mineral owner, an economic analysis, and an executed amendment by the parties to the lease setting forth the provisions pertaining to the suspension of operations and production. Such application shall be treated as a negotiated change to lease provisions,

and as such, shall be subject to review and approval by the Secretary.

§ 211.45 [Reserved]

§ 211.46 Inspection of premises, books and accounts.

Lessees shall allow the Indian mineral owner, the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and submit all related reports required by the lease and applicable regulations. Books and records shall be available for inspection during regular business hours.

§ 211.47 Diligence, drainage and prevention of waste.

The lessee shall:

(a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals production can be secured in paying quantities;

(b) Protect the lease from drainage (if oil and gas or geothermal resources are being drained from the lease premises by a well or wells located on lands not included in the lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions to protect the interest of the Indian mineral owner of the lands, such as payment of compensatory royalty for the drainage);

(c) Carry on operations in a good and workmanlike manner in accordance with approved methods and practices;

(d) Have due regard for the prevention of waste of oil or gas or other minerals, the entrance of water through wells drilled by the lessee to other strata, to the destruction or injury of the oil or gas, other mineral deposits, or fresh water aquifers, the preservation and conservation of the property for future productive operations, and the health and safety of workmen and employees;

(e) Securely plug all wells and effectively shut off all water from the oil or gas-bearing strata before abandoning them;

(f) Not construct any well pad location within 200 feet of any structures or improvements without the Indian surface owner's written consent;

(g) Carry out, at the lessee's expense, all reasonable orders and requirements of the authorized officer relative to prevention of waste;

(h) Bury all pipelines crossing tillable lands below plow depth unless other arrangements are made with the Indian surface owner; and

(i) Pay the Indian surface owner all damages, including damages to crops, buildings, and other improvements of the Indian surface owner occasioned by

the lessee's operations as determined by the superintendent.

§ 211.48 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of a mineral lease or permit pursuant to the regulations in this part.

(b) After a lease or permit is approved, written permission must be secured from the Secretary before any operations are started on the leased premises, in accordance with applicable rules and regulations in 25 CFR part 216; 30 CFR chapter II, subchapters A and C; 30 CFR part 750 (Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands), 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTLs) issued thereunder.

§ 211.49 Restrictions on operations.

Leases issued under the provisions of the regulations in this part shall be subject to such restrictions as to time or times for well operations and production from any leased premises as the Secretary judges may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor.

§ 211.50 [Reserved]

§ 211.51 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) All royalties and rentals due on the date the request for surrender is received must be paid;

(b) The superintendent, after consultation with the authorized officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all operations on the portion of the lease surrendered have been properly reclaimed, abandoned, or conditioned, as required;

(c) If a lease has been recorded, the lessee must submit a release along with the recording information of the original lease so that, after acceptance of the release, it may be recorded;

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease document, the lessee must deliver to the superintendent or area director the original lease documents; *Provided*, that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must deliver to the superintendent or area director only its copy of the assignment;

(e) If the lease (or a portion thereof being surrendered) is owned in

undivided interests, all lessees owning undivided interests in the lease must join in the request for surrender;

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if advance rental became due prior to the date the request for surrender was received by the superintendent or area director;

(g) If oil, gas, or geothermal resources are being drained from the leased premises by a well or wells located on lands not included in the lease, the Secretary reserves the right, prior to acceptance of the surrender, to impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owners of the lands surrendered. Such terms and conditions may include payment of compensatory royalty for any drainage; and

(h) Upon expiration or surrender of a solid mineral lease the lessee shall deliver the leased premises in a condition conforming to the approved reclamation plan. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, the machinery may not be removed from the leased premises without the written permission of the Secretary.

§ 211.52 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment, thereof shall be accompanied by a filing fee of \$75.00 at the time of filing.

§ 211.53 Assignments, overriding royalties, and operating agreements.

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions of the lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary.

(c) Assignments of leases, and stipulations modifying the provisions of

existing leases, which stipulations are also subject to the approval of the Secretary, shall be filed with the superintendent within five (5) working days after the date of execution. Upon execution of satisfactory bonds by the assignee the Secretary may permit the release of any bonds executed by the assignor. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease.

(d) Agreements creating overriding royalties or payments out of production shall not be considered as interests in the leases as such provision is used in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in such agreements shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations imposed by requirements of the MMS for reporting, accounting, and auditing; obligations for diligent development and operation, protection against drainage and mining in trespass, compliance with oil and gas, geothermal, and mining regulations (25 CFR part 216; 43 CFR parts 3160, 3260, 3480, and 3590; and those applicable rules found in 30 CFR chapter II, subchapters A and C) and the requirements for Secretarial approval before abandonment of any oil and gas or geothermal well or mining operation. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any oil and gas or geothermal well or mining operation. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the provisions of such assignments or instruments shall be subject to the condition stated in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent unless incorporated in

assignments or instruments required to be filed pursuant to this section.

§ 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that a permittee or lessee has failed to comply with the terms of the permit or lease; the regulations in this part; or other applicable laws or regulations; the Secretary may:

(1) Serve a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) Serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease or permit cancellation is proposed and shall specify what actions, if any, must be taken to avoid cancellation.

(b) The notice of noncompliance or proposed cancellation shall specify in what respect the permittee or lessee has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice shall be served upon the permittee or lessee by delivery in person or by certified mail to the permittee or lessee at the permittee's or lessee's last known address. When certified mail is used, the date of service shall be deemed to be when the notice is received or five (5) working days after the date it is mailed, whichever is earlier.

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order

of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

(i) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(j) Nothing in this section is intended to limit the authority of the authorized officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

§ 211.55 Penalties.

(a) In addition to or in lieu of cancellation under § 211.54, violations of the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee to a penalty of not more than \$1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice

continue beyond the time limits prescribed for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the lessee or permittee to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under § 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the authorized officer, the director's representative or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease or permit approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

§ 211.56 Geological and geophysical permits.

Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral leases entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian mineral owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the

consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

§ 211.57 Forms.

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms, prescribed by the Secretary, that may be obtained from the superintendent or area director. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

§ 211.58 Appeals.

Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to 25 CFR part 2.

PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT

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- 212.58 Appeals.

Authority: Act of March 3, 1909, (35 Stat. 783; 25 U.S.C. 396 (as amended)); Act of May 11, 1938, (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g; Act of August 1, 1956, (70 Stat. 774)); and 25 U.S.C. 2 and 9.

Subpart A—General

§ 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are applicable to lands or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after

the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 212.4, 212.5, and 212.6 of this part are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 212.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 212.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indian Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480, and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation

and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

- (1) All products of geothermal processes, including indigenous steam, hot water and hot brines;
- (2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;
- (3) Heat or other associated energy found in geothermal formations; and
- (4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian or Alaska Native who owns mineral interests in oil and gas, geothermal, or solid mineral resources, title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the

United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract, approved by the Secretary of the Interior under the Act of March 3, 1909 (35 Stat. 783)(25 U.S.C. 396), as amended, and the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a-396g), as amended, that authorize exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity which has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil, gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; *Provided*, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per

year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil and gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 212.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. Those regulations, apply to leases or permits issued under this part.

§ 212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases issued under this part.

§ 212.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 212.7 Environmental studies.

The provisions of § 211.7 of this subchapter, as amended, are applicable to leases under this part.

§ 212.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

Subpart B—How to Acquire Leases

§ 212.20 Leasing procedures.

(a) Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. Leases for minerals shall be advertised for bids as prescribed in this section unless one or more of the Indian mineral owners of a tract sought for lease request the Secretary to negotiate for a lease on their behalf without advertising. Unless the Secretary decides that negotiation of a mineral lease is in the best interests of the Indian mineral owners, he shall use the following procedure for leasing:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements on lease sales should send their mailing information to the appropriate agency or area office for future reference.

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. The Secretary shall establish the rental and royalty rates which shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required. The requirements under § 212.21 are applicable to the acceptance of a lease bid.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form, signed by the Indian mineral owner(s), at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the tract for sale, or subject to the consent of the Indian mineral owner, a lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained. The requirements under § 212.21 are applicable to the approval of a mineral lease.

§ 212.21 Execution of leases.

(a) The Secretary shall not execute a mineral lease on behalf of an Indian mineral owner, except when such owner is deceased and the heirs to or devisee of the estate have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been

offered for sale under the provisions of section 212.20(b) (1) through (6).

(b) The Secretary may execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity; *Provided*, that there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

(c) If an owner is a life tenant, the procedures set forth in 25 CFR part 179 (Life Estates and Future Interests), shall apply.

§ 212.22 Leases for subsurface storage of oil or gas.

The provisions of § 211.22 of this subchapter are applicable to leases under this part.

§ 212.23 Corporate qualifications and requests for information.

The provisions of § 211.23 of this subchapter are applicable to leases under this part.

§ 212.24 Bonds.

The provisions of § 211.24 of this subchapter are applicable to leases under this part.

§ 212.25 Acreage limitation.

The provisions of § 211.25 of this subchapter are applicable to leases under this part.

§ 212.26 [Reserved]

§ 212.27 Duration of leases.

The provisions of § 211.27 of this subchapter are applicable to leases under this part.

§ 212.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless

such consent is specifically required in the lease.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 212.29 [Reserved]

§ 212.30 Removal of restrictions.

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

(b) In the event restrictions are removed from a part of the land included in any lease approved by the Secretary, the entire lease shall continue to be subject to the supervision of the Secretary until such times as the holder of the lease and the unrestricted Indian owner submits to the Secretary satisfactory evidence that adequate

arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from the supervision of the Secretary, the lease, the regulations of this part, and all other applicable laws and regulations.

§§ 212.31, 212.32 [Reserved]

§ 212.33 Terms applying after relinquishment.

All leases for individual Indian lands approved by the Secretary under this part shall contain provisions for the relinquishment of supervision and provide for operations of the lease after such relinquishment. These leases shall contain provisions that address the following issues:

(a) *Provisions of Relinquishment.* If the Secretary relinquishes supervision at any time during the life of the lease instrument as to all or part of the acreage subject to the lease, the Secretary shall give the Indian mineral owner and the lessee thirty (30) days written notice prior to the termination of supervision. After notice of relinquishment has been given to the lessee, the lease shall be subject to the following conditions:

(1) All rentals and royalties thereafter accruing shall be paid directly to the lessor or the lessor's successors in title, or to a trustee appointed under the provisions of paragraph (b) of this section.

(2) If, at the time supervision is relinquished by the Secretary, the lessee has made all payments then due and has fully performed all obligations on the lessee's part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease, on file in the appropriate agency or area office, shall be of no further force or effect.

(3) Should relinquishment affect only part of the lease, then the lessee may continue to conduct operations on the land covered by the lease as an entirety; *Provided*, that the lessee shall pay, in the manner prescribed by the lease and regulations for the benefit of lessor, the same proportion of all rentals and royalties due under the provisions of this part as the acreage retained under the supervision of the Secretary bears to the entire acreage of the lessee, and shall pay the remainder of the rentals and royalties directly to the remaining lessors or successors in title or said trustee as the case may be, as provided in paragraph (a) (1) of this section.

(b) *Division of fee.* If, after the execution of the lease and after the

Secretary relinquishes supervision thereof, the fee of the leased land is divided into separate parcels held by different owners, or if the rental or royalty interest is divided in ownership, the obligations of the lessee shall not be modified in any manner except as specifically provided by the provisions of the lease. Notwithstanding such separate ownership, the lessee may continue to conduct operations on said premises as an entirety. Each separate owner shall receive such proportion of all rental and royalties accruing after the vesting of its title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental or royalty interest as the case may be. If at any time after departmental supervision of the lease is relinquished, in whole or in part, to rentals and royalties, whether said parties are so entitled by virtue of undivided interest or by virtue of ownership of separate parcels of the land covered, the lessee may elect to withhold the payment of further rentals or royalties (except as the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their said respective successors in title.

§ 212.34 Individual tribal assignments excluded.

The reference in this part to Indian mineral owners does not include assignments of tribal lands made pursuant to tribal constitutions or ordinances for the use of individual Indians and assignees of such lands.

Subpart C—Rents, Royalties, Cancellations, and Appeals

§ 212.40 Manner of payments.

The provisions of § 211.40 of this subchapter are applicable to leases under this part.

§ 212.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of \$2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the

rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16-²/₃ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

§ 212.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

The provisions of § 211.42 of this subchapter are applicable to leases under this part.

§ 212.43 Royalty rates for minerals other than oil and gas.

The provisions of § 211.43 of this subchapter are applicable to leases under this part.

§ 212.44 Suspension of operations.

The provisions of § 211.44 of this subchapter are applicable to leases under this part.

§ 212.45 [Reserved]

§ 212.46 Inspection of premises, books, and accounts.

The provisions of § 211.46 of this subchapter are applicable to leases under this part.

§ 212.47 Diligence, drainage and prevention of waste.

The provisions of § 211.47 of this subchapter are applicable to leases under this part.

§ 212.48 Permission to start operations.

The provisions of § 211.48 of this subchapter are applicable to leases under this part.

§ 212.49 Restrictions on operations.

The provisions of § 211.49 of this subchapter are applicable to leases under this part.

§ 212.50 [Reserved]

§ 212.51 Surrender of leases.

The provisions of § 211.51 of this subchapter are applicable to leases under this part.

§ 212.52 Fees.

The provisions of § 211.52 of this subchapter are applicable to leases under this part.

§ 212.53 Assignments, overriding royalties, and operating agreements.

The provisions of § 211.53 of this subchapter are applicable to leases under this part.

§ 212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

The provisions of § 211.54 of this subchapter are applicable to leases under this part.

§ 212.55 Penalties.

The provisions of § 211.55 of this subchapter are applicable to this part.

§ 212.56 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral lease entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and the consideration to be paid the Indian owner;

(2) The permit may not grant the permittee any option or preference rights to a lease or other development contract, authorize the production of, or removal of oil and gas, or geothermal resources, or other minerals except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(3) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may, in the discretion of the Secretary, release such information after six (6) years.

(b) A permit may be granted by the Secretary without 100 percent consent of the individual mineral owners if:

(1) The minerals are owned by more than one person, and the owners of a

majority of the interest therein consent to the permit;

(2) The whereabouts of one or more owners of the minerals or an interest therein is unknown, and all the remaining owners of the interests consent to the permit;

(3) The heirs or devisee of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(c) A lessee does not need a permit to conduct geological and geophysical operations on Indian lands, if provided for in the lessee's mineral lease, where the Indian mineral owner is also the surface land owner. In instances where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant.

§ 212.57 Forms.

The provisions of § 211.57 of this subchapter are applicable to leases under this part.

§ 212.58 Appeals.

The provisions of § 211.58 of this subchapter are applicable to leases under this part.

Dated: June 13, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16036 Filed 7-5-96; 8:45 am]

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OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

25 CFR Part 700

Protection of Archaeological Resources

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Interim final rule with comment period.

SUMMARY: This rule establishes procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) for the lands which are administered by the O.N.H.I.R. and have been acquired pursuant to Public Law 96-305 (25 U.S.C. 640-d(h)). The rule is necessary and its intended effect is to

allow the Federal Land Manager to protect archaeological resources on lands being developed for resettlement purposes.

DATES: This rule is effective August 7, 1996.

Comments must be received on or before August 7, 1996.

ADDRESSES: Comments may be mailed to the Executive Director, Office of Navajo and Hopi Indian Relocation, P.O. Box KK, Flagstaff, Arizona 86002.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at 520-779-8953.

SUPPLEMENTARY INFORMATION: Pub. L. 96-305 (25 U.S.C. 640d-11) provided for the acquisition of land for the use of Navajo families required to relocate under the terms of Pub. L. 93-531. Approximately 365,000 acres of land in Arizona have been acquired, taken into trust, and made part of the Navajo Reservation. Approximately 35,000 acres of land in the State of New Mexico will be acquired, taken into trust and made a part of the Navajo Reservation. These lands are referred to as the New Lands. Pursuant to Pub. L. 96-305, as amended, by Pub. L. 100-666, the Office of Navajo and Hopi Indian Relocation (O.N.H.I.R.) has complete administrative authority over these New Lands until the relocation program is completed as determined by the President.

The 1986 Interior Appropriations Bill (Pub. L. 99-190) provided construction funds to the Bureau of Indian Affairs for the purpose of building replacement homes on the New Lands. A number of relocations were completed at the New Lands under the authority of the Bureau of Indian Affairs. In 1988, Congress enacted Pub. L. 100-666, which transferred to the O.N.H.I.R. on January 31, 1989, all powers and duties of the Bureau of Indian Affairs derived from Pub. L. 99-190, that related to the relocation of members of the Navajo Tribe and also transferred all funds appropriated for such activities relating to such relocation. Before the passage of Pub. L. 100-666, the O.N.H.I.R. and the Bureau of Indian Affairs had worked together planning and developing the New Lands for resettlement purposes and relied upon the Bureau of Indian Affairs, to issue Archaeological Resources Protection Act (16 U.S.C. 470aa-11) permits on the New Lands. After the passage of Pub. L. 100-666, and the transfer of all powers and duties of the Bureau of Indian Affairs to the O.N.H.I.R., questions arose regarding which governmental agency was the Federal Land Manager and has the authority to issue A.R.P.A. permits on

the New Lands. It was determined that the O.N.H.I.R. is the Federal Land Manager on the New Lands and that the Bureau of Indian Affairs, Navajo Area Office, did not have administrative jurisdiction or surface management responsibilities on the New Lands located in Arizona. Thus the O.N.H.I.R. has the appropriate authority to issue A.R.P.A. permits. These regulations are being published pursuant to that authority to allow the Federal Land Manager to protect archaeological resources on the New Lands by issuing permits for authorized excavation and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources, by providing for the preservation of archaeological resource collections and data and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the resources. These regulations will apply to all New Lands in the states or Arizona and New Mexico acquired for relocation purposes.

These regulations are being published as an Interim Final Rule because of the time frame involved in the movement of eligible individuals to the New Lands. Because the O.N.H.I.R. has been requested by Congress in the 1995 Department of Interior and Related Agencies Appropriations Act (Pub. L. 103-332) to present a plan for the phase out of the relocation program, and transfer of its functions before the year 2000, there is considerable urgency to complete the development of the New Lands. In order to complete such development the O.N.H.I.R. must publish these regulations. It is, therefore, necessary for these regulations to become effective immediately so that development can go on uninterrupted.

The principal author of this final rulemaking is Paul Tessler, Legal counsel, Office of Navajo and Hopi Indian Relocation.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interest, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation Assistance and New Lands Administration.

PART 700—[AMENDED]

Accordingly, the Office is amending 25 CFR Part 700, by adding Subpart R, as follows:

1. The authority citation for Part 700 continues to read as follows:

Authority Pub. L. 99-590; Pub. L. 93-531; 88 Stat. 1712, as amended by Pub. L. 96-305, 94 Stat. 929; Pub. L. 100-666, 102 Stat. 3929 (25 U.S.C. 640d).

2. 25 CFR, Part 700, is amended by adding Subpart R, Protection of Archaeological Resources, as follows:

Subpart R—Protection of Archaeological Resources

- Sec.
- 700.801 Purpose.
- 700.803 Authority.
- 700.805 Definitions.
- 700.807 Prohibited acts.
- 700.809 Permit requirements and exceptions.
- 700.811 Application for permits and information collection.
- 700.813 Notification to Indian Tribes of possible harm to, destruction of, sites on the New Lands having religious or cultural importance.
- 700.815 Issuance of permits.
- 700.817 Terms and conditions of permits.
- 700.819 Suspension and revocation of permits.
- 700.821 Appeals relating to permits.
- 700.823 Relationship to section 106 of the National Historic Preservation Act.
- 700.825 Custody of archaeological resources.
- 700.827 Determination of archaeological or commercial value and cost of restoration and repair.
- 700.829 Assessment of civil penalties.
- 700.831 Civil penalty amounts.
- 700.833 Other penalties and rewards.
- 700.835 Confidentiality of archaeological resource information.
- 700.837 Report.
- 700.839 Permitting procedures for Navajo Nation Lands.

Subpart R—Protection of Archaeological Resources

§ 700.801 Purpose.

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and

ornaments (including, but not limited to pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to armaments, apparel, tackle, cargo);

(x) Any portion or piece of material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer under delegated authority from the Commissioner.

(d) *Federal Land Manager* means, with respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands,

including persons to whom such management authority has been officially delegated.

(e) *New Lands* means the land acquired for the use of relocatees under the authority of Public Law 96-305, 25 U.S.C., 640(d)-10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d-10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(f) *Indian lands* means lands of The Navajo Nation, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(g) *Indian tribe* or *Tribe* means The Navajo Nation.

(h) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(i) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(j) *Tribe* means the Navajo Nation.

(k) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470-aa11.)

§ 700.807 Prohibited acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands or Indian lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands or Indian lands, and to carry out activities associated

with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) Exceptions: (1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removed as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16

U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration under § 700.813.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.813, 700.815(a) (3), (4), (5), (6), and (7), 700.817, 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands or Indian lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and

proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the Navajo Nation.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The information collection requirement contained in § 700.811 has been

approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be property preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on the New Lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on the New Lands, as determined by the Federal Land Manager, at least 30 days before issuing such permit the Federal Land Manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal Land Manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal Land Manager.

(2) The Federal Land Manager may provide notice to any other Native American group that is known by the Federal Land Manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal Land Manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal Land Manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an

archaeological resource, the Federal Land Manager shall so notify the appropriate tribe

(b) (1) In order to identify sites of religious or cultural importance, the Federal Land Manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal Land Manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to the New Lands under the Federal Land Manager's jurisdiction, the Federal Land Manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal Land Manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal Land Manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research,

administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands or Indian lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian land owner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 980 days after the date the final report is submitted to the Federal Land Manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit;

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under

the requested permit where the permit is for the excavation and/or removal of archaeological resources from the New Lands.

(ii) All artifacts, samples, and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on the New Lands shall include such terms and conditions as may have been developed pursuant to § 700.813.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been

satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and revocation of permits.

(a) Suspension or revocation for cause. (1) The Federal Land Manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act of § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.829 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) Suspension or revocation for management purposes. The Federal Land Manager may suspend or revoke a permit without liability to the United States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with Section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.825 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from public lands remain the property of the Navajo Nation.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

§ 700.827 Determination of archaeological or commercial value and cost of restoration and repair.

(a) Archaeological value. For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) Commercial value. For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) Cost of restoration and repair. For purposes of this part, the cost of restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;
- (3) Ground contour reconstruction and surface stabilization;
- (4) Research necessary to carry out reconstruction or stabilization;
- (5) Physical barriers or other protective devices, necessitated by the

disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal Land Manager.

(8) Preparation of reports relating to any of the above activities.

§ 700.829 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) Notice of violation. The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal Land Manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal Land Manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) Petition for relief. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) Assessment of penalty. (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager shall determine a penalty amount in accordance with § 700.831.

(f) Notice of assessment. The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include the following in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to

be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) Hearings. (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal Land Manager.

(h) Final administrative decision. (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) Payment of penalty. (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in Section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business.

Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) Other remedies not waived.

Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.831 Civil penalty amounts.

(a) Maximum amount of penalty. (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the persons being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be doubled the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) Determination of penalty amount, mitigation, and remission. The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager archaeological resources removed from the New Lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands or Indian Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty

has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal Land Manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on the New Lands, the Federal Land Manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 700.833 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.831(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribes.

§ 700.835 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) the Federal Land Manager may make information available, provided

that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) The Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.837 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.839 Permitting procedures for Navajo Nation lands.

(a) If the lands involved in a permit application are Indian lands, the consent of the appropriate Indian tribal authority or individual Indian landowner is required by the Act and the regulations in this subpart.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Indian tribal government and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office that is responsible for the administration of the lands in question. The Office shall ensure that consultation with the appropriate Indian tribal authority or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. The Indian tribal authority or individual Indian landowner shall have 30 days from the

date of receipt of the consultation request from the Office to respond to such request. Failure of the Indian tribal authority or individual Indian landowner to respond timely to the consultation request shall be deemed to be consent to the request. Permits shall include terms and conditions requested by the Indian tribe or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit required by Indian tribal law.

Dated: June 25, 1996.

Christopher J. Bavasi,
Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 96-16650 Filed 7-5-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5528-6]

General Procedures to Opt Out of the Reformulated Gasoline Requirements; Removal of Jefferson County, Albany and Buffalo, New York; Twenty-eight Counties in Pennsylvania; and Hancock and Waldo Counties in Maine From the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule establishes the criteria and general procedures for states to opt out of the federal reformulated gasoline program for ozone non-attainment areas where the state had previously voluntarily opted into the program. This action describes the petition process a state must follow to be removed from the program, the criteria used by EPA to approve a petition, and the transition period before the opt-out becomes effective. This final rule also removes Jefferson County and the Albany and Buffalo areas in New York; twenty-eight counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas identified in § 80.70 of the reformulated gasoline rule.

Today's action only applies to opt-out requests submitted by states prior to December 31, 1997, unless this final rule is superseded by another rule which pertains to new criteria and general procedures for reformulated gasoline program opt-outs. The Agency intends to propose and solicit comments

on separate opt-out procedures for subsequent requests to opt out of the reformulated gasoline program.

EFFECTIVE DATE: This final rule is effective August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Coryell, U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9014. Also, contact Christine Hawk at (202) 233-9672 or Pat Childers at (202) 233-9415.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.
State governments.	State departments of environmental protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, 24.4K, or 48.8K baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS.

(K) Rulemaking and Reporting.

(3) Fuels.

(9) Reformulated gasoline.

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

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<D>ownload, <P>rotocol, <E>xamine,
<N>ew, <L>ist, or <H>elp Selection or <CR>
to exit: D filename.zip
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You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Extended Summary

Based upon public comments that were solicited in the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995, EPA has made the following decisions that are contained in this final rule.

This final rule provides the Agency's general rules concerning criteria and procedures for states to opt out certain non-attainment areas from the federal reformulated gasoline (RFG) program. This action applies to non-attainment areas where the state voluntarily opted into the program, and subsequently decides to withdraw from the reformulated gasoline program, an action referred to as "opt-out." This rule describes the process a state must follow to petition for removal from the program, the criteria used by EPA to evaluate a request, and the transition period before the opt-out becomes effective.

This final rule authorizes the EPA's Administrator to approve a petition to opt out all or a portion of an opt-in area. The final rule requires that the governor submit the opt-out petition, or the governor's authorized representative. It must include specific information on how, if at all, reformulated gasoline has been relied upon by the state in state or local implementation plans, or revisions to such plans, both pending or already approved.

This final rule specifies the effective date that an area will be removed from the list of covered areas defined in

§ 80.70 of the reformulated gasoline rule. If reformulated gasoline was included as a control measure in an approved State Implementation Plan (e.g. to demonstrate attainment or maintenance), then the opt-out would not become effective until 90 days from the effective date for Agency approval of a revision to the state plan removing reformulated gasoline as a control. If reformulated gasoline was relied upon in a plan pending Agency approval, then the opt-out would become effective 90 days from the date EPA provides written notification to the state that the petition has been approved. If the state does not have a plan or did not rely on reformulated gasoline in a pending plan, then the effective date is the same as for pending plans described above. The Agency would also publish a Federal Register notice announcing the approval of the petition and the effective date for the opt-out.

This final rule also removes Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule per the request of the States of New York, Pennsylvania and Maine. This is based on requests from the Governors of New York, Pennsylvania and Maine that these areas opt out of this federal program. In a separate action signed by the EPA Administrator on December 29, 1994, EPA stayed the application of the reformulated gasoline regulations in these areas effective January 1, 1995 until July 1, 1995. 60 FR 2696 (January 11, 1995). EPA proposed to extend this stay until final action was taken on the opt-out requests. 60 FR 31269 (June 14, 1995). In a separate action signed by the EPA Administrator the Agency extended the stay on June 30, 1995. 60 FR 35488 (July 10, 1995).

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

I. General Procedures for EPA's Processing of Future Opt-Out Requests

A. Background

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground level ozone problems by reducing vehicle emissions of the ozone

precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program nitrogen oxides (NO_x), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act requires reformulated gasoline in the nine largest cities with the highest levels of ozone. In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for their other nonattainment areas.

EPA issued final rules establishing requirements for reformulated gasoline on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule a number of states inquired as to whether they would be permitted to opt out of the RFG program at a future date, or opt out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). Such states wished to retain the flexibility to opt out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993 did not include procedures for opting out of the RFG program because EPA had not proposed and was not ready to adopt such procedures. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

B. Statutory Authority

The statutory authority for this rule is granted to EPA by section 211(c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545(c) and (k) and 7601(a). A discussion of EPA's statutory authority may be found in the preamble to the proposal, at 60 FR 31271 (June 14, 1995).

C. General Rulemaking vs. Notice and Comment Rulemaking for Each Opt-Out Request

In the NPRM, EPA proposed a general rule that would apply for all future opt-out requests. Some industry representatives and associations provided opposing comments. Some commenters argued that under section 307(d) of the Act, EPA must provide public notice and a comment period for each opt-out request. They argued that EPA must conduct rulemaking for each opt-out request to consider the

ramifications of each opt-out request, for example, on long-term costs to state, local and tribal governments and private industry and possible adverse regional air quality consequences. Other commenters, however, preferred the Agency's proposal to develop general opt-out procedures rather than conduct a rulemaking for each state opt-out request.

EPA does not agree that a separate rulemaking must be conducted for each future opt-out request. Through this rulemaking, EPA is establishing a petition based process that will address, on a case by case basis, future individual state requests to opt out of the federal RFG program. The regulations establish clear and objective criteria for EPA to apply in these future non-rulemaking, adjudication actions. These criteria address when a state's petition is complete and the appropriate transition time under the regulations. This application of regulatory criteria on a case by case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

It is not uncommon for the Agency to establish such a petition based process within a regulatory structure, in order to apply the criteria established in a regulation to a wide variety of individual cases. The reformulated gasoline regulations, for example, include a petition process for approval of individual baseline, augmentations of the complex model, exemptions, alternative test procedures, and the like. EPA believes that approach is most appropriate here as well, as it will allow for expeditious and consistent Agency action on the individual opt-out requests presented by states.

EPA believes that the general procedures adopted here will provide consistent opt-out decisions. This rule will also provide greater certainty in the market than individual rulemakings could provide. Lastly, this rule will provide quick approval for opt-out requests while maintaining a sufficient transition period to minimize costly market disruptions.

In certain cases, the affected parties will be able to comment on the state action. In those states where the reformulated gasoline program is included as a part of an approved state implementation plan (SIP), affected parties that are concerned with the impacts of an opt-out would have the opportunity to comment on a state's revised plan that removes reformulated gasoline as an air control measure.

The Agency is not taking action today on the portion of the proposed notice

concerning the question whether the Agency has the discretion under section 211(k) of the act to allow attainment areas to opt into this federal program. EPA has received comments on this question and is reviewing options that would permit opt-in opportunities to be expanded. EPA anticipates announcing a policy shortly.

D. Applicability

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

EPA received comments that complying with the Phase II reformulated gasoline requirements involves significantly greater capital investment than for the Phase I requirements. The transition periods set forth in today's rule for opting out of Phase I reformulated gasoline requirements would be, according to the comments, grossly inadequate for industry to recover in a reasonable time frame investment costs associated with the Phase II. EPA recognizes these different circumstances may call for different opt-out provisions and intends to propose separate rules for opting out areas from the Phase II reformulated gasoline requirements.

E. Petition Process

In the NPRM, EPA proposed that a state may petition the EPA to opt out of the reformulated gasoline program. Under the proposal, a petition would have to include specific information about how the program is used in a State Implementation Plan. If a state did include the reformulated gasoline program as a control measure in such plan or revision submitted to EPA for approval, then the state would have to describe if and how it intended to replace reformulated gasoline as a control measure. In addition, the state would need to identify whether it intended to submit a revision and, if so, when.

Several commenters raised concerns about the impacts that approved petitions would have on air quality, especially in nonattainment areas, since reformulated gasoline provides significant clean air benefits. A fuels association commented that petitions should demonstrate that there will be no unacceptable adverse air quality impacts to other areas or other states. Industry representatives commented that nonattainment areas should not be permitted to opt out unless the state has

binding commitments to adopt substitute measures to achieve attainment. Another commenter cautioned that a petition should not be approved if there is adequate showing that opting out would cause the area to return to nonattainment status. Regarding opportunity for public consideration, an association remarked that the petition process should include a formal comment period.

EPA is committed to ensuring that areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in its plans to attain and maintain the NAAQS. Today's action maintains the flexibility that states have in air quality planning by honoring their right to opt out and substitute alternative control measures where the state considers appropriate. EPA believes that the state should retain flexibility to revise the SIP by selecting control measures it desires to include in its plan as long as it makes the necessary demonstrations under the Act.

To begin the opt-out process, this final rule requires that a Governor, or his or her authorized representative, submit an opt-out petition to the Administrator of the Agency. The opt-out petition must include information describing how, if at all, reformulated gasoline has been relied upon by the state in its State Implementation Plans, revisions to such plans, or redesignation requests, both pending or already approved. This would include, for example, attainment as well as maintenance plans. The petition must also include a geographic description of the opt-out area.

In the case where a state has included reformulated gasoline in a pending plan submission, the petition must identify whether the state is withdrawing the plan and what alternative air quality control measures, if any, that the state intends to use to replace RFG. In the case where a state intends to submit a revision to an approved plan or to a pending SIP submission, the petition must identify this intention as well as the alternative air quality control measures that will be substituted for reformulated gasoline to reach or maintain compliance with the federal ozone standard. Furthermore, the petition must include the status of any proposed revision to an approved plan or pending SIP submission and the projected schedule for the revised plan. In the event a state does not intend on

revising an approved plan or pending SIP submission, the petition must include a description why no revision is considered necessary. A revision may not be considered necessary, for instance, if the proposed opt-out area does not need to rely on reformulated gasoline to achieve or maintain attainment.

The purpose of the information required in the petition is to provide EPA the assurance that a state has considered the programmatic effects of the requested opt-out. For instance, EPA expects that states will fully consider the effects that an RFG opt-out would have on its SIP or 15% VOC rate of progress plan as well as its overall ability to attain and maintain the federal ozone standard. Through this petition exercise, a state may find that alternative control measures may not offer the cost-effectiveness, immediate benefits, or ancillary benefits such as toxics reduction that reformulated gasoline provides. Thus careful planning is needed by the state since reductions from other sources may be much less practicable, depending on the state's circumstances. Reformulated gasoline is one of the most cost-effective measures for ozone control available and also yields significant air toxics benefits. EPA believes that the information requirement will address some of the commenters' concerns that states consider the effects on air quality of their decision to opt out, stated earlier in this section.

After a state submits a petition, the Agency will review the document to determine whether it contains all of the required information. Once the Agency determines that the petition is complete with the required elements, EPA will send a letter to the state approving the petition and identifying the effective date of the opt-out. For those instances where the state does not include federal RFG in an approved plan, the effective date shall be 90 days from the date of the notification to the state. When the state has included RFG in an approved plan, the effective date will be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

F. Transition Period

In the NPRM, EPA proposed to make the effective date for an opt-out dependent upon whether or not a state has an approved plan in place. If reformulated gasoline was relied upon as a control measure in an approved plan, EPA proposed to make the opt-out effective 30 days after the Agency had approved an appropriate revision to the

state plan. If reformulated gasoline was not relied upon in an approved or pending SIP, SIP revision, or redesignation request, EPA proposed to make the opt-out become effective 30 days from receipt of a complete opt-out petition. If reformulated gasoline was relied upon as a control measure in a plan revision that had been submitted to the Agency but was still pending Agency approval, and the Agency had found the plan to be complete and/or made a protectiveness finding under 40 CFR §§ 51.448 and 93.128, EPA proposed to make the opt-out effective 120 days from the date a complete petition is received. When the state had a pending plan revision that the Agency had determined complete and/or for which the Agency had made a protectiveness finding and the state decided to withdraw the submission or indicated to the Agency the state's intention to submit a revision, EPA proposed to make the opt-out effective 30 days from receipt of a complete petition from the state, as described above and specified in the proposed regulatory language.

EPA received numerous comments on two aspects of the proposal. First, the majority of the commenters indicated that the proposed time period between the approval of an opt-out and the date the opt-out becomes effective (referred to in this preamble as the transition period) is insufficient for industry to change the supply of gasoline from reformulated gasoline to conventional without significant disruption to the supply infrastructure. Second, commenters recommended that the opt-out process should be more orderly, with the Agency giving expeditious and clear notification to the public as to when the opt-out becomes effective.

In response to the comments received on the timing of opt-outs, EPA is adopting opt-out provisions that are modified from the proposal. First, today's action provides for a single 90-day transition period. In determining an appropriate length of time for the transition period, EPA weighed the need for industry to plan and implement a change in gasoline throughout the distribution system to the retail stations against the request from states to opt out in a timely manner. The majority of commenters indicated that 60 to 90 days would be adequate for industry to turn over existing stocks of reformulated gasoline to conventional gasoline. Also, based upon comments from state associations, as well as EPA's experience in other opt-outs, states are concerned that the Agency make a timely decision on the opt-out and generally consider a 90-day transition

period reasonable once the opt-out approval by the Agency has been made.

This action finalizes a single transition period, not two periods as proposed. In the NPRM, states with plan revisions containing RFG pending before the Agency would be opted out of the RFG program in 120 days, but a state could shorten this period to 30 days simply by withdrawing the pending plan revision or indicating to EPA the state's intention to submit a revision to the pending plan. These two conditions provide little impediment to a state to effectively opt out in 30 days. Therefore, EPA believes that a single transition period length will simplify an opt-out and maximize affected parties' ability to plan for a smooth transition from the reformulated gasoline program.

EPA is also modifying the procedure for initiating the 90 day count for the transition period. Several commenters noted, and EPA concurs, that in some cases the proposed procedures not only would have created uncertainty surrounding the transition period start date, but also would have effectively shortened the proposed transition period. In the NPRM, EPA proposed to make the transition period begin upon receipt of a complete petition. As commenters pointed out, this method would create uncertainty about whether the petition was complete on the day that the Agency received the petition and did not provide a means for communicating the petition's approval or effective date to the regulated industry.

EPA believes that in those cases where reformulated gasoline is relied upon as a control measure in an approved plan, the procedures for re-approval of the state plan, with notice, comment, and publication of the revision, would sufficiently address commenters' concerns about clear notification of Agency action. Therefore, if RFG is relied upon as a control measure in an approved plan, the opt-out would become effective 90 days after the effective date of the Agency's approval of an appropriate revision to the state plan. Notice of this action would be published in the Federal Register. Prior to this notice in the Federal Register, the state must also submit a complete petition to opt out of the reformulated gasoline program.

Where reformulated gasoline is relied upon as a control measure in a plan revision pending before the Agency, or is not relied upon in any plan, the state must petition the Agency to opt out of the reformulated gasoline program, and the opt-out will be effective 90 days after the Agency notifies the state that the state's petition is approved. The

Agency will provide written notification to the state indicating EPA's approval of the petition. The 90-day transition clock will start from the date of the approval notification sent to the opt-out state. To facilitate an orderly opt-out process and minimize any uncertainties that may result from an opt-out, EPA intends to quickly review opt-out petitions and expeditiously notify the public of the effective date of opt-outs. EPA intends to make a decision on the state's petition within two weeks from receipt of the petition. EPA will promptly notify the state and publish a notice in the Federal Register notifying the public of the effective date of the opt-out, thereby giving consistent and timely information to the affected parties. The Agency will make every effort to notify the associations of affected industries and states after EPA has approved a state's opt-out petition. In addition EPA will announce the opt-out's effective date on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). For information on how to access this system, see the **SUPPLEMENTARY INFORMATION** section of this rule for details.

Finally, at a state's request, the opt-out could be effective later than 90 days after the start of the transition period. In such a case, a state must indicate in its petition to the Agency the desired effective date for the opt-out. In this scenario, EPA recommends that a state consider an opt-out date which becomes effective on one of the reformulated gasoline program's natural transition points. EPA received comments supporting opt-out effective dates that are consistent with the natural transition points. These natural transition points are identified as January 1, the start of the averaging season, and May 1 and September 15, the beginning and end, respectively, of the VOC control season. The Agency understands these concerns and will support state efforts to accommodate these natural transition points.

G. Cyclic Opt-outs and Opt-ins by a State

The reformulated gasoline program is a cost-effective program designed to reduce ozone levels in participating metropolitan areas. But the cost effectiveness of the reformulated gasoline program is jeopardized by regulatory uncertainty, as it pertains to the regulated community's ability to plan for providing the manufacturing capacity to produce oxygenate and reformulated gasoline to specified control areas. Specifically, the uncertainty is increased by the

perceived absence of long term commitment to the reformulated gasoline program by those states who opted into the reformulated gasoline program and by the relatively simple process for states to opt out of the reformulated gasoline program provided for in this final rule.

EPA understands and expects that before a state submits an opt-out petition it will have given thoughtful consideration to the air quality consequences of its action and considered the substitute control measures that may be needed to achieve air quality standards and protect the health of its citizens. Therefore, the Agency believes it is improbable that a state would seek to reverse an opt-out decision by shortly thereafter requesting to opt back into the program.

However, comments from the oil industry expressed their concern that states may engage in a cycle of opt-ins and opt-outs. The Agency agrees that the integrity of the reformulated gasoline program would be jeopardized if states maintained a cycle of opt-ins and opt-outs, e.g. to create a customized seasonal program. The reformulated gasoline program is a year-round program.

Given the limited applicability of this final rule to December 31, 1997, EPA believes that it is unlikely that states would have the opportunity to complete a cycle of opt-out and opt-in. Although this final rule effectively allows states to quickly opt out of the reformulated gasoline program, the Agency may set the effective date of opt-in up to one year from the date of a governor's opt-in application. Section 211(k)(6). States would not be able to plan, with any certainty, the timing of opt-ins and opt-outs which would create a seasonal reformulated gasoline program. EPA does not believe that current conditions warrant any further restrictions on opt-ins and opt-outs. EPA may promulgate restrictions in the future if it is determined in the future that cyclic opt-outs and opt-ins are occurring.

H. Effect on Averaging

Under the RFG regulations, refiners and importers may elect to meet certain RFG standards either on a per-gallon basis or on average. This election, which must be made separately for each parameter and separately for each calendar year, applies to all RFG produced at a refinery by a refiner, or imported by an importer, during a calendar year.

Some commenters indicated that a refiner or importer who elects to comply with the RFG standards on average may be adversely affected by an area opting

out of the RFG program during an averaging period. This could occur where a refiner's or importer's average is out of compliance at the time of an unanticipated opt-out, and reduced future production or importation of RFG due to the opt-out results in the refiner or importer having insufficient volume in the remainder of the averaging period to bring the average into compliance.

EPA believes that the 90 day (minimum) transition period provides adequate time for refiners and importers to adjust to changes in the RFG market which may be attributed to opt-outs and that it is unlikely that a refiner's or importer's ability to comply with the RFG standards on average would be significantly impaired if an area opts out of the RFG program. As a result, EPA is not providing regulatory relief in today's action for such a possibility. Nevertheless, in setting a potential penalty in an enforcement action for violation of the RFG averaging standards, EPA will consider the effects of any opt-outs if the refiner or importer is able to demonstrate (1) that it would have been in compliance but for the opt-out, and (2) that it took all reasonable steps to address the averaging problem caused by the opt-out.

II. New York's, Pennsylvania's and Maine's Requests to Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program

A. Introduction

In the NPRM, EPA proposed to grant the petitions from the governors of the States of New York, Pennsylvania and Maine to remove Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by section 80.70 of the reformulated gasoline rule.

Jefferson County and the other eight New York counties affected by this proposal were included as covered areas in EPA's reformulated gasoline regulations based on Governor Mario Cuomo's request of October 28, 1991, that these areas be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh was acting for Governor Cuomo in this

matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. In the letter of December 12, addressing the opt-out request for Jefferson County, the Administrator also indicated that effective January 1, 1995, and until the rulemaking to remove Jefferson County from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in Jefferson County for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Jefferson County.

On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to further request the opt-out of the Albany and Buffalo areas which include the counties of Albany, Greene, Montgomery, Rennselaer, Saratoga, Schenectady, Erie and Niagara. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. The December 28 letter also indicated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995, until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. The letter stated, however, that the requirements of the reformulated gasoline program would apply in these areas until the stay becomes effective January 1, 1995.

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline regulations based on Governor Robert P. Casey's request dated September 25, 1991. See 40 CFR 80.70(j)(11)(i) through (xxviii). The counties referred to are listed as follows: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the list of covered areas defined by § 80.70 of the reformulated gasoline rule. As with New York's request, the Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994, stating EPA's

intention to grant Pennsylvania's request, and conduct rulemaking to implement this. Effective January 1, 1995, and until formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Pennsylvania. EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

Hancock and Waldo Counties in Maine were included as covered areas in EPA's reformulated gasoline regulation based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas. (56 FR 46119, September 10, 1991) See 40 CFR 80.70(j)(5)(viii) and (ix). On December 27, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 28, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement this. The December 28 letter also stated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995 until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. However, EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

In separate notices signed by the EPA Administrator on December 29, 1994, and June 30, 1995, and for the reasons described therein, EPA has stayed the program in these thirty-nine counties, or portions thereof, effective January 1, 1995, until such time as the Agency completed rulemaking on the proposed opt-out for these areas. (60 FR 2696, January 11, 1995; 60 FR 35488, July 10, 1995) Based on this chronology, EPA proposed that these areas be removed from the reformulated gasoline program effective upon the issuance of final action in this rulemaking. (60 FR 31269, June 14, 1995)

B. EPA Grants New York's, Pennsylvania's and Maine's Requests To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt out of the RFG program, provided that a process is established for a reasonable transition out of the program. 60 FR 31269 (June 14, 1995). The Agency has considered two key aspects in granting these opt-outs: the first involves coordination of air quality planning, and the second involves appropriate lead time for industry to transition out of the program.

With respect to air quality planning, EPA believes there is no reason to delay the removal of the 39 affected counties, or portions of counties, in New York, Pennsylvania and Maine. These areas do not include or rely on reformulated gasoline as a control measure in any state implementation plan, maintenance plan or 15% rate of progress plan. Even if reformulated gasoline is included as a contingency measure in a maintenance plan for the redesignation packages, allowing an area to opt out now would not interfere with implementing that contingency. The areas could opt into the reformulated gasoline program in the future, if necessary, within the restrictions outlined in section 211(k)(6) of the Act.

As indicated above, the reformulated gasoline program is currently stayed in all of the affected areas, and Agency consideration of an appropriate lead time for industry to change the supply of gasoline is unnecessary.

Therefore, in today's action, EPA removes Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule as of July 8, 1996.

III. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in volatile organic compounds, oxides of nitrogen (NO_x), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would receive control of NO_x and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not

degrade from the levels found in 1990. These areas would be foregoing the air quality benefits obtained from the use of reformulated gasoline.

However, as discussed in the proposal, one of the central concepts behind this rule is a recognition that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. EPA expects that states will in fact prudently in exercising their rights to opt out under these rules. Any environmental impacts of opting out are therefore not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

IV. Regulatory Flexibility Analysis

This rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied reformulated gasoline to the area opting out. This rule also establishes a transition period which maximizes affected parties's ability to plan for smooth transition from the reformulated gasoline program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of reformulated gasoline to conventional gasoline. Accordingly, EPA has determined that it is not necessary to prepare regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will have no significant adverse effect on substantial number of small businesses.

V. Public Participation

A. Public Comments

The Agency received submissions during the comment period for the NPRM from 36 commenters. Copies of all of the written comments submitted to EPA, as well as records of all oral comments received during the comment period, can be obtained from the docket for this rule (see ADDRESSES).

The Agency received comments from the public on three major issues: the opt-out process, EPA's authority to promulgate a rule on opt-outs, and transition period. A summary of these comments along with the Agency's responses are located throughout the preamble above. Discussion of public comments on the proposed opt-out

process and the Agency response can be located in Section I, Parts C and E of this preamble. Discussion of public comments on the proposed transition periods and the Agency response can be found in Section I, Part F. The Agency response to comments on statutory authority are located in Section I, Part B and in the preamble to the proposal, at 60 FR 31271.

The docket also contains a document that provides a more detailed summary of the comments, including some issues not covered in this preamble because they were minor or less contentious issues, and EPA's rationale for its response.

B. Public Hearing

The Agency held a public hearing on July 5, 1995 to hear comments on the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995. Comments at the hearing were provided by representatives of the oil industry and fuel oxygenate producers. These comments have been presented and addressed in the preamble above.

VI. Executive Order 12866

Under Executive Order 12866¹, the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.²

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

("UMRA"), Pub.L. 104-4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the final rule promulgated today does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

VIII. Judicial Review

Because this final action is nationally applicable, under section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the D.C. Circuit within sixty days of publication of this action in the Federal Register.

VIII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: June 21, 1996.

Carol M. Browner,
Administrator.

40 CFR part 80 is amended as follows:

¹ See 58 FR 51735 (October 4, 1993).

² *Id.* at section 3(f)(1)-(4).

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by adding paragraph (vv) to read as follows:

§ 80.2 Definitions.

* * * * *

Opt-in area. An area which becomes a covered area under § 80.70 pursuant to section 211(k)(6) of the Clean Air Act.

3. Section 80.70 is amended by revising paragraph (j) introductory text; by removing paragraphs (j)(5)(viii), (5)(ix), (j)(10)(i), (10)(iii), (10)(v) through (10)(xi); by redesignating paragraphs (j)(10)(ii) and (iv) as (10)(i) and (10)(ii); by removing paragraph (j)(11) and redesignating (j)(12) through (14) as (j)(11) through (13) respectively; and by adding a new paragraph (l) to read as follows:

§ 80.70 Covered areas.

* * * * *

(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (j) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C:

* * * * *

(l) Upon the effective date for removal under § 80.72(a), the geographic area covered by such approval shall no longer be considered a covered area for purposes of subparts D, E and F of this part.

4. Section 80.72 is added to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) For petitions received prior to and including December 31, 1997 and in accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

(b) To be approved under paragraph (a) of this section, a petition must be signed by the governor of a state, or his

or her authorized representative, and must include the following:

(1) A geographic description of each opt-in area, or portion of each opt-in area, which is covered by the petition;

(2) A description of all ways in which reformulated gasoline is relied upon as a control measure in any approved state or local implementation plan or plan revision, or in any submission to the Agency containing any proposed plan or plan revision (and any associated request for redesignation) that is pending before the Agency when the petition is submitted; and

(3) For any opt-in areas covered by the petition for which reformulated gasoline is relied upon as a control measure as described under paragraph (b)(2) of this section, the petition shall include the following information:

(i) Identify whether the state is withdrawing any such pending plan submission;

(ii)(A) Identify whether the state intends to submit a revision to any such approved plan provision or pending plan submission that does not rely on reformulated gasoline as a control measure, and describe the alternative air quality measures, if any, that the state plans to use to replace reformulated gasoline as a control measure;

(B) A description of the current status of any proposed revision to any such approved plan provision or pending plan submission, as well as a projected schedule for submission of such proposed revision;

(iii) If the state is not withdrawing any such pending plan submission and does not intend to submit a revision to any such approved plan provision or pending plan submission, describe why no revision is necessary;

(iv) If reformulated gasoline is relied upon in any pending plan submission, other than as a contingency measure consisting of a future opt-in, and the Agency has found such pending plan submission complete or made a protectiveness finding under 40 CFR 51.448 and 93.128, demonstrate whether the removal of the reformulated gasoline program will affect the completeness and/or protectiveness determinations;

(4) The Governor of a State, or his or her authorized representative, shall submit additional information upon request of the Administrator,

(c) (1) Except as provided in paragraph (c)(2) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section of 90 days from the Agency's written notification to the state approving the opt-out petition.

(2) If reformulated gasoline is contained as an element of any plan or

plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(d) The Administrator shall publish a notice in the Federal Register announcing the approval of any petition under paragraph (a) of this section, and the effective date for removal.

[FR Doc. 96-16668 Filed 7-5-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 425

RIN 2040-AC48

[FRL-5527-4]

Leather Tanning and Finishing Effluent Limitations Guidelines; Pretreatment Standards; New and Existing Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating changes modifying the pretreatment standards for existing and new sources applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works ("POTW"). This rule responds to a petition submitted by the leather tanning industry. The Agency conducted an informal survey of a small number of POTWs, permitting authorities, and industry representatives knowledgeable of leather processing operations and wastewater treatment. EPA is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments. EPA also wants to provide prompt implementation of the rule to minimize any potential hazards to worker safety and health that may occur in the absence of this rule. Prompt implementation will also allow affected facilities in this category to reduce the use of treatment chemicals.

DATES: This rule is effective on October 7, 1996 unless significant adverse or critical comments are received by September 6, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Send comments in triplicate on this rule to Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St., S.W., Washington, DC 20460, or telephone 202-260-7128.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by this action are those facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works, and entities include:

Category	Examples of regulated entities
Industry	Leather tanning facilities that conduct beamhouse operations and indirectly discharge process wastewater to publicly owned treatment works

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 425.15, § 425.25, § 425.65, or § 425.85 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding

FOR FURTHER INFORMATION CONTACT section.

Organization of this document:

- I. Legal Authority
- II. Clean Water Act
- III. Overview of the Leather Tanning Industry
- IV. Regulatory Activities and Responses
- V. Petition Submitted by Industry
- VI. Agency Action in Response to Petition
- VII. Options Considered
 - A. Selected Option
 - B. Other Options Considered
 - (1) Option 2
 - (2) Option 3
- VIII. Scope of This Rule
- IX. Executive Order 12866
- X. Unfunded Mandates Reform Act
- XI. Regulatory Flexibility Analysis
- XII. Submission to Congress and the General Accounting Office
- XIII. Paperwork Reduction Act
- XIV. Administrative Procedure Requirements

I. Legal Authority

These regulations are being promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Federal Water Pollution Control Act of 1972, as amended (known as the Clean Water Act), 33

U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361.

II. Clean Water Act

The Federal Water Pollution Control Act of 1972 ("the Act") established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" [Section 101(a)]. By July 1, 1977, existing industrial dischargers were to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT") [Section 301(b)(1)(A)]; and by July 1, 1983, dischargers of certain pollutants were required to achieve "effluent limitations requiring the application of the best available technology economically achievable * * * which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT") [Section 301(b)(2)(A)]. New industrial direct dischargers were required, under Section 306, to comply with new source performance standards ("NSPS"), based on the best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307(b) and of the Clean Water Act. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the Act, and pretreatment standards were made enforceable directly against dischargers to POTWs ("indirect dischargers").

III. Overview of the Leather Tanning Industry

Leather tanning is a general term for the various processing steps involved in converting animal skins or hides into leather. The three major hide and skin types used to manufacture leather are cattle hides, sheepskins and pigskins. The three primary steps of processing hides or skins are: beamhouse operations which wash and soak the hides or skins and (at most tanneries) chemically remove the attached hair; tanyard processes in which the tanning agent (primarily chromium) reacts with and stabilizes the proteinaceous matter in the hides or skins; and retanning and wet finishing processes which accomplish further processing by using additional tanning agents (again primarily chromium although other agents are also used) and other chemical agents such as dyes, lubricants and various finishes.

The U.S. leather tanning industry, identified by the Department of

Commerce's Standard Industrial Classification as industry number 3111, is an old industry. The number of tanneries in the U.S. has steadily decreased from around 7,500 in 1865 to approximately 1,000 by the year 1900. In 1982, EPA data indicated there were 158 tanneries producing leather and discharging wastewaters to surface streams or to POTWs. According to estimates in the *U.S. Industrial Outlook—1993*, in 1992 the leather tanning and finishing industry employed about 12,700 people, distributed among 110 facilities, or an average of about 115 employees per facility. Tanneries are clustered in the northeast and mid-Atlantic states, the Chicago-Milwaukee area and the Gloversville-Johnstown area of New York State. Other facilities are scattered around the U.S. Cattle hides represent the bulk of raw material utilized for tanning done in the U.S. The following is a brief description of the three primary areas of process operations of facilities in the leather tanning and finishing industry.

The first primary area of process operations is the beamhouse in which the raw hides and skins are prepared by cleaning and soaking to make them more pliable, and unhairing, or hair removal, to make the hides more attractive and useful. Beamhouse operations usually start with siding and trimming, followed by washing and soaking, fleshing and unhairing. The unhairing operation includes lime and sodium sulfide as the primary chemicals which dissolve the hair. Wastewaters are highly alkaline, in a pH range of 10 to 12.

The second primary area of process operations is the tanyard in which a durable material is produced from the animal hides or skins. The proteinaceous matter in the hides reacts with the tanning agent and becomes stabilized. The tanning is accomplished by trivalent chromium, by vegetable tannins extracted from the bark of certain trees, or by synthetic tanning agents. These operations occur in an acidic medium and the wastewater generated usually has a pH in the range of 2.5 to 3.5. The resulting stabilized materials will not degrade by physical or biological mechanisms.

The third primary area of process operations is retanning and wet finishing which gives the tanned hides special or desired features, such as bleached appearance, added coloring, lubricants, or further tanning for finished leather properties. These operations usually do not have a significant effect on the acidity/alkalinity of associated wastewaters.

IV. Regulatory Activities and Responses

On April 9, 1974 (39 FR 12958) EPA promulgated the original regulation for the leather tanning industry, establishing effluent limitations guidelines and standards for the industry based on the best practicable control technology currently available ("BPT"), the best available technology economically achievable ("BAT"), new source performance standards ("NSPS") for new direct dischargers, and pretreatment standards for new indirect dischargers ("PSNS"). These requirements were codified at 40 CFR Part 425, Subparts A-F.

The Tanners Council of America, Inc. (now the Leather Industries of America, Inc.), challenged the 1974 promulgated rule. The U.S. Court of Appeals for the Fourth Circuit left BAT and PSNS undisturbed, but remanded the BPT and NSPS limitations and standards.

On March 23, 1977 (42 FR 15696), EPA promulgated pretreatment standards for existing sources ("PSES") for the leather tanning industry. These standards included only a pH range and did not establish limits on chromium or sulfide.

On July 2, 1979 (44 FR 38746), EPA proposed revised effluent limitations guidelines and standards for the leather tanning and finishing point source category. EPA proposed to replace the remanded BPT and NSPS limitations and standards, establish new best conventional pollutant control technology ("BCT") limitations, and revise BAT, PSES and PSNS limitations and standards.

On November 23, 1982 (47 FR 52848) EPA promulgated a final regulation for the leather tanning and finishing industry point source category, establishing effluent limitations and standards to control specific toxic, nonconventional and conventional pollutants for nine subcategories in the leather tanning and finishing point source category. The pretreatment standards for indirect dischargers to POTWs established categorical limits on the discharge of chromium and sulfides and revised pH limits in certain subcategories.

The Tanners Council of America (now known as the Leather Industries of America, Inc. (LIA)) filed a petition for judicial review of several aspects of the promulgated regulation. This action was followed by the filing of an administrative Petition for Reconsideration with EPA. The Agency conducted an extensive review of the existing data base and acquired additional data. Following discussions between the Agency and the LIA, the

parties entered into a settlement agreement.

The settlement agreement, signed on December 11, 1984, addressed the issues raised in the LIA petition. EPA agreed to propose amendments to the 1982 rule and to solicit comments on these issues. LIA agreed to dismiss its petition for judicial review and to withdraw the Petition for Reconsideration if EPA promulgated rules consistent with the proposed amendments.

In response to the 1984 settlement agreement on the revised effluent guidelines, EPA published on January 21, 1987 (52 FR 2370) proposed amendments to the 1982 rule and preamble language with solicitation of comments. As one of the provisions of the settlement agreement, EPA agreed to propose to delete the upper pH limit for vegetable tanners in Subpart C [Hair Save or Pulp, Non-chrome Tan, Retan-Wet Finish subcategory (§ 425.35(a))] only. Also, as part of the settlement agreement, LIA and EPA jointly requested the U.S. Court of Appeals for the Fourth Circuit to stay the effectiveness of the sections of 40 CFR Part 425 which EPA had agreed to propose to amend, pending final action by EPA on the proposed amendments. On February 22, 1985, the Court entered an Order staying specified sections of Part 425, pending final promulgation of an amendment to the regulation consistent with the settlement agreement.

On March 21, 1988 (53 FR 9176) EPA promulgated amendments to 40 CFR Part 425. The promulgated rule added an alternative sulfide analytical method, clarification of the procedures that support applicability of sulfide pretreatment standards, revisions to certain BPT effluent limitations, corrections to NSPS, and an allowance for small tannery exemptions under certain conditions. The preamble to the promulgated rule stated that the Agency would not consider a waiver from the upper pH limit of 10.0 for other subcategories than Subpart C because it would be unduly complicated.

V. Petition Submitted by Industry

On March 18, 1993, Counsel for the leather tanning industry submitted a petition to the Agency, requesting that the Agency amend the upper pH limit for leather tanning facilities that conduct unhairing ("beamhouse") operations with indirect discharge to publicly owned treatment works ("POTWs"). The petition asks the Administrator " * * * to include within the relevant regulatory section language allowing a POTW, subject to EPA review, to waive the upper pH limit for

regulated discharges upon a showing that any such waiver will not 'interfere,' cause a 'pass through' or be 'incompatible' with a POTW's treatment works." The petitioners go on to say: "The rulemaking is requested because, as a result of changes in operating conditions and an incorrect assumption that flow equalization alone would allow continuous control of tannery wastewaters to a level between 7.0 and 10.0, the existing upper pH limit cannot always be safely met."

Since 1977, EPA has prohibited the discharge into POTWs of effluent from such facilities where the discharge failed to fall within a pH range of 7.0 to 10.0. This limitation was established primarily due to concerns over the solubility of chromium at higher pH levels and the potential for upsetting biological treatment systems of POTWs. To meet the pH requirement, leather tanning facilities would mix high pH beamhouse wastewaters with low pH tanyard wastewaters in a flow equalization process, resulting in a wastewater discharge that would meet the pH requirement.

In 1982, EPA subsequently set chromium pretreatment standards for the industry. The treatment technology for chromium reduction is precipitation at a pH range of 8.5 to 9.0, thus requiring tanyard wastewater to be raised from its usual range of 2.5 to 3.5. However, this treatment was not required at most facilities because POTWs would grant removal credits allowing chromium to be discharged without pretreatment.

Following the invalidation of the original removal credit regulation in 1986, *see NRDC v. EPA*, 790 F.2d 289 (3rd Cir. 1986), *cert. denied* 479 U.S. 1084 (1987), leather tanning facilities raised the pH of the tanyard wastewaters in order to achieve necessary chromium reduction. The petitioners assert that because the resulting wastewaters, when combined with the beamhouse wastewaters, are still at a pH outside the pretreatment standard, plants have found it necessary to add acid to the combined wastewater before discharge.

The petitioners indicate this acidification is problematic for several reasons. First, this adjustment to the pH may result in the generation and release of hydrogen sulfide (H₂S), a highly toxic gas, in the leather tanning facility or in the POTW. In addition, the petitioners assert that many municipal authorities believe that tannery wastewater alkalinity and buffering capacity are highly beneficial in counteracting sewer corrosion and H₂S generation within the sewer system.

VI. Agency Action in Response to Petition

In response to the petition, the Agency conducted an informal survey of a small number of POTWs receiving leather tanning wastewaters, permitting authorities, and industry representatives knowledgeable of leather processing operations and wastewater treatment.

Eight POTW managers and operators were contacted regarding the issues raised in the petition. Three of the POTWs contacted were identified in the petition and five of the POTWs contacted were known by EPA to be receiving wastewater from leather tanning facilities. All those contacted were amenable to receiving leather tanning and finishing wastewaters with a higher pH at the point of discharge to the POTW. Four operators stated that wastewaters with alkaline pH contribute to more efficient POTW operation. Three operators expressed the opinion that higher pH levels inhibit corrosion. Two operators stated that high pH at the user's point of discharge reduces or eliminates the need for adding caustic to the POTW treatment system to maximize removal efficiency. One POTW operator stated that his system had not had any operating or performance problems associated with too high a pH in his system.

Based on review of the petition, telephone discussions with operators and managers of POTWs receiving leather tanning wastewater, and regulatory personnel, EPA has determined that there is sufficient basis for promulgating amendments to the upper pH limit contained in the pretreatment standards for existing and new sources in the subparts identified below.

VII. Options Considered

A. Selected Option

EPA is promulgating this rule to revise the existing pretreatment standards to eliminate upper (alkaline) pH limits for plants in four subcategories in which unhairing operations are conducted. This minor revision will benefit POTW operations by lowering operating costs and reducing potential risks for worker safety and health. This option was selected because EPA believes that interference with the operation of POTWs (i.e., damage to POTW collection systems and upset of biological treatment processes, and potential for adverse effect on the health and safety of POTW workers) and potential for pass through of pollutants are not likely events. Affected POTWs may still elect to set an alternative

upper (alkaline) pH limit based on local circumstances.

B. Other Options Considered

The following options were considered but not selected.

(1) Option 2

EPA would promulgate a rule to develop new upper (alkaline) pH limits for all indirect dischargers in each of the four subcategories affected by the petition. This option was not selected because EPA does not have sufficient data to develop different pH limits. Even if sufficient data were available to develop different pH limits, this option also may leave individual cases where new pH limits still may not fit local circumstances, thus requiring further regulatory action. Moreover, as indicated above, the information currently available to the Agency indicate that no upper (alkaline) pH limits are necessary.

(2) Option 3

EPA would promulgate a rule adding a new section to 40 CFR Part 425 which would establish a procedure for use by individual POTWs in changing the pH range specified in the categorical pretreatment standards. The procedure would allow individual POTWs receiving these wastewaters to determine the appropriate upper (alkaline) pH limit for each of the affected leather tanning and finishing facilities. POTWs would determine the appropriate upper pH limit applicable to each indirect discharging leather tanning and finishing facility with operations in the affected subcategories based on consideration of all relevant factors pertinent to the POTW, including but not limited to those that EPA might present in support of such an option. EPA did not select this option because of the added unnecessary procedural burden this would place on POTWs; as indicated above, EPA does not believe that such limits are necessary. Where local conditions make such limits appropriate, POTWs should be free to set limits based on existing procedures rather than a new procedure developed for this rule.

VIII. Scope of This Rule

This notice of a "direct" final rule addresses only certain leather tanning facilities that conduct beamhouse operations and indirectly discharge process wastewater to publicly owned treatment works. Thus this final rule applies to the standards in Subparts A, B, F, and H of 40 CFR Part 425, at §§ 425.15, 425.25, 425.65, and 425.85.

The petition submitted by the Leather Industries of America, Inc., sought to amend only the Pretreatment Standards for Existing Sources (PSES). Because EPA set Pretreatment Standards for New Sources (PSNS) equal to PSES, this final rule applies to both existing and new indirect dischargers. However, because PSNS were set equal to PSES in each subcategory, EPA need only promulgate an amendment to PSES to effect the elimination of the upper (alkaline) pH limit for both existing and new sources in these four subcategories.

The petitioners also asked for relief from 40 CFR Part 425 Subpart C—Pretreatment Standards for Existing Sources—Hair Save or Pulp, Non-Chrome Tan, Retan—Wet Finish subcategory. However, EPA's rulemaking to implement the 1984 settlement agreement addressed removal of the upper (alkaline) pH limit for this subcategory.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulations containing significant Federal intergovernmental mandates. These consultation requirements build on those of Executive Order 12875 ("Enhancing the Intergovernmental Partnership").

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. This rule is intended to reduce the burden of compliance by affected industries with certain federal effluent requirements. In addition, the approach selected for altering the existing regulations is intended also to decrease implementation burdens for State and local governments. Thus, today's rule is

not subject to the requirements of sections 202 and 205 of the UMRA.

Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements of section 203 of UMRA. However, EPA has nonetheless involved state and local governments in the process of developing this rule. The Agency consulted with representatives of selected POTWs regarding the underlying technical aspects of this rule. The Agency will continue this process of consulting with state, local and other affected parties after issuance of the rule in order to further minimize the potential for unfunded mandates.

XI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This regulatory action does not have any adverse impact on either small or large entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

XII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

XIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3500 *et seq.*, EPA must submit a copy of any rule that contains a collection-of-information requirement to the Director of the Office of Management and Budget for review and approval. This rule contains no additional information collection requirements beyond those already required by 40 CFR part 403 and 40 CFR part 122 and by 40 CFR Part 425, and therefore the review requirement of the Paperwork Reduction Act is not applicable.

XIV. Administrative Procedure Requirements

The Agency is publishing this action as a "direct final" rule. A direct final rule is not an "interim final" rule (*i.e.* a rule which provides for public comment after it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment *before* the rule goes into effect. A response to all comments received will be placed in the docket for this rule prior to the effective date. This rule thus fully complies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for this rule because the Agency does not expect to receive adverse or critical comment and to allow for the most expeditious implementation possible, consistent with the APA. However, consistent with APA requirements, if EPA does receive significant adverse or critical comment, EPA will withdraw this rule prior to its effective date and proceed with a normal rulemaking process. As a result, elsewhere in today's Federal Register, EPA is also *proposing* this rule; if EPA decides to withdraw the direct final rule based on public comment, EPA will proceed with a revised rule based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

List of Subjects in 40 CFR Part 425

Leather, Leather Tanning and Finishing, Water Pollution Control, Wastewater Treatment and Disposal, Pretreatment Standards for Existing and New Sources.

Dated: June 26, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 425, subchapter N, chapter I, of title 40, Code of Federal Regulations, is amended as follows:

PART 425—[AMENDED]

1. The authority citation for part 425 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314 (b), (c), (e) and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

2. Section 425.15(a) is amended by revising the footnote to the table to read as follows:

§ 425.15 Pretreatment standards for existing sources (PSES).

(a) * * *

¹ Not less than 7.0.

* * * * *

Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory

3. Section 425.25 is amended by revising the footnote to the table to read as follows:

§ 425.25 Pretreatment standards for existing sources (PSES).

* * * * *

¹ Not less than 7.0.

Subpart F—Through-the-Blue Subcategory

4. Section 425.65 is amended by revising the footnote to the table to read as follows:

§ 425.65 Pretreatment standards for existing sources (PSES).

* * * * *

¹ Not less than 7.0.

Subpart H—Pigskin Subcategory

5. Section 425.85 is amended by revising the footnote to the table to read as follows:

§ 425.85 Pretreatment standards for existing sources (PSES).

* * * * *

¹ Not less than 7.0.

[FR Doc. 96-17023 Filed 7-5-96; 8:45 am]
BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-39

RIN 3090-AF89

Amendment of FIRM Schedule Provisions

AGENCY: Office of Policy, Planning and Evaluation, GSA.
ACTION: Interim rule with request for comments.

SUMMARY: This change to the Federal Information Resources Management Regulation (FIRM) removes provisions for using Federal information processing (FIP) multiple award schedule (MAS) contracts. The Federal Acquisition Regulation (FAR) will now govern all MAS contracting actions. This change is an example of GSA's ongoing efforts to ensure uniform regulatory procedures within the MAS program.

DATES: This amendment is effective July 8, 1996. Comments will be considered in the final rule, but must be received on or before September 6, 1996.

ADDRESSES: Comments may be mailed to GSA, Policy and Regulations Division (MKR), 18th & F Streets, NW., Room 3224, Washington, DC 20405, Attn: Judy Steele, or delivered to that address between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Judy Steele, GSA/MKR, FTS/Commercial (202) 501-3194(v) or (202) 501-0657 (tdd), Internet (judy.steele@gsa.gov).

SUPPLEMENTARY INFORMATION: As a result of a recent reorganization, GSA's FIP MAS Program is now a part of the Federal Supply Service schedule program. The FIRM is being revised to reflect that change. Section 201-39.801-1 is revised to clarify that the FIP MAS contracts now fall under the FSS program umbrella. Part 8 of the Federal Acquisition Regulation governs the FSS MAS Program, and will therefore, also apply to FIP MAS schedule contracts. Sections 201-39.803 and 201-39.803-1 through 201-39.803-3 are removed and reserved since a separate section on ordering from the FIP MAS contracts is no longer necessary.

This rule was submitted to, and reviewed by, the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

The recordkeeping provisions of the Paperwork Reduction Act do not apply because the FIRM changes do not impose information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 41 CFR Part 201-39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

For the reasons set forth in the preamble, GSA is amending 41 CFR Part 201-39 as follows:

PART 201-39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201-39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-39.801-1 is revised to read as follows:

§ 201-39.801-1 General.

GSA directs and manages the Federal Supply Schedules programs. Except as provided in § 201.39.804, use of the Federal Supply Schedules program is covered by FAR 8.4.

§§ 201-39.803, 201-39.803-1 through 201-39.803-3 [Removed and Reserved]

3. Sections 201-39.803 and 201-39.803-1 through 201-39.803-3 are removed and reserved.

Dated: June 4, 1996.

David J. Barram,
Acting Administrator of General Services.
[FR Doc. 96-17125 Filed 7-5-96; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Tariffs and Service Contracts; First Interim ATFI Amendments

CFR Correction

In title 46 of the Code of Federal Regulations, parts 500 to end, revised as of October 1, 1995, the table following § 514.17(d)(1) is incorrect. It should read as follows:

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

ET Num: 681	JKL Line Essential Terms Publication (XYZ 004)	[1]
SC Num: 765	Personal Computers from Taiwan	[2]
FMC File Num: 123456	Amendment Num: 3—Available until: 31 Jan 1992	[3]
Amendment Type: C	Contract Effective: 01 Dec 1992	[4]
Filing Date: 01 Jan 1992	Special Case: 123456—Contract Expiration: 15 Jan 1993	[5]
	Contract Termination: 15 Jan 1993	[6]

Term	(Amend)	List of essential terms titles	[7]
1	(0)	Origin	[i]
2	(0)	Destination	[ii]
3	(0)	Commodities	[iii]
4	(1)	Minimum Quantity	[iv]
4	A(0)	Minimum Quantity in 20ft containers	[A]
4	B(3)	Minimum Quantity in 40ft containers	[B]
5	(0)	Service Commitments	[v]
6	(0)	Contract Rates or Rate Schedules(s)	[vi]
7	(2)	Liquidated Damages for Non-Performance (if any)	[vii]
8	(0)	Later Events Causing Deviation From ET (if any)	[viii]
9	(0)	Duration of the Contract (e.g., "46 days from 01 Dec. 1992 to 15 Jan. 1993")	[ix]
10	(0)	Assessorials	[x]
100	(0)	(Title and text—Optional)	[8]
101	(0)	(Title and text—Optional)	[8]
[999 zzz	(999)	Maximum term and amendment values]	[8]

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Proposed Rules

Federal Register

Vol. 61, No. 131

Monday, July 8, 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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580-AA48

Fees for Commodity Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to make the following changes to fees charged for inspection services for commodities, other than rice, performed under the Agricultural Marketing Act of 1946: Increase hourly and unit fees; charge actual travel and per diem costs; charge for sanitation inspections, pre-inspection conferences, and related services; establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; eliminate the provisions for entering into a contract for service; and change in the fee structure for stowage examinations from an hourly rate to a unit fee.

These revisions are designed to generate revenue sufficient to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity inspection services rendered and to maintain an appropriate operating reserve.

DATES: Written comments must be submitted on or before August 7, 1996.

ADDRESSES: Written comments must be submitted to George Wollam, USDA-GIPSA-ART, Room 0623—South Building, 1400 Independence Avenue, SW., Washington, DC 20090-6454, or FAX (202) 720-4628. Comments may be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

All comments received will be available for public inspection during

regular business hours in Room 062—South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam at the address above or by telephone at (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The five changes being proposed are designed to generate revenue sufficient to recover the operating costs for commodity inspection services and to maintain an appropriate operating reserve. FGIS is proposing the following changes: (1) Increase in the hourly and unit fees for commodity inspection services, (2) begin charging actual travel costs for airlines, rental cars, etc. and per diem for travel beyond 25 miles of an official assigned duty location, (3) begin charging for sanitation inspections, pre-inspection conferences, and related services, (4) establish new hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays, (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

Fees for commodity inspection services were last increased on June 28, 1984 (49 FR 26547). For nearly 10 years, the 1984 fee schedule sufficiently recovered operating expenses and maintained a minimum 3-month operating reserve. However, by fiscal year (FY) 95, increased operating costs coupled with reductions in the number of services requested rendered the 1984 fee schedule inadequate for generating sufficient revenue to cover operating expenses. The operating reserve, which has been funding losses to the commodity inspection program for the past 4 years, was drawn down to the minimum 3-month operating reserve. Given these conditions, the Administrator of GIPSA determined that a fee necessary to meet rising costs and maintain an adequate reserve balance.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil

Justice Reform. It is not intended to have a retroactive effect, nor will this proposed rule preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. No administrative procedures must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the commodity inspection services do not meet the requirements for small entities. In addition, FGIS is required by statute to recover the costs of commodity inspection services, as nearly as practicable.

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements for applications for inspection services, including official commodity inspections, have been approved by the Office of Management and Budget under control number 0580-0013.

Background

The commodity inspection fees were last amended effective June 28, 1984 (49 FR 26547). These fees were to cover, as nearly as practicable, the operating costs for the program. They presently appear in § 868.90, Tables 1 and 2, of the regulations (7 CFR 868.90, Tables 1 and 2).

The majority of processed commodity inspections performed under the Agricultural Marketing Act of 1946 are on purchases made by the Farm Service Agency (FSA) formerly Agricultural Soil Conservation Service. Historically, approximately 92 percent of the services performed have been for FSA purchases. Defense Personnel Support Center (DPSC) inspections account for approximately 2 percent of the inspections; the remaining 6 percent are performed under nongovernment contracts. Approximately 65 percent of graded commodity inspections are for government purchases, and the

remaining 35 percent are for commercial sales.

Several actions have caused a general decrease in the number of inspections performed for both graded and processed commodities. Beginning in FY 92, FSA commodity purchases began to decline as a result of the success of a market-oriented farm program that virtually eliminated government-owned commodity grain stocks and, in turn, the portion of processed commodities derived from these stocks. In addition, in FY 94, responsibility for inspecting many products for DPSC was transferred from FGIS to AMS.

Processed commodities comprise approximately 90 percent of the program's revenue. In FY 91, FGIS inspected 26,218 lots. By FY 92, the number of inspected lots dropped to 24,004; in FY 93, 17,494 lots were inspected; and FY 94 saw a slight increase to 19,664. In FY 95, however, the total again decreased to 15,065, or a 43 percent reduction from the number of lots inspected in FY 91. Corresponding decreases have also been experienced for graded commodities.

Revenue collected in FY 91 totaled \$6,562,940 and operating costs totaled \$5,987,299 for a positive margin of \$575,570. Revenue in FY 92 dropped to \$5,158,903 due to the decrease in inspections and resulted in a \$179,396 loss to the program. Losses were incurred in each of the following years: \$1,184,602 in FY 93, \$764,865 in FY 94, and \$1,456,944 in FY 95. At the same time, FGIS reduced operating costs for the program from \$5,987,370 in FY 91 to \$5,468,059 in FY 95.

FGIS maintains an operating reserve specifically to cover the cost of shutting down the program in case of an emergency. Agency policy is to maintain the reserve at a level equal to 3 months operating expenses. In FY 91, the reserve was \$4,942,934, which represented 10 months of operating costs. The loss of \$179,396 in FY 92 was covered by this reserve.

In FY 92, FGIS reviewed the program's operating reserve to determine if the fund was being maintained at an adequate level. The Agency determined that, while the level exceeded the three-month reserve minimum, it would not be prudent to decrease the reserve because of anticipated downturns in the number of service requests and the consequent need to cover program losses while restructuring the program.

Again in FY 93, the \$1,184,602 loss was covered by the reserve, which was drawn down to a year-end total of \$3,889,429. Even with the loss, the fund still represented an 8.5 month reserve.

By FY 94, the reserve had dropped to \$3,173,033, or the equivalent of 7 months' operating costs. The losses incurred in FY 95 reduced the margin to \$1,716,090, which is a 3.2 month reserve and represents the target level for the fund.

In FY 94, FGIS responded to the decline in services requests by initiating a field restructuring plan that continued into FY 95. During this time period, three field offices and one suboffice that were directly involved with providing services were closed and consolidated. This eliminated the cost of maintaining a field office and streamlined overall operations. On two separate occasions, retirement incentives (buyouts) were offered to employees which reduced the staffing levels in this program. Other personnel were transferred to field offices and redirected to other programs. In FY 91, approximately 103 staff years were devoted to this program. By FY 95, the staffing level had been reduced by 35 percent to 67 staff years. The FY 95 level of 15,065 services performed is expected to remain fairly constant in the future. Large numbers of service requests as seen in the late 1980s and early 1990s are not forecasted. However, further losses are projected if adjustments to the fee schedule are not made.

Due to reduced and sporadic FSA purchases, efficiencies gained through volume inspections have disappeared. Fluctuations in service demand have increased, even at locations that routinely requested service on a daily basis. These changes have impacted on FGIS' ability to maintain qualified staff at some locations and especially those that are large distances from a field office. In addition, there has been an increase in the proportion of inspections requested by facilities that may need service only one or two weeks per year. Many of these locations are far from field offices. The result is a great deal of long-distance travel from field offices to remote locations for one or two week jobs. Such travel has increased operating costs and, in some instances, has offset the savings gained through the restructuring.

The 1984 fee schedule was designed to recover all costs associated with performing commodity inspection service, including overtime, travel, per diem, and other related services. For nearly ten years, the 1984 fee schedule generated sufficient revenue to cover operating expenses. This was due, in large part, to continuously improved efficiencies in service delivery and strong market demand for inspection services. Although additional costs saving measures were implemented

during fiscal years 94 and 95, operating expenses and service demand have reached a level at which the 1984 fee schedule no longer generates sufficient revenue to cover costs of providing service.

Since FY 90, there has been a 40 percent decrease in the amount of commodity inspections requested. The commodity inspection program experienced a \$1,642,720 loss (revenue \$4,011,116 and cost \$5,468,059) during FY 95. The commodity program's retained earnings are currently \$1,476,487, a 3.8-month operating reserve. Further losses are projected if adjustments to the 1984 fee schedule are not made.

Proposed Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. In accordance with this section, FGIS proposes the following changes to maintain the current commodity inspection program: (1) Increase hourly and unit fees; (2) charge actual travel and per diem costs; (3) charge for sanitation inspections, pre-inspection conferences, and related services; (4) establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

1. *Hourly Rates.* The proposed new hourly rates are divided into two categories: Regular Workday (Monday through Friday) and Nonregular Workday (Saturday, Sunday, and Holiday). Section 868.90, Tables 1 and 3, currently define Saturday as a Regular Workday. The revised Table 1 redefines a Nonregular Workday as a Saturday, Sunday, and Holiday and the hourly rate reflects time and one-half paid to employees. In addition, the two separate hourly rates for regular and nonregular workdays contained in Tables 1 and 3 are combined into one set of hourly rates in a revised Table 1 that covers all services.

Section 868.90, Tables 1 and 3, currently provide for reduced hourly fees for applicants who elect to enter into a contract with FGIS. No applicants have used this provision since it was introduced in 1984. Because the current trends of decreasing service requests and increasing demand fluctuations indicate less likelihood for applicants to use this provision in the future, it is eliminated.

The rate for a Regular Workday will increase to \$33.00 and Nonregular Workday will increase to \$42.80. These new hourly fees cover FGIS' administrative and supervisory costs for the performance of official services. These costs include personnel compensation and benefits, rent, communications, utilities, contractual services, supplies, and equipment.

2. *Unit Rates.* Section 868.90, Table 2 currently provides unit fees for the grading of beans, peas, lentils, hops, and other nongraded, nonprocessed commodities. These rates are increased and the current Table 2 is deleted and combined with proposal Table 1. The new unit rates cover FGIS' administrative and supervisory costs for performing the official service, including costs for personnel compensation and benefits, rent, communication, utilities, contractual services, supplies, and equipment.

3. *Travel and Per Diem.* FGIS is making changes to § 868.92 of the regulations concerning the application of fees covered in Table 1. Specifically, service, as provided under § 868.90,

Table 1, will include service provided within 25 miles of the employee's assigned duty point. Travel, per diem, and other related costs will be assessed for providing service beyond the 25-mile limit. Section 868.91, Table 1, Fees for certain Federal rice inspection services, remain unchanged; travel, per diem, and other related costs continue to be included in the hourly rate.

4. *Services Other Than Inspections.* FGIS is proposing a change in the fee structure for stowage examinations from an hourly fee that recovers all costs to a service-specific fee structure currently funded by the hourly rate. The service-specific fee will be a unit fee and will apply only to stowage examinations.

FGIS is revising Footnote 1 to include provisions for charging for sanitation examinations, pre-inspection conferences, and other related services for which FGIS does not currently charge.

5. *Fees for Laboratory Testing Services.* Fees For Laboratory Test Services, Table 4, Fees for Official Laboratory Test Services Performed At the FGIS Commodity Testing Laboratory

at Beltsville, Maryland, For Processed Agricultural Products is revised to read: Table 2—Commodity Testing Laboratory.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.)

2. Section 868.90 is revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1.—HOURLY RATES^{1 3}
[Fees for Inspection of Commodities Other Than Rice]

Hourly Rates (per service representative):	
Monday to Friday—\$33.00	
Saturday, Sunday, and Holidays—\$42.80	
Miscellaneous Processed Commodities²:	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	\$51.40
(ii) Falling Number	12.00
(iii) Aflatoxin Test Kit	7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	22.70
(ii) Other than field run (per lot or sample)	13.50
(iii) Factor analysis (per factor)	5.50
(2) Additional Tests—Unit Rates (Hops)—(i) Lot or sample (per lot or sample)	29.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities)—(i) Factor analysis (per factor)	5.50
(4) Stowage examination (service-on-request) ⁴ :	
(i) Ship (per stowage space)	50.00
	(minimum \$250 per ship)
(ii) Subsequent ship examinations (same as original)	
	(minimum \$150 per ship)
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

¹ Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to §§ 868.92, Explanation of service fees and additional fees for all other service fees except travel and per diem.

² When performed at a location other than at the commodity testing laboratory.

³ Faxed and extra copies of certificates will be charged at \$3.00 per copy.

⁴ If performed outside of normal business, 1½ times the applicable unit fee will be charged.

(b) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory

test (original, retest, or appeal) listed in Table 2.

(c) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

(d) Laboratory tests referenced in Table 2 will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES ¹

Laboratory tests	Fees
(1) Alpha monoglycerides	\$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Livibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Phosphorus	14.00
(39) Popcorn kernels (total defects)	19.00
(40) Popping ratio/value popcorn	19.00
(41) Potassium bromate	20.00
(42) Protein	7.50
(43) Rope spore count	31.50
(44) Salmonella	40.00
(45) Salt or sodium content	12.50
(46) Sanitation (filth light)	24.00
(47) Sieve test	5.00
(48) Smoke point	22.00
(49) Solid fat index	85.00
(50) Specific volume (bread)	21.80
(51) Staphylococcus aureus	24.50
(52) Texture	6.50
(53) Tilletia controversa kuhn (TCK) (Qualitative)	25.20
(54) Tilletia controversa kuhn (TCK) (Qualitative)	76.00
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities oils & shortenings)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50

TABLE 2.—FEES FOR LABORATORY TEST SERVICES¹—Continued

Laboratory tests	Fees
(68) Other laboratory tests	(²)

¹ When laboratory test service is provided for GIPSA by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to GIPSA for the service provided.

² Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

3. Section 868.92 (a)(2) is revised to read as follows:

§ 868.92 Explanation of service fees and additional fees.

(a) * * *

(2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, Table 1, Fees for certain Federal rice inspection services. See § 868.90, Table 1, footnote 1 for Fees for Inspection of Commodities Other Than Rice.

* * * * *

Dated: June 25, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-16853 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-247-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B16 (CL-601-3A and -3R) and CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-2B16 and CL-600-2B19 series airplanes. This proposal would require a one-time inspection of the spring bungee assembly of the nose landing gear (NLG) to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable unit, if necessary. This proposal is prompted by reports of failure of the NLG to extend when the landing gear selector was placed in the "DOWN" position, and failure of the NLG doors to open when the NLG door

switch was set in the "SAFETY/DOOR OPEN" position; these conditions may have been caused by a reduced stroke of the spring bungee. The actions specified by the proposed AD are intended to prevent improper operation of the NLG door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee.

DATES: Comments must be received by August 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-247-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York. **FOR FURTHER INFORMATION CONTACT:** Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256-7509; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-247-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-247-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2B16 (CL-601-3A and -3R), and CL-600-2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation advises that it received reports indicating that, during flight of a Model CL-600-2B19 series airplane, the nose landing gear (NLG) did not extend when the landing gear selector was placed in the "DOWN" position. The NLG did extend following cycling of the selector valve. Transport Canada Aviation also advises that it received a report indicating that, during a pre-flight check of a Model CL-600-2B16 series airplane, the NLG doors did not open when the NLG door switch was set in the "SAFETY/DOOR OPEN" position. The cause of these occurrences has been attributed to a defective spring bungee assembly of the NLG door mechanism. Investigation revealed that the spring

bungee may have a reduced stroke due to incorrect clearance between the collar and the body of the spring bungee. This incorrect clearance was the result of incorrect assembly during manufacture. This condition, if not corrected, could result in improper operation of the NLG door, which could result in inability to extend the NLG.

Explanation of Relevant Service Information

The manufacturer has issued Canadair Regional Jet Alert Service Bulletin A601R-32-037, Revision "A," dated December 2, 1994 (for Model CL-600-2B19 series airplanes), and Canadair Challenger Service Bulletin 601-0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601-0454, dated July 14, 1995 (for Model CL-600-2B16 series airplanes). These service bulletins describe procedures for a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable (new or reworked) unit, if necessary. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF-95-10, dated June 27, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement

of the spring bungee assembly with a serviceable (new or reworked) unit, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Explanation of Differences between Service Bulletins and the Proposed Rule

Operators should note that the compliance time specified in this proposed AD (within 90 days after the effective date of the AD) differs from the times recommended in the referenced service bulletins. [The compliance time recommended in Canadair Challenger Service Bulletin 601-0454 for Model CL-600-2B16 series airplanes is "at the next 300-hour check." Canadair Regional Jet Alert Service Bulletin A601R-32-037 (for Model CL-600-2B19 series airplanes) recommends a compliance time of no later than the next "A" check or within the next three months after receipt of the alert service bulletin.] The FAA finds that the compliance time should not differ for each airplane model, since the spring bungee installed on both models has the same part number. In developing an appropriate compliance time for this AD, the FAA also considered not only the degree of urgency associated with addressing the subject unsafe condition, but availability of replacement parts and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA finds 90 days to be an appropriate compliance time for accomplishing these actions.

Cost Impact

The FAA estimates that 101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$24,240, or \$240 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 95-NM-247-AD.

Applicability: Model CL-600-2B16 (CL-601-3A and -3R), serial numbers 5100 through 5166 inclusive; and Model CL-600-2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7048 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper operation of the nose landing gear (NLG) door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee; in accordance with Canadair Regional Jet Alert Service Bulletin A601R-32-037, Revision 'A,' dated December 2, 1994 (for Model CL-600-2B19 series airplanes); or Canadair Challenger Service Bulletin 601-0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601-0454, dated July 14, 1995 (for Model CL-600-2B16 series airplanes); as applicable.

(b) If improper torque of the collar is found, or if incorrect clearance between the collar and the body of the bungee is found: Prior to further flight, replace the spring bungee assembly with a serviceable (new or reworked) unit that has been inspected in accordance with Canadair Regional Jet Alert Service Bulletin A601R-32-037, Revision "A", dated December 2, 1994 (for Model CL-600-2B19 series airplanes); or Canadair Challenger Service Bulletin 601-0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601-0454, dated July 14, 1995 (for Model CL-600-2B16 series airplanes); as applicable. Accomplish the replacement in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install a spring bungee assembly having part number 600-86115-1 (for Model CL-600-2B16 series airplanes) or 600-86115-5/70 (for Model CL-600-2B19 series airplanes) on any airplane unless that assembly has been inspected and reworked, as necessary, in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Issued in Renton, Washington, on July 1, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 96-17218 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 95-CE-103-AD]

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (formerly Government Aircraft Factory) Models N22B, N24A, and N22S 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 Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N24A, and N22S airplanes that are not equipped with a part number (P/N) 1E/N-12-57 fuselage stub fin plate (MOD N759). The proposed action would require replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N-12-57. Several reports of cracks along the forward flange of the fuselage stub fin plate in the area of Rib Water Line (WL) 138.87 prompted the proposed action. The actions specified by the proposed AD are intended to prevent structural failure of the fuselage area caused by a cracked stub fin plate, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before September 6, 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-103-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.

ADDRESSES: Service information that applies to the proposed AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region,

Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-103-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.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5224; facsimile (310) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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-103-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-103-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may

exist on certain ASTA Models N22B, N24A, and N22S airplanes. The CASA reports several incidents of cracks along the forward flange of the fuselage stub fin plate in the area of Rib Water Line (WL) 138.87. Investigation has revealed fretting and fatigue of this plate, part number (P/N) 1D/N-12-57. These conditions, if not detected and corrected, could result in structural failure of the fuselage area, which could result in loss of control of the airplane.

ASTA has issued Nomad Service Bulletin (SB) ANMD-53-13, Revision 3, dated October 24, 1995, which specifies procedures for installing a fuselage stub fin plate of improved design, P/N 1E/N-12-57.

The CASA of Australia classified this service bulletin as mandatory and issued FCAA AD/GAF-N22/63, amendment 1, dated July 1994, in order to assure the continued airworthiness of these airplanes in Australia.

This airplane model is manufactured in Australia and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CASA of Australia has kept the FAA informed of the situation described above. The FAA has examined the findings of the CASA of Australia, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Models N22B, N24A, and N22S airplanes of the same type design that are registered in the United States and are not equipped with a P/N 1E/N-12-57 fuselage stub fin plate (MOD N759), the proposed AD would require replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N-12-57. Accomplishment of the proposed installation would be in accordance with Nomad SB ANMD-53-13, Revision 3, dated October 24, 1995.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. Parts cost

approximately \$150 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$22,050 or \$1,470 per airplane. This figure is based on the assumption that no affected owner/operator of the affected airplanes has accomplished the proposed replacement.

ASTA has informed the FAA that it has no records of parts distribution. The FAA believes that several of the affected airplanes already have the proposed replacement incorporated, which would reduce the cost impact upon the public.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aerospace Technologies of Australia PTY Ltd; Docket No. 95-CE-103-AD.

Applicability: Models N22B, N24A, and N22S airplanes (all serial numbers), certificated in any category, that are not equipped with a part number (P/N) 1E/N-12-57 fuselage stub fin plate (MOD N759).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural failure of the fuselage area caused by a cracked stub fin plate, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Replace the fuselage stub fin plate with one of improved design, P/N 1E/N-12-57 (MOD N759), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Service Bulletin ANMD-53-13, Revision 3, dated October 24, 1995.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard., Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; 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 June 25, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-17295 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-CE-30-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation) Models 1900C, 1900D, and 2000 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 Raytheon Aircraft Corporation (Raytheon) Models 1900C, 1900D, and 2000 airplanes. The proposed action would require inspecting (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, the proposal would require replacing the associated fuel filter assembly. Three in-flight occurrences where the low fuel pressure light illuminated prompted the proposed action. In each of the instances, a bypass valve on the affected engine was glued shut with anaerobic thread lock adhesive and when the fuel filter became clogged, proper fuel flow to the engine was not obtained. The actions specified by the proposed AD are intended to prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-30-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4146; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-30-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. 96-CE-30-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of in-flight occurrences involving Raytheon Model 1900 D airplanes, where the low fuel pressure light illuminated. Fortunately, the airplane landed safely in these incidents. In each of the instances, a bypass valve on the affected engine was glued shut with anaerobic thread lock adhesive and when the fuel filter became clogged, proper fuel flow to the engine was not obtained. Further

investigation has revealed that some fuel filter assemblies were contaminated with anaerobic thread lock adhesive during the manufacturing process.

Raytheon reports that the following airplane models and serial numbers could have fuel filter assemblies contaminated with anaerobic thread lock adhesive:

Models	Serial numbers
1900C	UC-1 through UC-174
1900C (C-12J)	UD-1 through UD-6
1900D	UE-1 through UE-205
2000	NC-4 through NC-53

Raytheon has issued Service Bulletin (SB) No. 2677 (for Model 2000), dated March, 1996; and Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996. These service bulletins specify procedures for (1) inspecting the fuel filter assemblies to detect any bypass valves glued shut; and (2) replacing the fuel filter assembly.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900C, 1900D, and 2000 airplanes of the same type design that were manufactured during the period when the fuel filter assembly bypass valves were susceptible to anaerobic thread lock adhesive contamination, the FAA is proposing AD action. The proposed AD would require inspecting (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, the proposal would require replacing the fuel filter assembly. Accomplishment of the inspection and replacement (if necessary) would be in accordance with Raytheon SB No. 2677 (for Model 2000), dated March, 1996; or Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996, as applicable.

Cost Impact

The FAA estimates that 379 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection,

and that the average labor rate is approximately \$60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$45,480. This figure only takes into account the cost of the inspection and does not take into account the cost of replacing any fuel filter assembly found to have a nonfunctional bypass valve. A fuel filter assembly replacement would take approximately 1 workhour (possible two fuel filter assembly replacements per airplane) at approximately \$60 per hour. The manufacturer will provide parts at no cost to the owner/operator. The FAA knows of no affected airplane owner/operator that has already accomplished the proposed action.

Regulatory Impact

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 airworthiness directive (AD) to read as follows:

Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation): Docket No. 96-CE-30-AD.

Applicability: The following airplane model and serial numbers, certificated in any category:

Models	Serial numbers
1900C	UC-1 through UC-174
1900C (C-12J)	UD-1 through UD-6
1900D	UE-1 through UE-205
2000	NC-4 through NC-53

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve, accomplish the following:

(a) Inspect (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, prior to further flight, replace the associated fuel filter assembly. Accomplish the inspection and replacement (if necessary) in accordance with Raytheon Service Bulletin (SB) No. 2677 (for Model 2000), dated March, 1996; and Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine these documents 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 June 25, 1996.

James E. Jackson,
Acting Manager,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-17296 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-4-95]

RIN 1545-AT41

Allocation of Loss on Disposition of Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation of loss realized on the disposition of stock. These regulations will affect United States and foreign shareholders of stock in domestic and foreign corporations. The regulations are necessary to modify existing guidance with respect to stock losses. This document also contains a notice of public hearing on the regulations.

DATES: Written comments must be received by October 7, 1996. Outlines of topics to be discussed at the public hearing scheduled for November 6, 1996, at 10 a.m. must be received by October 16, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL-4-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL-4-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 2615, Internal

Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Seth B. Goldstein, (202) 622-3850; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by September 6, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information under section 865(j)(1) is in § 1.865-2(e)(2)(ii). The proposed regulations provide that in order for taxpayers to elect retroactive application of the regulations, taxpayers must comply with the reporting requirements contained in § 1.865-2(e)(2)(ii). This information is required by the IRS as a condition for a taxpayer to elect to apply the rules of § 1.865-2 retroactively. This information will be used to determine whether a taxpayer properly applied the regulations. The respondents generally will be U.S. corporations or individuals that sell or otherwise dispose of stock in a foreign corporation of which the seller owns more than 10% of the vote or value.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 4,000 hours. The estimated annual burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: Once.

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 861, 865, and 904 of the Internal Revenue Code. These regulations are also issued under authority contained in section 7805 of the Internal Revenue Code.

Explanation of Provisions

This notice of proposed rulemaking provides rules under section 865(j) relating to the treatment of losses from the sale or other disposition of stock.

Section 1.865-1 provides that the allocation of loss on the disposition of property not governed by § 1.865-2 continues to be governed by the generally applicable rules of § 1.861-8, except as provided in other administrative pronouncements. For example, Notice 89-58 (1989-1 C.B. 699) remains in effect with respect to losses described in that Notice. The treatment of portfolio stock, which is excluded from § 1.865-2, will be reviewed in the context of a broader project dealing with similar portfolio investments, including debt instruments and derivative financial products. Allocation of loss on the disposition of stock of a regulated investment company and stock of an S corporation also will continue to be governed by §§ 1.861-8(e)(7)(i) and (ii).

Section 1.865-2(a) provides the general rule that stock losses are allocated in the same manner as stock gains (determined without regard to sections 1248 and 865(f)). Thus, stock loss generally is allocated to the residence of the seller. Loss recognized by a United States resident on the disposition of stock attributable to a foreign branch is allocated to foreign source income if a gain would have been taxable by the foreign country and the highest marginal rate of tax imposed in that foreign country is at least 10 percent. Loss recognized by a nonresident alien individual or foreign corporation with respect to stock constituting a United States real property interest reduces United States source income, in accordance with section 897.

Section 1.865-2(b) provides exceptions to the general rule. Section 1.865-2(b)(1) provides a dividend recapture rule that applies to losses realized on a disposition of stock within 24 months following the inclusion of a dividend or similar amount. To the extent of the dividend recapture amount, the loss shall be allocated to

the same class of income as the dividend. Under a de minimis rule, the recapture rule will not apply if the sum of all dividend recapture amounts is less than 10 percent of the realized loss.

A dividend recapture amount includes an actual dividend, a subpart F or qualified electing fund inclusion attributable to a dividend received by a controlled foreign corporation in a separate limitation category other than that for passive income, and an inclusion attributable to section 956 or 956A. Dividends from foreign corporations, which often are sheltered from United States tax by foreign tax credits and do not reduce the shareholder's basis in the stock, may reduce the selling price of the stock, thereby creating or increasing a loss on sale. Similarly, the identified subpart F inclusions may increase the shareholder's stock basis without substantially affecting the value of the stock, offering similar opportunities to create a tax mismatch from an economic "wash" by pairing tax-sheltered foreign source inclusions and United States source loss.

Section 1.865-2(b)(2) provides a consistency rule requiring generally that loss recognized on the disposition of an 80%-owned foreign affiliate reduces foreign source passive income if, within the past five years, the seller or any member of its consolidated group recognized gain on the disposition of a foreign affiliate that was sourced under section 865(f). In order to provide relief for taxpayers that could have taken steps to avoid section 865(f) treatment on gain sales occurring prior to the publication of these proposed regulations, the five-year lookback period will be phased in so that losses will be tainted only by reason of gains recognized after September 6, 1996.

Section 1.865-2(b)(3) provides anti-abuse rules designed to prevent taxpayers from changing the allocation of a loss with respect to stock or other property by entering into certain transactions.

Section 1.865-2(c) provides rules of general application. Section 1.865-2(c)(1) provides that a partner's distributive share of loss resulting from a disposition of stock by a partnership is allocated as if the partner disposed of the stock. In an appropriate case the loss may be attributable to a fixed place of business of the partnership rather than to the partner's residence.

Section 1.865-2(c)(2) provides that worthlessness shall be treated as a disposition for purposes of the stock loss allocation rules.

Section 1.865-2(d) provides definitions.

Under § 1.865-2(e), the regulations are proposed to be effective for taxable years beginning after 60 days after the date final regulations are published in the Federal Register. However, a taxpayer may elect to apply the regulations retroactively to stock losses in all open post-1986 taxable years. A taxpayer generally may make the election by attaching a statement to an original or amended federal income tax return filed after final regulations are published in the Federal Register. However, the election will not be effective unless amended returns are filed within 120 days of the date final regulations are published in the Federal Register.

Section 1.904-4(c) is proposed to be amended to provide rules specifically addressing the treatment of loss allocated to the section 904(d) separate category for passive income. The proposed amendments provide that, for purposes of the grouping rules relating to the high-tax kick-out described in section 904(d)(2)(F), a passive loss is initially allocated to a group based on the foreign tax that was, or would have been, imposed on the transaction had the sale resulted in a gain under foreign law. If, after allocation and apportionment of all deductions, net income in a group is less than zero, any taxes imposed with respect to the group are considered related to general limitation income. The net loss is not considered related to general limitation income, but proportionately reduces income in the other passive income groups. The determination of whether income in the positive income groups is high-taxed is made after this allocation of loss groups. Any net loss in the section 904(d) separate category for passive income constitutes a separate limitation loss governed by section 904(f)(5).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect U.S. owners of significant interests in foreign corporations, which owners generally are large multinational corporations. This certification is also based upon the fact that, even in cases in which the regulation applies to small entities, the burden imposed by the collection of information in the regulation, which is

merely an election to apply the regulation to prior taxable years, is not substantial and, therefore, the collection of information will not impose a significant economic impact on such entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 6, 1996, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments by October 7, 1996 and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by October 16, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Seth B. Goldstein, of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.865-1 is also issued under 26 U.S.C. 865(j)(1).

Section 1.865-2 is also issued under 26 U.S.C. 865(j)(1).

Par. 2. Section 1.861-8 is amended by adding paragraph (e)(7)(iii) to read as follows:

§ 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(7) * * *

(iii) *Special rules for allocation of loss from disposition of stock.* See § 1.865-2 for special rules regarding the allocation of loss recognized on certain dispositions of stock in taxable years beginning after December 31, 1986.

Par. 3. Sections 1.865-1 and 1.865-2 are added under the undesignated center heading "Determination of Sources of Income" to read as follows:

§ 1.865-1 Loss from the disposition of personal property.

Allocation of loss on the sale or other disposition of portfolio stock, stock of a regulated investment company (as defined in section 851), stock of an S corporation (as defined in section 1361), and other personal property not governed by § 1.865-2 is governed by § 1.861-8 or other administrative pronouncements. Portfolio stock is, with respect to a taxpayer, stock in a corporation in which the taxpayer owns, or is considered to own under the rules of section 267(c), less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such corporation and less than 10 percent of the total value of the stock of such corporation.

§ 1.865-2 Loss from the disposition of certain stock.

(a) *General rules for allocation of loss on disposition of stock—(1) Allocation against gain.* Except as otherwise provided in § 1.865-1 and paragraph (b) of this section, loss recognized on the sale or other disposition of stock shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which gain (other than gain treated as a dividend under section 1248) from the sale of such stock would give rise in the hands of the seller

(without regard to section 865(f)). For purposes of section 904, any such loss shall be allocated to the separate category to which such gain would have been assigned (without regard to section 904(d)(2)(A)(iii)(III)). For purposes of § 1.904-4(c)(2)(ii)(A), any loss allocated to passive income shall be allocated (prior to the application of § 1.904-4(c)(2)(ii)(B)) to the group of passive income to which gain on the sale would have been assigned if the sale of the stock had resulted in the recognition of a gain under the law of the relevant foreign jurisdiction or jurisdictions. See section 904(f)(5) and the regulations under that section for rules regarding the treatment of separate limitation losses.

(2) *Stock attributable to foreign office.* Except as otherwise provided in § 1.865-1 and paragraph (b) of this section, in the case of loss on the sale or other disposition of stock (other than stock constituting inventory) by a United States resident that is attributable to an office or other fixed place of business in a foreign country within the meaning of section 865(e)(3), the loss shall be allocated to reduce foreign source income if a gain would have been taxable by the foreign country and the highest marginal rate of tax imposed in the foreign country is at least 10 percent.

(3) *Stock constituting a United States real property interest.* Loss recognized by a nonresident alien individual or a foreign corporation on the sale or other disposition of stock that constitutes a United States real property interest shall be allocated to reduce United States source income. For additional rules governing the treatment of such loss, see section 897 and the regulations thereunder.

(b) *Exceptions—(1) Dividend recapture exception—(i) In general.* Except as otherwise provided in § 1.865-1, if a taxpayer realizes a loss on a disposition of stock, and the taxpayer included in income a dividend recapture amount (or amounts) with respect to such stock at any time during the recapture period, then, to the extent of the dividend recapture amount (or amounts), the loss shall be allocated and apportioned on a proportionate basis to the class or classes of gross income or the statutory or residual grouping or groupings of gross income to which the dividend recapture amount was assigned.

(ii) *Exception for de minimis amounts.* Paragraph (b)(1)(i) of this section shall not apply to a loss realized by a taxpayer on the disposition of stock if the sum of all dividend recapture amounts included in income by the

taxpayer with respect to such stock during the recapture period is less than 10 percent of the realized loss.

(2) *Consistency exception—(i) In general.* Except to the extent provided in paragraph (b)(1) of this section, loss recognized by a taxpayer with respect to the sale or other disposition of stock of a foreign affiliate (or of a corporation that was a foreign affiliate within the five-year period preceding the date of the sale) or a foreign affiliate holding company shall be allocated to reduce foreign source income if the taxpayer (or, in the case of a taxpayer that is a member of a consolidated group (within the meaning of § 1.1502-1(h)) at the time the loss is recognized, the consolidated group) recognized gain on the disposition of any stock that was sourced under section 865(f) within the five-year period ending on the last day of the taxable year in which the loss was recognized. See paragraph (a)(1) of this section for rules relating to the allocation of the loss to separate categories described in section 904(d).

(ii) *Phased-in lookback period.* The rule of paragraph (b)(2)(i) of this section shall apply only if gain sourced under section 865(f) was recognized after September 6, 1996.

(3) *Anti-abuse rules.* If one of the principal purposes of a reorganization within the meaning of section 368(a), liquidation under section 332, transfer to a corporation under section 351, transfer to a partnership under section 721, transfer to a trust, distribution by a partnership, distribution by a trust, or transfer to or from a qualified business unit (within the meaning of section 989(a)) is to change the allocation of a built-in loss on the disposition of stock (or other personal property), the loss shall be allocated as if it were recognized on the disposition of the stock (or other personal property) immediately prior to the reorganization, liquidation, transfer, or distribution. In addition, if a loss recognized by a taxpayer with respect to the sale or other disposition of stock in a corporation is primarily attributable to loss with respect to one or more financial instruments held by the corporation, and one of the taxpayer's principal purposes for holding the financial instrument or instruments through the corporation is to allocate loss under § 1.865-2, the stock loss shall be allocated under § 1.865-1 as if it were recognized on the disposition of such financial instrument or instruments. Whether a taxpayer has a principal purpose to allocate loss under § 1.865-2 shall be determined by taking into account all the facts and circumstances, including whether the

corporation engages in business activities (other than trading financial instruments) and whether the taxpayer or any related person or persons (within the meaning of section 267(b) or 954(d)(3)) hold positions that offset loss positions held by the corporation. For purposes of this paragraph (b)(3), positions are offsetting if the risk of loss of holding one or more positions is substantially diminished by holding one or more other positions. A person may have a principal purpose of affecting loss allocation even though this purpose is outweighed by other purposes (taken together or separately).

(4) *Example.* The application of this paragraph (b) may be illustrated by the following example:

Example. (i) *P*, a domestic corporation, is a United States shareholder of *N*, a controlled foreign corporation. *N* has never had any subpart F income and all of its earnings and profits are described in section 959(c)(3). On August 5, 1997, *N* distributes a dividend to *P* in the amount of \$100. The dividend gives rise to a \$5 foreign withholding tax, and *P* is deemed to have paid an additional \$45 of foreign income tax with respect to the dividend under section 902. Under section 904(d)(3) the dividend is general limitation income described in section 904(d)(1)(I).

(ii) On February 6, 1998, *P* sells its shares of *N* and recognizes a \$110 loss. In 1998, *P* has the following taxable income, excluding the loss on the sale of *N*:

(A) \$1,000 of foreign source income that is general limitation income described in section 904(d)(1)(I), which is subject to foreign taxes of \$400;

(B) \$1,000 of foreign source capital gain that is passive income described in section 904(d)(1)(A) attributable to gain on the sale of stock in a foreign affiliate that is sourced under section 865(f), which is subject to foreign taxes of \$30.

(iii) The \$100 dividend paid in 1997 is a dividend recapture amount that was included in *P*'s income within the recapture period preceding the disposition of the *N* stock. The de minimis exception of paragraph (b)(1)(ii) of this section does not apply because the \$100 dividend recapture amount exceeds 10 percent of the \$110 loss. Therefore, to the extent of the \$100 dividend recapture amount, the loss must be allocated under paragraph (b)(1)(i) of this section to the separate limitation category to which the dividend was assigned (general limitation income).

(iv) Because *P* recognized gain on the sale of stock in a foreign affiliate that was sourced under section 865(f) within the period described in paragraph (b)(2)(i) of this section, *P*'s remaining \$10 loss on the disposition of the *N* stock is allocated to foreign source passive income under paragraph (b)(2)(i) of this section.

(v) After allocation of the stock loss, *P*'s taxable income in 1998 consists of \$900 of foreign source general limitation income and \$990 of foreign source passive income.

(c) *Rules of application—(1) Loss recognized by partnership.* A partner's

distributive share of loss resulting from the sale or other disposition of stock by a partnership shall be allocated and apportioned in accordance with this section as if the partner had disposed of the stock. If a sale of stock is attributable to an office or other fixed place of business of the partnership within the meaning of section 865(e)(3), such office or fixed place of business shall be considered to be an office of the partner for purposes of this section.

(2) *Worthless stock.* For purposes of this section, worthlessness giving rise to a deduction under section 165(g) (including section 165(g)(3)) with respect to stock shall be treated as a disposition.

(d) *Definitions*—(1) *Terms defined in § 1.861-8.* See § 1.861-8 for the meaning of *class of gross income, statutory grouping of gross income, and residual grouping of gross income.*

(2) *Dividend recapture amount.* A dividend recapture amount is a dividend (except for an amount treated as a dividend under section 78), an inclusion described in section 951(a)(1)(A)(i) (but only to the extent attributable to a dividend included in the earnings of a controlled foreign corporation that is included in foreign personal holding company income under section 954(c)(1)(A) and that, pursuant to section 904(d)(3)(B), is treated as income in a separate category other than the separate category for passive income described in section 904(d)(2)(A)), an inclusion described in section 951(a)(1)(B) or (C), and an inclusion described in section 1293(a)(1) (but only to the extent attributable to a dividend that is included in the earnings of a qualified electing fund and that, pursuant to section 904(d)(3)(I), is treated as income in a separate category other than the separate category for passive income described in section 904(d)(2)(A)).

(3) *Foreign affiliate.* A foreign affiliate is a foreign corporation that is a member of the affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)) that includes the taxpayer.

(4) *Foreign affiliate holding company.* A foreign affiliate holding company is any corporation, substantially all the assets of which consist of stock of one or more foreign affiliates, held directly or indirectly. For purposes of this paragraph, any assets acquired or held by a corporation with a principal purpose of avoiding foreign affiliate holding company status shall be disregarded.

(5) *Recapture period.* A recapture period is the 24-month period preceding the date on which a taxpayer realizes a

loss on a disposition of stock, increased by any period of time in which the taxpayer has diminished its risk of loss in a manner described in section 246(c)(4) and the regulations thereunder.

(6) *Taxpayer.* A taxpayer shall include all predecessors or successors of the taxpayer.

(7) *United States resident.* See section 865(g) and the regulations thereunder for the definition of United States resident.

(e) *Effective date*—(1) *In general.* This section is effective for taxable years beginning after the date that is 60 days after the date these regulations are published as final regulations in the Federal Register.

(2) *Prior year election*—(i) *In general.* A taxpayer may elect to apply the rules of this section to all (but not less than all) of its taxable years that begin after December 31, 1986, and on or before the date that is 60 days after the date these regulations are published as final regulations in the Federal Register, and with respect to which the statute of limitations expires after the date that is 120 days after the date these regulations are published as final regulations in the Federal Register. The election shall be effective only if the taxpayer satisfies all the applicable requirements specified in paragraph (e)(2)(ii) of this section.

(ii) *Requirements for election*—(A) *Statement filed with original or amended return.* For each taxable year subject to the election, a taxpayer shall file an original or amended federal income tax return that reflects the rules of this section and includes the statement described in paragraph (e)(2)(ii)(C) of this section. Amended returns filed pursuant to this section must be filed on or before the date that is 120 days after the date these regulations are published as final regulations in the Federal Register.

(B) *Presentation of statement upon audit.* A taxpayer that is under examination with respect to any taxable year subject to the election on the date that is 120 days after the date these regulations are published as final regulations in the Federal Register must furnish a copy of the statement described in paragraph (e)(2)(ii)(C) of this section for all years subject to the election to the revenue agent responsible for examining its federal income tax returns on or before the date that is 140 days after the date these regulations are published as final regulations in the Federal Register. For purposes of this paragraph (e)(2)(ii)(B), a taxpayer is under examination beginning on the date the taxpayer (or any member of the consolidated group

of which the taxpayer is a member) has been contacted in any manner by a representative of the Internal Revenue Service for the purpose of scheduling any type of examination of any of its federal income tax returns and ending on the earliest of the date: the taxpayer (or consolidated group of which the taxpayer is a member) receives a “no change” letter; the taxpayer (or consolidated group of which the taxpayer is a member) pays the deficiency (or proposed deficiency); or on which a deficiency, jeopardy, termination, bankruptcy, or receivership assessment is made. An electing taxpayer that is not under examination with respect to any taxable year subject to the election on the date that is 120 days after the date these regulations are published as final regulations in the Federal Register and is contacted thereafter by a representative of the Internal Revenue Service for the purpose of scheduling any type of examination of any of its federal income tax returns for a year subject to the election must furnish a copy of the statement described in paragraph (e)(2)(ii)(C) of this section for all years subject to the election to the revenue agent responsible for examining its federal income tax returns within 20 days of being contacted.

(C) *Contents of statement.* The statement shall be entitled “ELECTION UNDER § 1.865-2(e)(2) TO APPLY RETROACTIVELY § 1.865-2 STOCK LOSS ALLOCATION RULES.” The statement shall identify, for the taxable year subject to the election, each loss from the disposition of stock that is subject to this section and that was incurred by the taxpayer or by any controlled foreign corporation (within the meaning of section 953(c)(1)(B) or 957) with respect to which the taxpayer is a United States shareholder (within the meaning of section 951(b) or 953(c)(1)(A)). For each such loss, the statement shall provide the name and identifying number of the entity that incurred the loss, the amount of the loss, and the paragraph of this section under which the loss is allocated. Each loss subject to paragraph (b)(1) of this section shall be separately identified with a notation stating “Subject to dividend recapture under § 1.865-2(b)(1).” The statement shall also include the following declaration: “No losses, other than those so identified herein, are subject to § 1.865-2(b)(1).” The statement shall indicate whether the taxpayer or any controlled foreign corporation (within the meaning of section 953(c)(1)(B) or 957) with respect to which the taxpayer is a United States

shareholder (within the meaning of section 951(b) or 953(c)(1)(A)) acquired the stock after July 8, 1996 as a result of a transaction described in paragraph (b)(3) of this section (regardless of the purpose or purposes of the transaction). An election shall not be effective unless each statement required by this paragraph (e)(2)(ii) contains all the information specified herein.

PAR. 4. Section 1.904-0 is amended by revising the entry for § 1.904-4(c)(2)(ii) and adding entries for paragraphs (c)(2)(ii)(A) and (B) of that section to read as follows:

§ 1.904-0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904-4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) * * *

(2) * * *

(ii) Grouping rules.

(A) Initial allocation and apportionment of deductions.

(B) Reallocation of loss groups.

PAR. 5. Section 1.904-4 is amended by revising paragraphs (c)(1) and (c)(2) and adding paragraph (c)(8) *Example 11* and *Example 12* to read as follows:

(c) *High-taxed income*—(1) *In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses, losses and other deductions of the United States person to that income under paragraph (c)(2)(ii) of this section, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 or section 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph (c), income that would otherwise be passive income is determined to be high-taxed income, such income shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904-6. If, after application of this paragraph (c), passive income is less than zero, the loss shall constitute a passive separate limitation

loss (subject to the rules of section 904(f)(5) and the regulations under that section), but any taxes imposed on passive income shall be considered related to general limitation income under § 1.904-6. For additional rules regarding losses related to passive income, see paragraph (c)(2) of this section. Income and taxes shall be translated at the appropriate rates, as determined under sections 986, 987 and 989 and the regulations under those sections, before application of this paragraph (c). For purposes of allocating taxes to groups of income, United States source passive income is treated as any other passive income. In making the determination whether income is high-taxed, however, only foreign source income, as determined under United States tax principles, is relevant. See paragraph (c)(8) *Examples* (10), (11) and (12) of this section for examples illustrating the application of this paragraph (c)(1) and paragraph (c)(2) of this section.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income*—(i) *Effective date.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3), (c)(4), and (c)(5) of this section apply to taxable years beginning after December 31, 1987. See notice 87-6 for the grouping rules applicable to taxable years beginning after December 31, 1986 and before January 1, 1988. Paragraph (2)(ii)(B) of this section is effective for taxable years beginning after the date that is 60 days after the date these regulations are published as final regulations in the Federal Register.

(ii) *Grouping rules*—(A) *Initial allocation and apportionment of deductions.* For purposes of determining whether passive income is high-taxed, expenses, losses and other deductions shall be allocated and apportioned initially to each of the groups of passive income (described in paragraphs (c)(3), (4), and (5) of this section) under the rules of §§ 1.861-8 through 1.861-14T, 1.865-1, and 1.865-2. Taxpayers that allocate and apportion interest expense on an asset basis may nevertheless apportion passive interest expense among the groups of passive income on a gross income basis. If loss from the disposition of property gives rise to foreign tax (e.g., the transaction giving rise to the loss is treated under foreign law as having given rise to a gain), the foreign tax shall be allocated to the group of passive income to which the loss is allocated under this paragraph (c)(2)(ii)(A), without regard to paragraph (c)(2)(ii)(B) of this section. A

determination of whether passive income is high-taxed shall be made only after application of paragraph (c)(2)(ii)(B) of this section (if applicable).

(B) *Reallocation of loss groups.* If, after allocation and apportionment of expenses, losses and other deductions under paragraph (c)(2)(ii)(A) of this section, the sum of the allocable deductions exceeds the gross income in one or more groups, the excess deductions shall proportionately reduce income in the other groups (but not below zero), and any taxes imposed with respect to such loss group or groups shall be considered related to general limitation income.

* * * * *

(8) * * *

Example 11. P, a domestic corporation, earns the following items of gross income: \$100 of foreign source, passive limitation interest income not subject to any foreign tax, \$200 of foreign source, passive limitation royalty income subject to a 5 percent foreign withholding tax (foreign tax paid is \$10), \$1300 of foreign source, passive limitation rental income subject to a 25 percent foreign withholding tax (foreign tax paid is \$325), \$500 of foreign source, general limitation income that gives rise to a \$250 foreign tax, and \$2000 of U.S. source capital gain that is not subject to any foreign tax. P has a \$700 deduction allocable to its passive rental income. P's only other deduction is a \$500 capital loss on a sale of stock that is allocated to foreign source passive limitation income under § 1.865-2(b)(2). If P had recognized a gain on the stock sale under foreign law, the gain would not have been subject to foreign tax. The \$500 capital loss is initially allocated to the group of passive income not subject to any foreign tax, and the \$400 amount by which the capital loss exceeds the income in the group must be reapportioned to the other groups under paragraph (c)(2)(ii)(B) of this section. The net royalty income is thus reduced by \$100 to \$100 (\$200 - (\$400 × (200/800))) and the net rental income is reduced by \$300 to \$300 (\$1300 - \$700 - (\$400 × (600/800))). The \$100 net royalty income is not high-taxed and remains passive income. The \$300 net rental income is high-taxed because the foreign taxes exceed the highest United States rate of tax on that income. Under the high-tax kick-out, the \$300 of net rental income (the gross rental income and expenses allocated and apportioned thereto) and the \$325 of associated foreign tax are assigned to the general limitation category.

Example 12. The facts are the same as in *Example 11* except the amount of the capital loss that is allocated under § 1.865-2(b)(2) and paragraph (c)(2) of this section to the group of foreign source passive income subject to no foreign tax is \$1100. Under paragraph (c)(2)(ii)(B) of this section, the excess deductions of \$1000 must be reapportioned to the \$200 of net royalty income subject to a 5% withholding tax and the \$600 of net rental income subject to a

25% withholding tax. The income in each of these groups is reduced to zero, and the foreign taxes imposed on the rental and royalty income are considered related to general limitation income. The remaining loss of (\$200) constitutes a separate limitation loss with respect to passive income.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96-17004 Filed 7-5-96; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-90-03]

RIN-2115-AE47

Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: At the request of the Port of Los Angeles, the Coast Guard is proposing a temporary change to the regulations for the Henry Ford Avenue Railroad Bridge (Ford Bridge), across Cerritos Channel of Los Angeles/Long Beach Harbor, mile 4.8, at Long Beach, California, to authorize a five month (150 day) closure of the bridge to replace the movable span and erect the support towers. The proposed closure would start November 7, 1996 and conclude on April 7, 1997. If these dates change, the actual 5 month closure dates will be advertised in the Local Notice to Mariners. The bridge, also known as the Badger Avenue Bridge, currently remains open to navigation except for the passage of trains. This proposal is being made because the bridge needs to be replaced to preserve rail access to Terminal Island and to insure reliable service to vessel traffic.

DATES: Comments must be received on or before August 7, 1996.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 50-6, Coast Guard Island, Alameda, CA 94501-5100, or may be delivered to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3514. Commander (oan-br) maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10,

Room 214, Coast Guard Island, Alameda.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Section, Eleventh Coast Guard District, at (501) 437-3461.

SUPPLEMENTARY INFORMATION:

Request for Additional 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 11-90-03) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments previously submitted have been entered into the record and need not be resubmitted.

The Commander, Eleventh Coast Guard district will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed in light of the comments received.

The Coast Guard plans no public hearing, but one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of the Proposal

Regulatory History

This supplements a Notice of Proposed Rulemaking dated August 28, 1990 (55 FR 35154), which discussed a six and one-half month closure of the bridge draw for bridge rehabilitation, from February 1, 1991 through August 15, 1991. The Ford Bridge provides the only rail access to port facilities on Terminal Island. The bridge is over 70 years old and no longer meets California seismic standards or Federal Railroad Administration clearance standards. The bridge owner determined that the bridge could not be rehabilitated economically, and in 1993 applied for a permit to replace the bridge. In 1995, the Coast Guard issued a permit for its replacement. The new bridge is currently under construction, and it is anticipated that the work can be accomplished with a slightly shorter closure period. Since more than five years has elapsed since the publication of the NPRM, an additional opportunity for public comment is being provided. The four comments received on the previous NPRM will be considered part of the record.

The Notice of Proposed Rulemaking (NPRM) in 1990 was for the earlier plan to rehabilitate the bridge, a plan that is no longer feasible. That NPRM, which involved a slightly longer closure, generated only four comments: Pacific Towing Company requested one leaf operation of the bridge; Jacobson Pilot Service requested the closure period to be kept to a minimum; Dow Chemical expressed concern about land access during construction; and the Port of Long Beach wrote supporting the proposal.

Because of the change from rehabilitation to reconstruction, it is not possible to have the bridge in partial service during the construction of the towers and lift span for which the closure is necessary. The Coast Guard has reviewed the construction plans and determined that the proposed closure is the shortest feasible time period consistent with safety and good engineering practice. The bridge construction will only cause brief interruptions to rail service or land access to nearby facilities.

The revised bridge plan has been advertised in the Federal Register on three occasions: a Notice of Intent to prepare an Environmental Impact Statement (EIS) (58 F.R. 28087); a Notice of Availability of the Draft EIS (59 F.R. 6639); and a Notice of Availability of the final EIS (59 F.R. 60631).

The circulation of the Coast Guard Environmental Impact Statement for the Ford Bridge Replacement Project provided additional opportunities for public comment on the bridge closure. No comments were received addressing the closure. Because the revised plan has been advertised extensively and no opposition has thus far been expressed, the Coast Guard for good cause believes that a 30 day comment period is adequate to solicit any remaining comments on this supplemental notice of proposed rulemaking.

Current Proposal

The Port of Los Angeles has requested the bridge span closure to allow them to safely construct the replacement bridge. The proposed closure of the span would start November 7, 1996, and conclude on April 7, 1997. If these dates change, the actual 5 month closure dates will be advertised in the Local Notice to Mariners.

The Ford Avenue Railroad Bridge provides vertical clearance of 14 feet above Mean Lower Low Water (9 feet above Mean High Water) when closed. The waterway is a connecting channel in the Los Angeles/Long Beach Harbor complex and is used by oceangoing cargo ships, tugs and barges, tour boats,

commercial fishing vessels and recreational boats. The alternate route past the bridge site is through the outer harbor, with a maximum detour of 10 miles.

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 costs 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 the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The draft regulatory evaluation prepared for the NPRM has been superceded by the economic analysis in the Coast Guard Final Environmental Impact Statement (FEIS) for the Ford Bridge Replacement dated November 25, 1994. A copy of the FEIS has been placed in the rulemaking docket, and may be inspected and copied at the address listed under **ADDRESSES**.

Replacement of the existing bridge was determined to be the most feasible and prudent alternative. This replacement cannot be accomplished without closing the bridge span for a period of months. To minimize the impact on the maritime community, the applicant plans to work an accelerated schedule to complete the work requiring the bridge closure in five months. Increased costs to the marine industry are estimated to be \$1 million due to detours during a five month closure. The overtime work schedule increases overall project costs approximately \$2.2 million. The applicant estimates that if the contractor were required to work only a standard 40 hour work week, they would need a closure of eleven months to complete work. Thus, the impact to the maritime industry has been minimized. On balance, the short term costs due to the detour will be offset by the long-term benefits gained by the operation of a new, more reliable bridge. The new bridge will ensure uninterrupted rail service to Terminal Island, and timely, reliable openings of the bridge for waterborne traffic. Construction of a new bridge will minimize the possibility of congestion or delays in transit times, which would occur if the existing bridge malfunctioned, or was damaged by seismic activity.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact

on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). During the environmental review process, the Coast Guard determined that the economic impact to navigation would be approximately \$1 million. Almost half of that impact was on the towing and tour boat operations of one company who does not qualify as a "small business concern". The remaining economic impact was on recreational mariners berthed at nearby marinas and two other towing companies. Recreational mariners would have small additional costs to travel as much as 5 miles further to fuel docks, pumpout stations, etc. The cost per recreational vessel is estimated to be less than \$100. The towing companies would have additional costs for personnel and fuel to travel as much as 5 miles further to towing assignments. The cost per towing company is estimated to be less than \$100 thousand. These companies will all benefit from the reliable operation of the new bridge span for many years to come. Since there are only a few small entities affected by the 5 month closure, and the effect is short-time, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal together with the overall impacts of the replacement project in their FEIS for the Henry Ford (Badger Avenue) Bridge Replacement Project dated November 25, 1994. The principal environmental impact of the project was the loss of the existing, historic bridge. The environmental impacts of this rule were marine transportation disruptions, economic impacts to waterway users, and minor increases in air pollution from detouring marine vessels. The Coast Guard determined that there was no feasible and prudent alternative to the loss of the historic bridge to meet the needs of future transportation and

safety. A new bridge will allow for increased carriage of goods to and from the port by rail, rather than by truck, resulting in a net decrease in air pollution. On balance, the short-term impacts to navigation will be offset by long-term benefits to navigation from construction of a new, more reliable bridge. The FEIS supercedes the draft Environmental Assessment prepared for the NPRM. The FEIS is available for review at the address under **ADDRESSES**.

Collection of Information

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

List of Subjects in 33 CFR Part 117

Bridges

Regulation: For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

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

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

2. Section 117.147 is amended by suspending paragraph (b) and adding a new paragraph (c) to read as follows:

§ 117.147 Cerritos Channel.

* * * * *

(c) During the period November 7, 1996 through April 7, 1997 the Henry Ford Avenue railroad bridge, mile 4.4 at Long Beach, will be undergoing reconstruction and the draw need not open for the passage of vessels.

Dated: June 20, 1996.

D.D. Polk,

*Captain, U.S. Coast Guard, Commander,
Eleventh Coast Guard District Acting.*

[FR Doc. 96-17301 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-14-M

Coast Guard

33 CFR Part 167

[CGD 96-030]

Port Access Routes; Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for vessel routing or other traffic management measures in the approaches to the Cape Fear River and Beaufort Inlet, NC. Concerns for the

safety of navigation in these areas have been expressed by the Morehead City Pilots Association and the Coast Guard Marine Safety Office in Wilmington, NC. This port access route study will determine what, if any, vessel routing or other traffic management measures are needed in the approaches to the Cape Fear River and Beaufort Inlet, NC. As a result of the study, vessel routing measures or other vessel operating requirements may be proposed in the Federal Register.

DATES: Comments must be received on or before October 7, 1996.

ADDRESSES: Comments should be mailed to Commander (Aow), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, room 401. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Edward Westfall (757) 398-6559 or E.Westfall/LANT5@cgsmtmp.uscg.mil (Internet), or Margie Hegy (202) 267-0415 or M.Hegy/G-M11@cgsmtmp.uscg.mil (Internet).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships in the study area. Vessel owners and operators are specifically invited to comment on any safety concerns they may have when operating in the study area. Negative impacts that may result from the establishment of a routing measure, such as a traffic separation scheme (TSS), or a regulated navigation area (RNA) with vessel operating requirements should be identified and supported with documentation of any costs or benefits.

Commenters should include their names and addresses, identify this notice (CGD 96-030), and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed post card or envelope is enclosed. In addition to the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any other interested parties are invited. All comments received during the comment period will be considered in the study and in development of any regulatory proposals.

The Fifth Coast Guard District will conduct the study and develop recommendations. LT Edward Westfall, Waterways Management Section, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District (757) 398-6559, is the project officer responsible for the study.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting fairways or TSS's. The Coast Guard is undertaking a port access route study to determine if a vessel routing system is needed in the study area.

An internationally recognized vessel routing system is one or more routes or routing measures aimed at reducing the risk of casualties. A system may include TSS's, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

A TSS is a routing measure which minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an International Maritime Organization (IMO) approved TSS are subject to Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS).

A two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

A recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

An area to be avoided is a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

An inshore traffic zone comprises a designated area between the landward boundary of a TSS and the adjacent coast and is used in accordance with Rule 10(d) of the 72 COLREGS.

A roundabout is a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

A precautionary area is a defined area where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

A deep-water route is a route within defined limits which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published on July 22, 1982 (47 FR 31766). The study concluded that "there is no need to impose new ship routing measures such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any" area off the North Carolina coast. Vessel traffic density and channel depth and width have changed since 1981.

The U.S. Army Corps of Engineers' *Waterborne Commerce of The United States* reports that, from 1981 to 1993, annual trips to and from the Port of Wilmington, NC increased by 128% (from 10,060 to 22,897) and the number of trips to and from Morehead City Harbor, NC decreased by 57% (from 7,842 to 3,385). Since 1981, the actual controlling depth for the Cape Fear River ocean bar channel has increased from 38 feet to 40 feet, the project depth. The project depth for Beaufort Inlet/Morehead City has recently been increased from 42 to 45 feet.

The Morehead City Pilots Association requested additional aids to navigation in the approach routes commonly used for Beaufort Inlet because a dredge spoil area has shallowed the area. They also report difficulty in distinguishing the range lights on Beaufort Inlet Reach because of background lights from the town of Beaufort; and, the light at the entrance to Gallants Channel is easily confused with the lights marking the Morehead City Channel and could be the cause of an accident. Because of safety concerns associated with the close proximity of shipping lanes to shallow water, the Coast Guard's Marine Safety Office in Wilmington, NC suggested that establishing anchorages and a vessel routing scheme, to include pilot transfer zones, may assist safe navigation in the study area.

Study Area

The study area is bounded by a line connecting the following geographic positions:

Latitude	Longitude
34°40'N	77°00'W
34°40'N	76°15'W
34°10'N	76°15'W

Latitude	Longitude
33°15'N	77°30'W
33°00'N	78°20'W
33°50'N	78°20'W
33°50'N	77°55'W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial vessels transiting to and between these ports.

Issues

The Coast Guard is trying to determine the scope of any safety problems associated with vessel transit in the study area. It is expected that information will be gathered during the study that will identify the problems and appropriate solutions.

The study may recommend the following:

1. No vessel routing measures are needed.
2. Establish one or more of the following vessel routing measures:
 - (a) TSS in the Approach to Cape Fear River;
 - (b) TSS in the Approach to Beaufort Inlet;
 - (c) TSS Off North Carolina encompassing the routes typically used by merchant and naval vessels transiting the study area;
 - (d) Precautionary area(s) near either or both approaches;
 - (e) Inshore traffic zone(s) near either or both approaches; and,
 - (f) Establish an area to be avoided in shallow areas where the risk of grounding is present.
3. Create anchorage area(s).
4. Establish a regulated navigation area with specific vessel operating requirements to ensure safe navigation in areas near shallow water.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs that the Secretary designate necessary fairways and TSS's in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider previous studies and experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the Federal Register. If the Coast Guard determines that new routing or other regulatory measures are needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be concluded by 31 December 1996.

Dated: June 28, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96-17302 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 425

[FRL-5530-7]

RIN 2040-AC48

Leather Tanning and Finishing Effluent Limitations Guidelines Pretreatment Standards New and Existing Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing to modify the pretreatment standards for existing and new sources applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works ("POTW"). In the final rules section of this Federal Register, EPA is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments. EPA also wants to provide prompt implementation of the rule to minimize any potential hazards to worker safety and health that may occur in the absence of this rule.

DATES: Comments on the proposed rules must be received by September 6, 1996.

ADDRESSES: Send comments in triplicate on this proposal to Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St., S.W., Washington, DC 20460, or telephone 202-260-7128.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this Federal Register.

List of Subjects in 40 CFR Part 425

Leather, leather tanning and finishing, water pollution control, wastewater treatment and disposal, pretreatment standards for existing and new sources.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96-17024 Filed 7-5-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-137; RM-8823]

Radio Broadcasting Services; Negaunee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Todd Stuart Noordyk requesting the allotment of Channel 270A to Negaunee, Michigan, with cut-off protection and modification of his application for Channel 258A to specify operation on Channel 270A at Negaunee. The coordinates for Channel 270A at Negaunee are 46-28-18 and 87-36-55. Since Negaunee is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. This proposal would enable the settlement of a mutually exclusive proceeding between two applicants for Channel 258A at Negaunee, Michigan.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret & Imlay, P.C., 1233 - 20th Street, NW., Suite 204, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-137, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services,

Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Provision of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-17192 Filed 7-5-96; 8:45 am]

BILLING CODE 6712-01-F

Notices

Federal Register

Vol. 61, No. 131

Monday, July 8, 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

Submission for OMB Review; Comment Request

June 28, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, PACC-IRM, Ag Box 7630, Washington, D.C. 20250-7630. Copies of the submission(s) may be obtained by calling (202) 720-6204 or (202) 720-6746.

Farm Service Agency

Title: Guaranteed Farmer Program Loans 7 CFR 1980—Addendum.

Summary: USDA is amending procedures for reporting collections on accounts where a loss has been paid. The number of years to report is being reduced from five to three and a form has been developed for lender to use.

Need and Use of the Information: USDA is taking this action in response to an audit by the Office of Inspector General. This will help ensure that borrowers who default on guaranteed loans not receive new loans or USDA payments without first considering the failure to repay the guaranteed loans.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 2,233.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 191,585.

Foreign Agricultural Service

Title: FAS/Readership Survey.

Summary: This is a survey of U.S. exporters for the purpose of shaping the content, format and delivery of USDA publications to more effectively meet the needs of readers, to avoid duplication with other USDA reports, and to develop campaigns to extend the outreach of Foreign Agricultural Service information.

Need and Use of the Information: Survey is needed to insure USDA is providing exporters with the information they most need and that this information is presented and delivered in the most effective and efficient manner.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 340.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements for Imported Peanuts.

Summary: The Agricultural Act of 1949 has been amended to require that all peanuts imported meet the same quality requirements established for domestically produced peanuts. Importers will be required to file copies of documentation proving compliance with quality and handling requirements.

Need and Use of the Information: The documents submitted will show compliance with handling procedures and quality and food safety requirements established for the import regulation. The intent is to ensure that all peanuts in the domestic market are of good quality.

Description of Respondents: Business or other for-profit.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 425.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96-17205 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-01-M

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the information collections related to making eligibility determinations in the Child Nutrition Programs.

DATES: To be assured of consideration, comments must be received by September 6, 1996.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

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 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.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305-2600.

SUPPLEMENTARY INFORMATION

Title: 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk

OMB Number: 0584-0026.

Expiration Date: July 31, 1996.

Type of Request: Extension of clearance for existing collection

Abstract: 7 CFR Part 245,

"Determining Eligibility for Free and Reduced Price Meals and Free Milk", sets forth policies and procedures for use by State agencies (SA) and local level organizations, administering or operating the child nutrition programs, in providing meals free or at a reduced price to eligible children. Under section 9(b)(1) of the National School Lunch Act (NSLA), (42 U.S.C. 1758(b)), the Secretary prescribes income eligibility guidelines for free and reduced price lunches. Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family-size income level of the income eligibility guidelines for free lunches, shall be served a free lunch. Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the income level of the income eligibility guidelines for free lunches, but less than or equal to the applicable family-size income eligibility guidelines for reduced price lunches, shall be served a reduced price lunch. Section 4(e) of the Child Nutrition Act of 1966, (42 U.S.C. 1773(e)) requires that breakfasts served to school children will be served free or at a reduced price under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 9 of the NSLA.

Eligibility determinations are to be made by cross-referencing family income with family size. Section 9(b)(2) of the NSLA requires each SA to announce the income guidelines issued by the Secretary, for use by schools under the SA's jurisdiction. The information collection requirements of 7 CFR Part 245 involve the certification and verification of children as meeting these guidelines.

Estimate of Burden: The reporting burden for this collection of information is estimated at 657,743 burden hours. The major areas of the reporting burden are attributed to the completion of applications for benefits by households; and notification to households by school food authorities utilizing direct certification that children are eligible to receive free meals; i.e., 289,717 and 160,521 hours, respectively. The recordkeeping burden is estimated at 369,782 burden hours. The review of applications and eligibility determinations by schools comprises

the majority of the recordkeeping burden, i.e., 215,332 hours.

Respondents: State agencies, school food authorities, schools, households.

Estimated Number of Respondents: 8,298,688 respondents.

Estimated Number of Responses per Respondent: .863 responses.

Estimated Total Annual Burden on Respondents: 1,027,525 burden hours.

Dated: June 21, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96-17262 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-30-U

Natural Resources Conservation Service

Red-White Clay Creeks Watershed, Pennsylvania and Delaware

AGENCY: USDA—Natural Resources Conservation Service.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Red-White Clay Creeks Watershed, Chester County, Pennsylvania and New Castle County, Delaware.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110-2993, telephone (717) 782-2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve extensive accelerated land treatment and the acquisition of conservation easements. Land treatment measures include agricultural waste management systems; erosion and sediment control

on cropland; restoration of wetlands; establishment of riparian forest buffers; and stabilization of severely eroding streambanks. Conservation easements included perpetual floodplain and wetland easements.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the Federal Register.

Janet L. Oertly,
State Conservationist.

"(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

[FR Doc. 96-17184 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-16-M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received, FmHA Instruction 1951-M.

DATES: Comments on this notice must be received by September 6, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Betty K. Throne, Realty Specialist, Single Family Housing Servicing and Property Management Division, RHS, U.S. Department of Agriculture, Ag Box 0784, Washington, DC 20250, Telephone (202) 720-1452.

SUPPLEMENTARY INFORMATION: Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Single Family Housing.

OMB Number: 0575-0105.

Expiration Date of Approval:
December 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The rural housing loan program under Section 502 of the Housing Act of 1949, 42 U.S.C. Section 1472, enables persons of low- to moderate income to purchase adequate but modest dwellings in rural areas. In addition, the program includes borrowers that obtain financing from the RHS under Section 504 of the Housing Act of 1949. The Section 504 program enables very low-income owner-occupants in rural areas to obtain loans to remove unsafe, unhealthy, and hazardous conditions from their homes. RHS has the responsibility, to assure that when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance which they received that appropriate action is taken. The borrower or grantee may be required to repay the unauthorized financial assistance received or establish a repayment schedule for the unauthorized assistance.

RHS will be collecting information on borrowers or grantees who may be recipients of unauthorized assistance. The information is collected and evaluated by the local RHS County Office. The information is needed by the Agency to determine if the borrowers/grantees have received financial assistance for which they are not eligible. The information is collected when RHS becomes aware that the borrowers/grantees may have received unauthorized assistance. If not collected, the borrower/grantee would be unable to provide evidence that they did not receive unauthorized assistance and the Agency would be unable to obtain further information to assist in their determination of unauthorized assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .92 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,100

Estimated Number of Responses per Respondent: 1.14

Estimated Total Annual Burden on Respondents: 2,229

Copies of this information collection can be obtained from Johnnie Anderson, Regulations and Paperwork Management Division, at (202) 720-9735.

COMMENTS: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS'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. Comments may be sent to Johnnie Anderson, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 26, 1996.

Jan Shadburn,

Acting Administrator, Rural Housing Service.

[FR Doc. 96-17088 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-07-U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement list; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on

the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Binder, Recycled, Slant D-Ring:

7510-01-368-3485

7510-01-368-3486

7510-01-368-3487

7510-01-384-8786

7510-01-384-8788

7510-01-384-8673

7510-01-385-6711

7510-01-417-1876

7510-01-417-1881

7510-01-417-1882

7510-01-417-1883

7510-01-417-1884

7510-01-417-1878

7510-01-417-1879

7510-01-417-1877

7510-01-420-8078

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Paper, Mimeograph and Duplicating:

7530-00-285-3072
7530-01-037-5556
7530-00-285-3060

NPA: Louisiana Association for the Blind, Shreveport, Louisiana.

Duster, Ostrich Feather and Lambswool:
M.R. 991
M.R. 992

NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Dustpan:
M.R. 996

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Mop, Deck Twist and Refill:
M.R. 989
M.R. 969

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Mop, Chamí Twist and Refill:
M.R. 900
M.R. 935

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Services

Administrative Services, Social Security Administration, 6400 Old Branch Avenue, Camp Springs, MD.

NPA: Anchor Mental Health Association, Washington, DC.

Administrative Services, General Services Administration, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey.

NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.

Janitorial/Custodial, Argonne USARC, 10 S 100 S Frontage Road, Darien, Illinois.

NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois.

Beverly L. Milkman,
Executive Director.

[FR Doc. 96-17270 Filed 7-5-96; 8:45 am]

BILLING CODE 6353-01-P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed: Food Service Attendant, U.S. Coast Guard, Haley Hall Dining Facility, Building 560, Petaluma, California, NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California.

Beverly L. Milkman,
Executive Director.

[FR Doc. 96-17271 Filed 7-5-96; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on the development of a draft Federal Information Processing Standard for the Federal Key Management Infrastructure.

The Committee will consist of no more than twenty-four members to be appointed by the Secretary to assure a balanced representation among individuals with established expertise in cryptography and the implementation and use of cryptographic systems.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Edward Roback, Computer Security, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: 301-975-3696.

Dated: June 27, 1996.

Mark Bohannon,
Chief Counsel for the Technology Administration.

[FR Doc. 96-16896 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-13-M

Foreign-Trade Zones Board

[Docket 54-96]

Foreign-Trade Zone 142—Camden, New Jersey Application for Subzone Status Coastal Eagle Point Oil Company (Oil Refinery Complex) Westville, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Jersey Port Commission, grantee of FTZ 142,

requesting special-purpose subzone status for the oil refinery complex of Coastal Eagle Point Oil Company (wholly-owned subsidiary of Coastal Corporation), located in Gloucester County (Westville area), New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 25, 1996.

The refinery complex (130,000 BPD, 377 employees) is located at a 1,000-acre site on the Delaware River at U.S. Route 130 South, Gloucester County (Westville area), New Jersey, some 10 miles south of Philadelphia.

The refinery produces fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, kerosene, distillates and residual fuels. Petrochemical feedstocks and refinery by-products include butane, propane, benzene, toluene, xylene, propylene, cumene, sulfur, petroleum coke and asphalt. All of the crude oil (85 percent of inputs) and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

Zone procedures would exempt the operations involved from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil, natural gas condensate). The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 23, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Bldg. #6, Suite 100, 3131 Princeton Pike, Trenton, New Jersey 08648.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 27, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96-17280 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-DS-P

Lapse of Authority for Inactive Foreign-Trade Zones

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Second notice.

SUMMARY: The information that follows is provided as a follow-up to the notice published on April 1, 1996 (61 FR 14290) regarding § 400.28(a)(5) ("lapse provision") of the regulations of the Foreign-Trade Zones (FTZ) Board (15 CFR Part 400), which goes into effect on November 8, 1996, for certain inactive foreign-trade zones. Based upon an FTZ staff survey and contacts with zone grantees, it appears that some 40 of 210 existing FTZ projects could be initially affected by the lapse provision. In addition, it appears some 50 subzones (out of some 350) could be individually affected notwithstanding the fact that the general-purpose zone with which they are affiliated would not be affected. Since the last notice, 7 projects have taken action to meet the activation requirements, and over 50 percent of the remaining grantees affected are doing so.

This second notice is published to give interested parties a further opportunity to comment on the interpretive guidelines and procedures that are being considered by the Board to implement § 400.28(a)(5). As indicated below, certain changes are being considered after review of the comments received following the first notice.

EFFECTIVE DATES: As indicated in the first notice, the lapse provision first goes into effect for zones approved prior to November 8, 1991, which have not been activated at any time in the past and will not have been activated by November 8, 1996. Thereafter it will have a continuing effect that requires activation within 5 years of approval.

FTZ Activation

The information relating to activation remains essentially as stated in the first notice. A zone grantee which will have reported in its annual report to the FTZ Board the receipt of shipments under FTZ procedures (and under Customs activation approval) at any time in the past prior to November 8, 1996, and thereafter within the applicable time frame, is deemed to have fulfilled the FTZ activation requirement with regard to its general-purpose zone sites, and for any subzones for which shipments have been reported. The grantees of zones so activated after the last annual report period are requested to notify the Executive Secretary with supporting information if they have not yet done so.

A zone project at which no shipments have been actually received under FTZ procedures, but which is active in offering FTZ services to the public, may fulfill the activation requirement as follows: (1) obtain Customs activation approval under § 146.6 of the Customs regulations (19 CFR Part 146) from the Customs Port Director (formerly, District Director) for the area; and, (2) submit a zone schedule to the Executive Secretary of the FTZ Board and to the Customs Port Director pursuant to § 400.42(b) of the FTZ regulations. It is completion of both these requirements that constitutes "FTZ activation".

As indicated in the first notice, zone grantees having no shipments to report and who are completing the requirements to avert a lapse of authority under § 400.28(a)(5), shall notify the Executive Secretary in writing upon completion of the requirements, stating the extent to which the zone is open for business. The Executive Secretary will then, upon review, acknowledge in writing whether FTZ activation has occurred subject to FTZ Board approval of the procedures outlined in this notice.

Review Procedure

As indicated in the first notice, beginning November 8, 1996, and thereafter on October 1 of each Federal fiscal year, the FTZ Staff will conduct periodic reviews with regard to zone projects that appear to be affected by § 400.28(a)(5). Lists will be maintained by the FTZ staff of those zones for which authority has lapsed as well as those for which authority has terminated (after the reinstatement period), and the U.S. Customs Service will be kept advised.

Reinstatement

Upon review of the comments received in response to the first notice,

the FTZ Staff is considering a recommendation to the FTZ Board which would provide for an 18-month period (instead of 12 months) for possible reinstatement of lapsed grants of authority. This would allow zone grantees to apply for reinstatement of FTZ authority for their general-purpose zone sites, and for subzones on an individual basis, if the FTZ activation requirements are met within 18 months of a lapse of authority. Grantees should notify the Executive Secretary when steps are being taken to qualify for reinstatement.

During the reinstatement period, the authority for the affected zone and any associated subzones is considered lapsed, but termination of authority would not occur until the end of the reinstatement period. During the reinstatement period, the processing of any pending application(s) from the zone project involved will be halted; but, a grantee may request that processing be continued with regard to applications that are related to FTZ activation.

Interpretive Guidelines

Interpretive guidelines 1-3 below remain the same, as published in the first notice, but guideline 4 has been revised.

1. A zone which had been in FTZ activation at any time and for any length of time within the applicable time frame (i.e., prior to the lapse date) is not affected by the lapse provision.

2. The FTZ activation of any part of a general-purpose zone or a subzone will suffice to preserve FTZ authority for all of the general-purpose sites of a zone project, but each subzone is considered separately.

3. The starting time for tolling whether a lapse of authority has occurred will be from the time of the

original grant of authority for a zone project, and it will affect all general-purpose zone sites and subzones associated with the project, however recently approved, as well as applications submitted to or pending with the FTZ Board or the FTZ Staff.

4. The FTZ activation of a general-purpose zone or subzone may be determined to extend to separate, but related, general-purpose zones or subzones approved for the same grantee if the projects were approved in the same Board action or if the projects are so interrelated in terms of their administration as an element of state/regional/local economic development programs (in the case of subzones, if the sites are administered as a unit by the subzone company), providing that the Customs Port Directors involved concur.

Authority for Determinations/Decisions

The Executive Secretary would have authority to make determinations and decisions on matters relating to the lapse of authority provision, including FTZ activation and reinstatement. Appeals from such determinations and decisions could be made to the Board by affected zone grantees as provided for in § 400.47 (15 CFR Part 400).

Comments Invited: Further comments are invited in writing until August 7, 1996, from grantees and interested parties as to any of the information, procedures or guidelines outlined in this notice. They should be addressed to: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: FTZ Staff—Claudia Hausler (202) 482-2862; U.S. Customs—Marcus Sircus (202) 927-6894.

Dated: June 28, 1996.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 96-17281 Filed 7-5-96; 8:45 am]
BILLING CODE 3510-DS-P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than the last day of July 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
<i>Antidumping Proceeding:</i>	
Armenia: Solid Urea, A-831-801	7/1/95-6/30/96
Azerbaijan: Solid Urea, A-832-801	7/1/95-6/30/96
Belarus: Solid Urea, A-822-801	7/1/95-6/30/96
Brazil: Industrial Nitrocellulose, A-351-806	7/1/95-6/30/96
Brazil: Silicon Metal, A-351-806	7/1/95-6/30/96
Estonia: Solid Urea, A-447-801	7/1/95-6/30/96
Georgia: Solid Urea, A-833-801	7/1/95-6/30/96
Germany: Industrial Nitrocellulose, A-428-803	7/1/95-6/30/96
Germany: Solid Urea, A-429-605	7/1/95-6/30/96
Iran: In-Shell Pistachio Nuts, A-507-502	7/1/95-6/30/96
Japan: Cast Iron Pipe Fittings, A-588-605	7/1/95-6/30/96
Japan: Electric Cutting Tools, A-588-823	7/1/95-6/30/96
Japan: High Power Microwave Amplifiers and Components Thereof, A-588-005	7/1/95-6/30/96
Japan: Industrial Nitrocellulose, A-588-812	7/1/95-6/30/96
Japan: Synthetic Methionine, A-588-041	7/1/95-6/30/96
Kazakhstan: Solid Urea, A-834-801	7/1/95-6/30/96
Kyrgyzstan: Solid Urea, A-835-801	7/1/95-6/30/96
Latvia: Solid Urea, A-449-801	7/1/95-6/30/96
Lithuania: Solid Urea, A-451-801	7/1/95-6/30/96

	Period
Moldova: Solid Urea, A-841-801	7/1/95-6/30/96
Romania: Solid Urea, A-485-601	7/1/95-6/30/96
Russia: Ferrovandium, A-821-807	1/4/95-6/30/96
Russia: Solid Urea, A-821-801	7/1/95-6/30/96
South Korea: Industrial Nitrocellulose, A-580-805	7/1/95-6/30/96
Tajikistan: Solid Urea, A-842-801	7/1/95-6/30/96
Thailand: Butt-Weld Pipe Fittings, A-549-807	7/1/95-6/30/96
Thailand: Canned Pineapple, A-549-813	1/11/95-6/30/96
Thailand: Furfuryl Alcohol, A-549-812	5/8/95-6/30/96
The People's Republic of China: Butt-Weld Pipe Fittings, A-570-814	7/1/95-6/30/96
The People's Republic of China: Industrial Nitrocellulose, A-570-802	7/1/95-6/30/96
The People's Republic of China: Sebacic Acid, A-570-825	7/1/95-6/30/96
The Ukraine: Solid Urea, A-823-801	7/1/95-6/30/96
The United Kingdom: Industrial Nitrocellulose, A-412-803	7/1/95-6/30/96
Turkmenistan: Solid Urea, A-843-801	7/1/95-6/30/96
Uzbekistan: Solid Urea, A-844-801	7/1/95-6/30/96
<i>Countervailing Duty Proceeding:</i>	
European Economic Community: Sugar, C-408-046	1/1/95-12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or

355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by the last day of July 1996. If the Department does not receive, by the last day of July 1996, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 28, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96-17279 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-801, A-428-801, A-475-801, A-588-804, A-485-801, A-559-801, A-549-801, A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995.

Although we initiated reviews for seven other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. In addition, the Department is terminating reviews of the orders on BBs from Romania and Thailand. The sole request

we received regarding Romania was withdrawn. Regarding Thailand, on June 21, 1996, we issued the final results of the 1993-1994 administrative review revoking the order on BBs from Thailand, effective May 1, 1994.

We have preliminarily determined that sales have been made below normal value (NV) by various companies subject to these reviews. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price (EP) or constructed export price (CEP) and the NV.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482-4733.

France

Andrea Chu (Intertechnique, SNFA, SNR), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde, Rollix Defontaine), Matthew Rosenbaum (SKF), or Michael Rill.

Germany

Thomas Barlow (Torrington Nadellager), Davina Hashmi (INA), Chip Hayes (NTN Kugellagerfabrik), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde and Rollix Defontaine), Matthew Rosenbaum (SKF), Thomas Schauer (FAG), Michael Rill, or Richard Rimlinger.

Italy

Kris Campbell (SKF), Michael Rausher (FAG), Michael Rill, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Chip Hayes (NTN), Michael Panfeld (NPBS), Mark Ross (Asahi Seiko), Thomas Schauer (NSK Ltd.), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Andrea Chu (Hoffman U.K.), Hermes Pinilla (NSK/RHP), Matthew Rosenbaum (Rose Bearing Co., Ltd.), or Michael Rill.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Background

On May 15, 1989, the Department published in the Federal Register (54 FR 20909) the antidumping duty orders on BBs, CRBs, and SPBs from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden and the U.K.; and BBs from Romania, Singapore and Thailand. On June 19, 1995, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of certain of these orders for the period May 1, 1994, through April 30, 1995 (60 FR 31952). The Department is now conducting these administrative reviews in accordance with section 751 of the Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of review requests for Fichtel & Sachs AG (Germany), Jidosha Buhin Kogyo Co., Ltd. (Japan), Naico Spicer Co., Ltd. (Japan), Nissan Trading Co., Ltd. (Japan), Izumoto Seiko Co., Ltd. (Japan), Tehnoimportexport, S.A. (Romania), Barden Corporation (United Kingdom), and Normalair-Garrett Ltd. (United Kingdom). Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies in accordance with 19 CFR 353.22(a)(5). We are terminating the review of AFBs from Romania because Tehnoimportexport, S.A. was the only company for which a review of that order was requested.

We are terminating the review of AFBs from Thailand with respect to NMB Thai/Pelmec Thai because subsequent to the initiation of this review we revoked the antidumping duty order (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand; Final Results of Antidumping Duty Administrative Review and Revocation*

of Antidumping Duty Order, issued June 21, 1996).

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00,

4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the

orders being reviewed, including recent scope determinations, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60

FR 10900 (February 28, 1995) (*AFBs IV*). The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
Franke GmbH	BBs.
Hoesch Rothe-Erde AG	BBs.
Intertechnique	All.
Rollix Defontaine, S.A.	BBs.
SKF France (including all relevant affiliates)	All.
SNFA	BBs, CRBs.
Societe Nouvelle Roulements (SNR)	All.
Germany	
FAG Kugelfischer Georg Schaefer KGaA (FAG Germany)	All.
Franke GmbH	BBs.
Hoesch Rothe Erde AG	BBs.
INA Walzlager Schaeffler KG (INA)	All.
NTN Kugellagerfabrik (Deutschland) GmbH (NTN Germany)	All.
Rollix & Defontaine, S.A.	BBs.
SKF GmbH (including all relevant affiliates) (SKF Germany)	All.
Torrington Nadellager (Torrington/Kuensenbeck)	BBs, CRBs.
Italy	
FAG Italia S.p.A. (including all relevant affiliates) (FAG Italy)	BBs, CRBs.
SKF-Industrie S.p.A. (SKF Italy)	BBs.
Japan	
Asahi Seiko	BBs.
Koyo Seiko Co., Ltd.	All.
Nippon Pillow Block Sales Company, Ltd. (NPBS)	All.
NSK Ltd. (formerly Nippon Seiko K.K.)	All.
NTN Corp. (NTN Japan)	All.
Singapore	
NMB Singapore Ltd./Pelmecc Ind. (Pte.) Ltd. (NMB Singapore/Pelmecc)	BBs.
United Kingdom	
NSK Bearings Europe, Ltd./RHP Bearings (NSK/RHP)	BBs, CRBs.
Hoffman U.K.	BBs, CRBs.
Rose Bearing Co., Ltd.	BBs, CRBs.
Timken Bearing Co.	BBs, CRBs.

Certain respondents reported no shipments or sales subject to these reviews. One firm, Torrington Nadellager (Torrington/Kuensenbeck), reported entries of merchandise subject to the order on BBs from Germany but no sales to unaffiliated U.S. purchasers. Because this merchandise was consumed by the affiliated importer and not resold in any form, we will liquidate these entries without regard to antidumping duties.

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and

selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA, Hoffman U.K., and Rose Bearings, all with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs only, and for SKF France with respect to SPBs only, because these firms did not respond to our antidumping questionnaire. We find that these firms have withheld "information that has been requested by

the administering authority." Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available, which is secondary information within the meaning of section 776(c) of the Act.

We also preliminarily determine, in accordance with section 776(a) of the Act, that the use of the facts available as the basis for the weighted-average dumping margin is appropriate for NPBS because, despite the Department's attempts to verify information provided

by NPBS, the Department could not verify the information as required under section 782(i) of the Act. Where a party provides information requested by the Department but the information cannot be verified, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available. Further, in accordance with section 782(e)(2) of the Act, the Department has declined to consider information submitted by NPBS because the information cannot be verified. Moreover, we preliminarily determine that, pursuant to section 776(b) of the Act, NPBS did not cooperate to the best of its ability and therefore we are required to use adverse facts available.

We found that responses provided by NPBS, as a whole, could not be verified. At our attempted verification, for example, we found the following inaccuracies in the response provided by NPBS which render the response unusable for purposes of margin calculations: unreported home market and United States sales; inability to demonstrate how quantity and value totals were calculated; incorrect reporting of the form of the subject merchandise as entered; incorrect designation of bearings that were further processed in the United States; and failure to provide in its response to the questionnaire the final prices to its largest home market customer. In addition, we found errors in the calculation of the following items: entered customs value, all charges and adjustments allocated by entered value, customer category of U.S. sales, U.S. inland freight, U.S. international freight, U.S. short-term interest rate, export selling expenses incurred in the home market, indirect selling expenses for home market sales, and home market short-term interest income.

NPBS has not cooperated to the best of its ability, as demonstrated by the misreportings, inaccuracies, and omissions we found at our attempted verification which resulted from inconsistencies in data within NPBS's control. Therefore, as facts available for NPBS, we have used the "all others" rate from the less-than-fair-value (LTFV) investigation, which is considered secondary information within the meaning of section 776(c) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative

value (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., *Fresh Cut Flowers from Mexico*; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, Torrington Nadellager, Hoffman U.K. and Rose Bearings, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. This rate is the highest available rate and no evidence exists in the record that indicates that the selected margin is not appropriate as adverse facts available.

For NPBS, we examined the rates applicable to ball bearings from Japan throughout the course of the proceeding. Given NPBS's level of participation in this segment of the proceeding, we preliminarily determine that 45.83 percent, which is the all others rate from the LTFV investigation, is sufficiently adverse to encourage full cooperation in future segments of the proceeding. Moreover, this rate has probative value because it includes the average of calculated margins from the LTFV investigation. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (See, e.g., *Fresh Cut Flowers*.)

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for a particular class or kind of merchandise, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1-7, 1994, August 21-27, 1994, October 2-8, 1994, November 6-12, 1994, January 22-28, 1995, and March 19-25, 1995. We reviewed all EP sales transactions during the POR.

We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823-824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, expenses assumed on behalf of the buyer and indirect selling expenses, and repacking expenses in the United States. Where appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where the special rule provided in section 772(e) of the Act was applied (see below). Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, e.g., parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied for all firms, except INA, that added value in the United States.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we estimated, for all firms except INA that added value in the United States, that the value added was at least 60 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act, because each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate NV in accordance with section 777A of the Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales in sample months that corresponded to the sample weeks we selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, May, August, October, and November of 1994, and January, March, and May of 1995.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Because the Department disregarded sales below the cost of production (COP) in the last completed review with respect to SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, Asahi Seiko, Koyo, NPBS, NSK, NTN Japan, NMB Singapore/Pelmech Ind., and NSK/RHP and the classes or kinds of merchandise under review (see *AFBs IV*; concerning Asahi Seiko, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993) (*AFBs III*)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, Asahi Seiko, Koyo, NPBS, NSK, NTN Japan, NMB Singapore/Pelmech, and NSK/RHP in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis for respondents

which reported no sales or no shipments, nor did we conduct a COP analysis for respondents for which we relied on facts available to determine weighted-average dumping margins.

After calculating COP, we tested whether home market sales of AFBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time.

Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they (1) were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above companies and classes or kinds of merchandise.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale

(COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 353.56. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade as the EP or CEP. If NV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See *Level of Trade* below.)

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market.

Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 C.F.R. 353.56 for COS differences and level-of-trade differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

Where possible, we calculated CV at the same level of trade as the EP or CEP. If CV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and 773(a)(8) of the Act. (See *Level of Trade* below.)

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA at 829-831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP "offset" may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In implementing these principles in these reviews, we obtained information about the selling activities of the producers/exporters associated with each channel of distribution. We asked each respondent to establish any claimed levels of trade based on these selling activities.

In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each channel of distribution claimed by the respondents. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In reviewing the selling functions reported by the respondents, we considered all types of selling activities that had been performed. In analyzing whether separate levels of trade existed in these reviews, we found that no single selling function in the bearings industry was sufficient to warrant a separate level of trade (see *Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7307, 7348 (February 27, 1996) (*Proposed Regulations*)).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level-of-trade claims of each respondent. To test the claimed levels of trade, we analyzed the selling activities associated with the channels of distribution respondents reported. In applying this test, we expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

When we were unable to find sales of the foreign like product in the home market at the same level of trade as that of the EP or CEP, we examined whether a level-of-trade adjustment was appropriate. In these reviews, the same level of trade as that of the CEP did not exist in the home market. For some EP sales, we also did not find the same level of trade in the home market. Therefore, we could not determine whether there was a pattern of consistent price differences between the levels of trade, in accordance with section 773(a)(7)(A) of the Act, based on the respondent's home market sales of merchandise under review. However, the SAA states that "if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products." SAA

at 830. Accordingly, where necessary we examined the alternative methods for calculating a level-of-trade adjustment. In these reviews, we did not have information that would allow us to apply these alternative methods. Thus, in accordance with section 773(a)(7)(b) of the Act, if we established NV at a level of trade which constituted a more advanced stage of distribution, we made a CEP offset.

For some EP sales, the same level of trade did exist in the home market but we could only match the U.S. sale to home market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. To make this determination, we compared the average of the prices of sales made in the ordinary course of trade at the two levels of trade for models sold at both levels. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination.

Respondent *Intertechnique* reported only one channel of distribution in the home market and only EP sales through one channel of distribution to the United States. Because the selling activities in both markets were substantially the same, we considered the home market sales and the EP sales to be at the same level of trade. Therefore, we made no level-of-trade adjustments.

SKF Germany, SKF France, SKF Italy, Koyo, and SNR each reported two channels of distribution in the home market. For each of these companies we found that the two home market channels differed significantly with respect to selling activities such as advertising and sales promotion, sales and marketing support, inventory maintenance and, to a lesser degree, other selling activities. Based on these differences, we found that the two home market channels constituted two different levels of trade.

These companies, except *SKF France* and *SKF Italy*, reported only CEP sales in the U.S. market. *SKF France* and *SKF Italy* also had EP sales. Although the starting price for the CEP sales was based on sales made by the affiliated reseller to unaffiliated customers through two channels of distribution

which constituted two different levels of trade, each of these companies reported similar selling activities associated with all sales to the affiliated reseller (*i.e.*, at the level of trade of the CEP). Therefore, we considered the CEP to constitute only one level of trade for each of these companies. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on each respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For these respondents, to the extent possible, we determined NV at the same level of trade as the starting price for the CEP, which was the price to the unaffiliated customer, and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. *SKF France* made EP sales of BBs through one channel of distribution. *SKF Italy* made EP sales of BBs through two channels of distribution. For both *SKF France* and *SKF Italy*, the selling activities associated with EP sales were similar to those associated with one of the levels of trade in the home market. Therefore, we considered these channels to constitute one level of trade and this level of trade to be the same as a level of trade in the home market. Where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For this class or kind of merchandise, we found that there was such a pattern for both *SKF France* and *SKF Italy* and therefore made an adjustment for the differences in level of trade. We therefore adjusted normal value by the weighted-average difference in prices

between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

INA reported only one channel of distribution in the home market. Because the selling activities associated with all sales were similar, we considered this channel of distribution to constitute one level of trade. *INA* reported two channels of distribution in the U.S. market, one represented by its EP sales and one represented by its CEP sales. Because the selling activities associated with the home market level of trade were similar to those associated with EP sales, we made no level-of-trade adjustments for these comparisons. For CEP sales, *INA* reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We compared the selling activities associated with the sale to the affiliated reseller to those associated with the home market level of trade and found them to be dissimilar. For example, the level of trade of the CEP involved little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, inventory maintenance or after-sale service. Therefore, we considered the home market sales to be at a different level of trade and at a more advanced stage of distribution than the CEP. Because the sole home market level of trade was different from the level of trade of the CEP, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on *INA's* home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Accordingly, for *INA*, we determined NV at the sole

home market level of trade and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

FAG Germany reported a number of channels of distribution in the home market. We found that four of these channels did not differ significantly with respect to selling activities and constitute one level of trade (level 1). We found that the same is true of three other home market channels (level 2). Finally, we found that another home market channel is not similar to any of the other channels of distribution in the home market (level 3). We found that level 1 differed significantly from level 2 with respect to selling activities such as post-sale services and warranties, technical advice, advertising, strategic and economic planning, market research, research and development, and engineering services. We found that level 1 differed significantly from level 3 with respect to selling activities such as inventory maintenance, advertising, freight and delivery arrangement, strategic and economic planning, market research, personnel training, research and development, and engineering services. We found that level 2 differed significantly from level 3 with respect to selling activities such as inventory maintenance, post-sale services and warranties, technical advice, freight and delivery arrangement, advertising, and personnel training. Based on these differences, we found that the three home market channel groups constitute three different levels of trade.

In the U.S. market, *FAG Germany* reported CEP sales and EP sales. The CEP sales were made by *FAG Germany's* U.S. subsidiary to unaffiliated customers through channels of distribution and at levels of trade similar to levels 1 and 2 in the home market. Although we considered *FAG Germany's* sales to unaffiliated customers to be made at two levels of trade, *FAG Germany* reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from all home market levels of trade and at a less advanced stage of distribution than any home market level of trade. Consequently, we could not

match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on *FAG Germany's* home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For *FAG Germany*, to the extent possible, we determined NV for CEP sales at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. *FAG Germany* made EP sales of two classes or kinds of merchandise through channels of distribution similar to those comprising one of the levels of trade in the home market. Therefore, we considered these channels to constitute one level of trade and this level of trade to be the same as one of the levels of trade in the home market. Where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For BBs, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. However, for CRBs we did not find such a pattern and therefore made no level-of-trade adjustment. For BBs, we adjusted normal value by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted-average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

FAG Italy reported two channels of distribution in the home market. We found that the two home market channels differed with respect to selling

activities such as after sales services/warranties, technical advice, and research and development. Based on these differences, we found that the two home market channels constituted two different levels of trade.

In the U.S. market, *FAG Italy* reported only CEP sales. The CEP sales were made by *FAG Italy's* U.S. subsidiary to unaffiliated customers through channels of distribution and at levels of trade similar to the two levels of trade in the home market. Although we considered *FAG Italy's* sales to unaffiliated customers to be made at two levels of trade, *FAG Italy* reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market, nor could we determine a level-of-trade adjustment based on *FAG Italy's* home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For *FAG Italy*, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NSK reported four channels of distribution in the home market. We found that two of these channels did not differ significantly from each other with respect to selling activities and constitute one level of trade (level 1). We found that the same is true of the other two home market channels (level 2). We found that the selling activities associated with level 1 differed significantly from activities at level 2. For example, we found differences with respect to personnel training, advertising, technical support, price negotiation, and sales calls on the end-user. Based on these differences, we found that the two home market channel groups constituted two different levels of trade.

In the U.S. market, NSK had CEP sales and EP sales. NSK made CEP sales to unaffiliated customers through five channels of distribution, which we considered to be two levels of trade similar to those found in the home market. Though NSK's sales to unaffiliated customers were made at two levels of trade, NSK reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered this level of trade to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on NSK's home market sales of merchandise under to review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For NSK, to the extent possible, we determined NV for CEP sales at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B). NSK made EP sales of one class or kind of merchandise to unaffiliated customers through channels of distribution similar to those comprising channel 1 in the home market. Therefore, we considered these channels to constitute one level of trade and that level of trade to be the same as level 1 in the home market. Where possible we have matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched EP sales to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For this class or kind of merchandise, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. We adjusted normal value by the weighted-average difference in prices between the two levels of trade in the

home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted-average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

NTN Japan reported five channels of distribution in the home market. We found that the degree to which NTN Japan performed functions such as market research, technical services, and sales services such as processing and purchasing arrangements and delivery arrangements varied among the five channels. Based on these differences, we found that the five home market channels constituted three levels of trade. We found that the selling activities for level 1 differed significantly from levels 2 and 3 in terms of strategic economic planning, market research, accounting and business functions, engineering services, types of packing, and types of advertising and sales promotion. The selling activities for level 2 varied from those of level 3 in strategic and economic planning, accounting and business functions, and advertising and sales promotion.

NTN Japan reported both EP and CEP sales in the U.S. market made through two channels of distribution. *NTN Japan* made CEP sales through its U.S. subsidiary to unaffiliated customers through channels of distribution similar to those in the home market. Though these sales to unaffiliated customers were made at two levels of trade, *NTN Japan* reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, at the level of trade of the CEP there was little or no strategic planning, sales forecasting, advertising, or technical assistance. Therefore, we considered this level of trade to be different from the three home market

levels of trade and at a less advanced stage of distribution than the home market levels of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. We considered all of *NTN Japan's* EP sales to be at one level of trade. We determined that the selling activities associated with EP sales were essentially the same as those associated with one of the home market levels of trade, and therefore the EP level of trade did exist in the home market. Therefore, where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For BBs and CRBs, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. However, for SPBs we did not find such a pattern and therefore made no level-of-trade adjustment. For BBs and CRBs, we adjusted NV by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

NTN Germany claimed one channel of distribution but two levels of trade in

the home market. We found that the degree to which NTN Germany performed functions such as after sales services, market research, technical services, and sales services such as processing and purchasing arrangements differed by claimed levels of trade. Based on these differences, we found that these claimed levels of trade in fact constitute two levels of trade in the home market.

NTN Germany reported only CEP sales in the U.S. market. Though CEP sales to unaffiliated customers were made at two levels of trade, NTN Germany reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, at the level of trade of the CEP there was little or no strategic planning, sales forecasting, advertising, or technical assistance. Therefore, we considered this level of trade to be different from the home market levels of trade and at a less advanced stage of distribution than the home market levels of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NMB Singapore/Pelmec reported two channels of distribution in the home market. We found that these two channels differed significantly with respect to selling activities such as after-sales services/warranties, technical support, engineering services, market research, sales promotion, and advertising. Based on these differences, we found that the two home market channels constituted two different levels of trade.

NMB Singapore/Pelmec reported only CEP sales in the U.S. market. Though sales were made to unaffiliated customers through two channels of distribution, the company reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We

found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP only involved order processing and some engineering consultation. This level did not include any of the other selling activities associated with either of the home market levels of trade such as inventory maintenance, after-sales services/warranties, technical support, market research, sales promotion, advertising, freight and delivery, packing and accounting. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Asahi Seiko reported seven channels of distribution in the home market and CEP sales through four channels of distribution in the U.S. market. In comparing selling activities among channels of distribution in the home market, we found that no promotional expenses, sales-support functions, or inventory maintenance activities were performed for the channel of distribution consisting of direct sales to *Asahi's* affiliated customer while these functions were performed with respect to the other six channels. In addition, the selling activities were substantially the same among the other six channels. Therefore, we found that the seven HM channels constitute two different levels of trade. However, we are not using the level of trade consisting of direct sales to *Asahi's* affiliated customer as a basis for NV because we could not determine that these sales were made at arm's-length prices. Thus, for NV we could use only one level of trade for comparison purposes.

In the U.S. market *Asahi Seiko* reported that the CEP sales it made to unaffiliated customers were through four channels of distribution, but the selling activities among all sales to the affiliated reseller were similar. Therefore, we considered the CEP to

constitute only one level of trade. We found significant differences between the selling activities associated with the CEP and those associated with the home market level of trade. For example, the level of trade of the CEP involved little or no advertising and sales promotions, engineering services, or after-sales service. Therefore, we considered this level of trade to be different from and at a less advanced stage of distribution than the home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on *Asahi's* home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For *Asahi Seiko*, to the extent possible, we determined NV at the same level of trade as the U.S. sales to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NSK/RHP reported five channels of distribution in the home market. The selling activities associated with three of these reported channels did not differ significantly, and therefore we considered sales through these channels to constitute one level of trade (level 1). The selling activities associated with another channel of distribution differed from level 1 in terms of advertising, inventory maintenance, technical support and to a lesser degree other selling activities. Therefore, we consider this channel of distribution to constitute a second level of trade (level 2). The remaining channel of distribution involved only sales to an affiliate. However, we requested, and *NSK/RHP* reported, the downstream sales to unaffiliated customers which constitute levels 1 and 2. Moreover, we could not determine that these sales were made at arm's length. Therefore, we did not use these sales to determine NV or as the basis of any level-of-trade adjustments.

In the U.S. market, *NSK/RHP* reported EP and CEP sales. Although *NSK/RHP* reported that the CEP sales it made to unaffiliated customers were made through two channels of distribution, the selling activities among all sales to the affiliated reseller were similar. Therefore, we considered the CEP to constitute only one level of trade. We compared the selling activities at this level of trade with the selling activities at each home market level of trade and found them to be substantially dissimilar. For example, the level of trade of the CEP involved little or no strategic and economic planning,

advertising or sales promotion, technical services, technical assistance, or inventory maintenance. Therefore, we considered the home market sales to be at a different level of trade and at a more advanced stage of distribution than CEP. Because the home market levels of trade were different from the level of trade of the CEP, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on NSK-RHP's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For NSK-RHP's CEP sales, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. NSK/RHP made EP sales of two classes or kinds of merchandise to unaffiliated customers through one channel of distribution which we considered to be a level of trade similar to one of the levels of trade in the home market. We were able to match all EP sales to sales at the same level of trade in the home market and therefore made no level-of-trade adjustments.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1994, through April 30, 1995 to be as follows:

Company	BBs	CRBs	SPBs
France			
Franke GmbH	1 66.42	(3)	(3)
Hoesch Rothe Erde		(2)	(3)
Intertechnique	1.55	(2)	(2)
Rollix Defontaine	(2)	(3)	(3)
SKF	21.39	(2)	42.79
SNFA	66.42	18.37	(2)
SNR	2.10	4.26	(2)
Germany			
FAG	10.22	16.90	9.51
Franke GmbH	1 132.25	(3)	(3)
Hoesch Rothe Erde		(2)	(2)
INA	11.66	12.33	(2)
NTN	23.37	(2)	(2)
Rollix & Defontaine	(2)	(3)	(3)
SKF	2.42	8.11	5.34
Torrington Nadellager	(2)	76.27	(3)
Italy			
FAG	2.43	(2)	(3)
SKF	2.68	(3)	(3)
Japan			
Asahi Seiko	1.96	(3)	(3)

Company	BBs	CRBs	SPBs
Koyo Seiko	22.32	2.79	0.00 ¹
NPBS	45.83	(2)	(2)
NSK Ltd.	14.24	18.27	(2)
NTN	4.31	10.27	2.60
Singapore			
NMB Singapore/ Pelmec Ind.	0.71	(3)	(3)
United Kingdom			
NSK/RHP	9.60	11.13	(3)
Hoffman U.K.	54.27	48.29	(3)
Rose Bearings ...	54.27	48.29	(3)
Timken Bearings	(2)	(2)	(3)

¹ No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

² No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

³ No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

Case	Date	Time	Room No.
General Issues	Aug. 16, 1996	9:00 a.m.	4830
Singapore	Aug. 16, 1996	3:00 p.m.	4830
United Kingdom	Aug. 19, 1996	10:00 a.m.	1412
Japan	Aug. 19, 1996	1:00 p.m.	1412
Germany	Aug. 20, 1996	10:00 a.m.	1412
France	Aug. 20, 1996	1:00 p.m.	1412

Issues raised in hearings will be limited to those raised in the respective briefs and rebuttal briefs. Briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit briefs or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

Case	Briefs	Rebuttals due
General issues.	Aug. 5, 1996	Aug. 12, 1996.
Singapore	Aug. 5, 1996	Aug. 12, 1996.
U.K.	Aug. 6, 1996	Aug. 13, 1996.

Case	Briefs	Rebuttals due
Japan	Aug. 6, 1996	Aug. 13, 1996.
Germany	Aug. 7, 1996	Aug. 14, 1996.
France	Aug. 7, 1996	Aug. 14, 1996.

The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of these reviews within 180 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and the inability to link sales with specific entries prevents calculation of duties on

an entry-by-entry basis, we have calculated an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.)

In some cases, such as EP situations, the respondent does not know the

entered value of the merchandise. For these situations, we have either calculated an approximate entered value or an average unit dollar amount of antidumping duty based on all sales examined during the POR. (See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31694 (July 11, 1991).) The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991-92 administrative reviews of these orders (see *AFBs III*). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section

751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: June 27, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

[FR Doc. 96-17277 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-583-810]

Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Termination in Part.

SUMMARY: In response to a request by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 19 manufacturers/exporters of the subject merchandise to the United States for the period September 1, 1994, through August 31, 1995. The review indicates the existence of margins for all firms.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between export price and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) and statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4195 or 482-3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act

(URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1991, the Department published the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47736). The Department published a notice of "Opportunity to Request Administrative Review" on September 12, 1995 (60 FR 47349). The petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review for the period September 1, 1994, through August 31, 1995. A respondent, Chuen Chao Enterprise Company LTD (Chuen Chao) requested an administrative review of its sales. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on October 12, 1995 (60 FR 53164), and sent questionnaires to the following firms: Anmax Industrial Co., Ltd. (Anmax), Buxton International Corporation (Buxton), Chu Fong Metallic Electric Co. (Chu Fong), Everspring Plastic Corp. (Everspring), Gingen Metal Corp. (Gingen), Goldwinate Associates, Inc. (Goldwinate), Gourmet Equipment Corporation (Gourmet), Hwen Hsin Enterprises Co., Ltd. (Hwen), Kwan How Enterprises Co., Ltd. (Kwan How), Kwan Ta Enterprises Co. Ltd (Kwan Ta), Kuang Hong Industries, Ltd. (Kuang), Multigrand Industries Inc. (Multigrand), San Chien Electric Industrial Works, Ltd. (San Chien), San Shing Hardware Works Co., Ltd. (San Shing), Transcend International Co. (Transcend), Trade Union International Inc./Top Line (Top Line), Uniauto, Inc. (Uniauto), Wing Tang Electrical Manufacturing Company, Inc (Wing) and Chuen Chao. On December 11, 1995, Chuen Chao withdrew its request for administrative review. Since Chuen Chao was the only party which requested a review of its sales, we are terminating the review of Chuen Chao and its entries will be liquidated at the rate at which they were entered. Gourmet responded to the questionnaire. Buxton and Uniauto are related parties and so responded to the questionnaire as one respondent.

Questionnaires that were sent to Chu Fong, Kwan How, Kwan Ta, Everspring, Gingen, Goldwinate, Multigrand and Kuang were returned as undeliverable. These firms will receive the "all others"

rate established in the less-than-fair-value (LTFV) investigation, 6.93 percent.

The Department has now conducted the administrative review in accordance with section 751 of the Act.

Scope of the Review

On April 19, 1994, the Department issued its Final Scope Clarifications on Chrome-Plated lug Nuts from Taiwan and the PRC. The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by this review conform to the April 19, 1994 scope clarification.

Imports covered by this review are shipments of one-piece and two-piece chrome-plated lug nuts, finished or unfinished, more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least 3/4 inches (19.05 millimeters) but not more than on inch (25.4 mm), plus or minus 1/16 of an inch (1.59 mm). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of the review.

During the period of review (POR), chrome-plated lug nuts were classifiable under Harmonized Tariff Schedule (HTS) subheading 7318.16.00.00. Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Use of Facts Otherwise Available

We preliminarily determine that in accordance with section 776(d) of the Act, the use of facts available is appropriate for Anmax, Hwen, San Chien, San Shing, Transcend, Top Line, and Wing because these firms did not respond to the Department's antidumping questionnaire. The Department finds that, in not responding to the questionnaire, these firms failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department. Because necessary information is not available on the record with regard to sales by these firms as a result of their withholding the requested information, we must make our preliminary determination based on facts otherwise available pursuant to section 776(a) of the Act.

Where the department must base the entire dumping margin for a respondent in an administrative review on the facts

available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of the respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The statute also provides that the facts otherwise available may be based on secondary information. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567), where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). No such circumstances exist in this case which would cause the Department to disregard a prior margin. In this case, we have used the highest rate from any prior segment of the proceeding. 10.67

percent. This rate was calculated in the *Amendment to the Final Determination of Sales at Less Than Fair Value* (56 FR 47737), covering the period May 1, 1990 through October 31, 1990.

The Department also sent questionnaires to Gourmet and Buxton/Uniauto which provided us with responses to our questionnaires. However, while planning for verification of these two firms, the Department received submissions from each firm stating that a verification would produce the same results as in previous reviews where the Department was unable to reconcile the data Gourmet and Buxton/Uniauto submitted in their responses to our questionnaire with their audited financial statements (see Buxton/Uniauto and Gourmet submissions dated March 28, 1996, and May 1, 1996, respectively). Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) states that the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title" if an interested party or any other person provides information but the information can not be verified. Because their submissions were unreconcilable to their audited financial statements and thus unverifiable, we have determined to apply facts available to Gourmet and Buxton/Uniauto. However, because these firms cooperated with our request for information, we are not using an adverse inference in selecting from among the facts otherwise available. In this case, we have used Gourmet's and Buxton/Uniauto's highest rates from a prior review which are 6.47 percent and 6.93 percent respectively.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period September 1, 1994, through August 31, 1995:

Manufacturer/Exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation	6.47
Buxton International/Uniauto	6.93
Chu Fong Metallic Electric Co	6.93
Transcend International	10.67
San Chien Industrial Works, Ltd	10.67
Anmax Industrial Co., Ltd	10.67
Everspring Plastic Corp	6.93
Gingen Metal Corp	6.93
Goldwinate Associates, Inc	6.93
Hwen Hsin Enterprises Co., Ltd	10.67

Manufacturer/Exporter	Percent margin
Kwan How Enterprises Co., Ltd	6.93
Kwan Ta Enterprises Co., Ltd	6.93
Kuang Hong Industries Ltd	6.93
Multigrand Industries Inc	6.93
San Shing Hardware Works Co., Ltd	10.67
Trade Union International Inc./Top Line	10.67
Uiauto, Inc	6.93
Wing Tang Electrical Manufacturing Company	10.67

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of the date of publication (19 CFR 353.38(b)). Any hearing, if requested, will be held 44 days after publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days after the date of publication of this notice (19 CFR 353.38(c)). Rebuttal briefs and rebuttal comments, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisal instructions on each manufacturer/exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed firms will be those firms' rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the

exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 6.93 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96-17278 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: West Palm Beach, Anaheim, Oxnard, and Cincinnati

AGENCY: Minority Business Development Agency.

ACTION: Amendment.

SUMMARY: The Minority Business Development Agency is revising the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the West Palm Beach, Anaheim, Oxnard, and Cincinnati MBDCs. The revised closing date for the West Palm Beach MBDC application is July 22, 1996. Anaheim, Oxnard, and Cincinnati closing dates will be July 29, 1996. These solicitations were originally published in the Federal Register, Thursday, June 6, 1996, Vol. 61, No. 110, page 28847 and Wednesday, June 12, 1996, Vol. 61, No. 114, pages 29733 and 29735.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

July 1, 1996.

Frances B. Douglas

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96-17224 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-21-P

Business Development Center Applications: Charleston, South Carolina

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the Federal Register, Wednesday, June 12, 1996, Vol. 61, No. 114, 29737.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: July 1, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96-17223 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-21-P

National Oceanic and Atmospheric Administration

[I.D. 070196B]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on July 18, 1996 beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA; telephone: (215) 492-0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make recommendations for the 1997 management measures (possession limit and quota) for bluefish.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 1, 1996.

Richard W. Surdi,

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

[FR Doc. 96-17274 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 062896C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting.

DATES: The meeting will begin on July 15, at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene on July 16 through July 19, at 8 a.m. The meeting will adjourn on Friday at 5 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's June 1996 instructions to the GMT and prepare reports for the August 1996 Council meeting. The GMT will review several new groundfish stock assessments and prepare initial recommendations for 1997 catch levels; review the rate of groundfish landings through June; review preliminary analyses of the Pacific whiting allocation proposal, a proposal to establish disposition procedures for salmon bycatch in the shore-based whiting fishery, and industry proposals relating to sale of amounts of fish landed in excess of trip limits, restrictions on transfers

(including leases) of limited entry permits, allowing vessels to begin their landing periods mid-month, and data collection.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: July 1, 1996.

Richard W. Surdi,

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

[FR Doc. 96-17273 Filed 7-5-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 070196A]

Endangered Species; Permits

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

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: Notice is hereby given that a public hearing on an application from the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) for a scientific research/enhancement permit has been requested and will take place. The public comment period for the permit application is extended.

DATES: The public hearing is scheduled for July 24, 1996 from 6 p.m. - 9:30 p.m., or until all comments have been heard. The comment period for the permit application is extended through July 29, 1996 to allow concerned parties the opportunity to respond to the testimony presented at the public hearing.

ADDRESSES: The public hearing will be held at the Oregon Department of Transportation Building, Region 5, 3012 Island Avenue, La Grande, Oregon, 97850. The permit application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

Send written comments to the Chief, Endangered Species Division, Office of Protected Resources at the address above.

SUPPLEMENTARY INFORMATION: Notice was published on May 20, 1996 (61 FR 25208) that an application had been filed by ODFW (P211J) for a scientific research/enhancement permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227). ODFW requests authorization to collect juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for three populations of chinook salmon in the Grande Ronde River Basin. The captive broodstock program has been proposed to forestall the possible extinction of the local populations and to preserve the overall stock structure of Snake River spring/summer chinook salmon. ODFW proposes to collect juveniles for the captive broodstock program annually from tributaries of the Lostine River, Catherine Creek, and the upper Grande Ronde River. ODFW proposes to rear and maintain the ESA-listed fish in hatcheries until mature, spawn the fish, rear and raise the resulting progeny to smolts, and release the offspring in their respective parental streams.

During the public comment period for the permit application, NMFS received the request for a public hearing from the Confederated Tribes of the Umatilla Indian Reservation at Pendleton, OR. The Umatilla Tribes are concerned that the issuance of the permit would be premature because of the experimental nature of captive broodstock programs. They also believe that Rapid River hatchery stock, determined not to be an evolutionarily significant unit by NMFS, should not be omitted from recovery efforts.

Anyone wishing to make a presentation at the public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak, a time limit may be imposed. All statements and opinions summarized in this notice are those of the applicant and/or concerned parties and do not necessarily reflect the views of NMFS.

Special Accommodations

The hearing will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Keren Holtz at (503) 230-5424 at least five days prior to the date of the hearing.

Dated: July 1, 1996.
 Robert C. Ziobro,
*Acting Chief, Endangered Species Division,
 Office of Protected Resources, National
 Marine Fisheries Service.*
 [FR Doc. 96-17272 Filed 7-5-96; 8:45 am]
 BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
 Commodity Futures Trading
 Commission.

TIME AND DATE: 9:30 a.m., Tuesday, July
 16, 1996.

PLACE: 1155 21st St. N.W., Washington,
 D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
 Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION:
 Jean A. Webb, 202-418-5100.
 Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 96-17488 Filed 7-3-96; 3:57 pm]
 BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
 Commodity Futures Trading
 Commission.

TIME AND DATE: 10:30 a.m., Wednesday,
 July 24, 1996.

PLACE: 1155 21st St. N.W., Washington,
 D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule
 enforcement review.

CONTACT PERSON FOR MORE INFORMATION:
 Jean A. Webb, 202-418-5100.
 Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 96-17489 Filed 7-3-96; 3:57 pm]
 BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
 Commodity Futures Trading
 Commission.

TIME AND DATE: 10:00 a.m., Friday, July
 26, 1996.

PLACE: 1155 21st St. N.W., Washington,
 D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
 Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
 Jean A. Webb, 202-418-5100.
 Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 96-17490 Filed 7-3-96; 8:45 am]
 BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
 Commodity Futures Trading
 Commission.

TIME AND DATE: 10:00 a.m., Monday, July
 29, 1996.

PLACE: 1155 21st St. N.W., Washington,
 D.C. Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Use of
 Electronic Media by Commodity Pool
 Operators and Commodity Trading
 Advisors.

CONTACT PERSON FOR MORE INFORMATION:
 Jean A. Webb, 202-418-5100.
 Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 96-17491 Filed 7-3-96; 8:45 am]
 BILLING CODE 6351-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
 Uniformed Services University of the
 Health Sciences.

TIME AND DATE: 1:00 p.m. to 4:00 p.m.,
 August 5, 1996.

PLACE: Uniformed Services University
 of the Health Sciences, Board of Regents
 Conference Room (D3001), 4301 Jones
 Bridge Road, Bethesda, MD 20814-4799.

STATUS: Open—under "Government in
 the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:
 1:00 p.m. Meeting—Board of Regents

- (1) Approval of Minutes—May 17, 1996
- (2) Faculty Matters
- (3) Granting of Degrees
- (4) Departmental Reports
- (5) Financial Report
- (6) Report—President, USUHS
- (7) Report—Dean, School of Medicine
- (8) Report—Dean, Graduate School of
 Nursing
- (9) Comments—Chairman, Board of
 Regents
- (10) New Business

CONTACT PERSON FOR MORE INFORMATION:
 Mr. Bobby D. Anderson, Executive
 Secretary of the Board of Regents (301)
 295-3116.

Dated: July 3, 1996.
 Patricia L. Toppings,
*Alternate OSD Federal Register Liaison
 Officer, Department of Defense.*
 [FR Doc. 96-17479 Filed 7-3-96; 3:16 pm]
 BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.
ACTION: Notice of interest rates for the
 William D. Ford Federal Direct Loan
 Program for the period July 1, 1996,
 through June 30, 1997.

SUMMARY: The Assistant Secretary for
 Postsecondary Education announces the
 interest rates for variable rate loans
 made under the William D. Ford Federal
 Direct Loan (Direct Loan) Program for
 the period July 1, 1996, through June 30,
 1997.

FOR FURTHER INFORMATION CONTACT:
 Barbara F. Grayson, Program Specialist,
 William D. Ford Federal Direct Loan
 Program, Policy Development Division,
 Office of Postsecondary Education, U.S.
 Department of Education, Room 3045,
 ROB-3, 600 Independence Avenue, SW,
 Washington, DC 20202-5400.
 Telephone: (202)708-9406. 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: The
 formulas for determining the interest
 rates for Direct Loan Program loans are
 provided under section 455 of the
 Higher Education Act of 1965, as
 amended (the Act) (20 U.S.C. 1087e),
 and as codified in 34 CFR 685.202(a)
 and 685.215(g). Section 455(b) of the
 Act provides that a variable interest rate
 applies to loans made under the Direct
 Loan Program and disbursed on or after
 July 1, 1994. The variable rate is
 determined annually and applies for
 each 12-month period beginning July 1
 and ending June 30. For Federal Direct
 Stafford/Ford (Direct Subsidized) and
 Federal Direct Unsubsidized Stafford/
 Ford (Direct Unsubsidized) Loans, and
 Federal Direct Subsidized and Federal
 Direct Unsubsidized Consolidation
 Loans, the interest rate may not exceed
 8.25 percent. For Federal Direct PLUS
 and Federal Direct PLUS Consolidation
 Loans, the interest rate may not exceed
 9 percent.

Interest Rates for Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans

Loans first disbursed prior to July 1, 1995. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.25 percent.

Loans first disbursed on or after July 1, 1995. (a) During the in-school, grace, and deferment periods. Pursuant to section 455(b)(2) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 7.66 percent.

(b) During all other periods. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.25 percent.

Interest Rates for Direct PLUS and Direct PLUS Consolidation Loans

Pursuant to section 455(b)(4) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.72 percent. (20 U.S.C. 1087e).

Dated: July 1, 1996.

David A. Longanecker,
Assistant Secretary for Postsecondary
Education.

[FR Doc. 96-17243 Filed 7-5-96; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96-579-000]

Colorado Interstate Gas Company; Notice of Application

July 1, 1996.

Take notice that on June 18, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a request, pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations, for authorization: (1) to abandon its existing Amoco Delivery Line to Amoco's Wattenberg Plant and (2) to construct new pipeline delivery facilities in Adams County, Colorado, all under CIG's blanket certificate, issued in Docket No. CP83-21-000.

Take notice also that, by letter dated June 28, 1996, CIG requested that its June 18, 1996, request be converted into a combined application: (1) for

authorization to abandon its Amoco Delivery Line, pursuant to section 7(b) of the Natural Gas Act; and (2) for a certificate of public convenience and necessity to construct the aforementioned pipeline delivery facilities, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The Commission issued a certificate to CIG in an order issued December 8, 1992, in Docket No. CP92-470-000, authorizing it to: (1) Construct the existing Amoco Delivery Line, which consists of approximately 0.8 miles of 16-inch diameter pipeline and connects CIG'S 16-inch diameter 52-A line to Amoco's Wattenberg Plant; (2) construct CIG's Enterprise Lateral, which consists of approximately 21.5 miles of 16-inch diameter pipeline and connects to CIG's 52-A line; and (3) convert that segment of the 52-A line which lies between the Enterprise Lateral and Amoco Delivery Line connections (approximately 23.9 miles of the 52-A line) into a supply lateral.

The affected segment of 52-A had previously been used to transport gas in and out of CIG's Fort Morgan facility and Young Gas Storage Co., Ltd.'s Young Storage Field. In the December 8, 1992 order, the Commission held that lines 52-A and 52-B are facilities required to test, develop or utilize an underground storage field, and that (as such) the 52-A and/or 52-B may not be modified under the automatic authorization provisions of § 157.208 of the regulations. The Commission also stated that 52-A and 52-B are not eligible facilities under § 157.202(b)(2)(ii)(D) of the regulations, and that "CIG may not perform miscellaneous re-arrangement of either line absent case-specific certificate authorization."

CIG now proposes to abandon its 16-inch diameter Amoco Delivery Line and construct approximately 23.9 miles of 10-inch diameter pipeline that would parallel its 52-A and 52-B lines. CIG also proposes to construct a new 0.8 mile, 10-inch diameter delivery line to the Wattenberg Plant to replace the 16-inch Amoco Delivery Line. CIG plans to lay the new 10-inch delivery line in the right-of-way currently occupied by the 16-inch Amoco Delivery Line. CIG also proposes to convert the aforementioned segment of its 52-A line back to its original function. CIG estimates that the proposed facilities will cost \$2.9 million.

Any person desiring to be heard, or to make any protest with reference to said

application should, on or before July 22, 1996, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and/or a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17201 Filed 7-5-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-596-000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

July 1, 1996.

Take notice that on June 25, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96-596-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Maricopa County, Arizona to permit the transportation and

delivery of natural gas to Southwest Gas Corporation (Southwest), under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that Southwest seeks to deliver natural gas to its customers from a point of El Paso's 12 $\frac{3}{4}$ " O.D. Santan Line in Maricopa County, Arizona. The proposed location is approximately at milepost 9.2 on El Paso's 12 $\frac{3}{4}$ " O.D. Santan Line in the NE/4 of Section 20, Township 1 South, Range 6 East, in Maricopa County, Arizona. El Paso has been advised that Southwest will use the gas to serve the residential, commercial, and industrial requirements of its customers in the Gilbert, Arizona area. El Paso requests authorization to construct and operate the proposed delivery point (known as the Gilbert City Gate Meter Station) on its 12 $\frac{3}{4}$ " O.D. Santan Line in Maricopa County, Arizona. The estimated cost is \$92,100 and Southwest has agreed to reimburse El Paso pursuant to their letter agreement.

El Paso states that the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on El Paso's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

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

Lois D. Cashell,
Secretary.

[FR Doc. 96-17202 Filed 7-5-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-603-000]

**Tennessee Gas Pipeline Company;
Notice of Application to Abandon
Facilities by Sale**

July 1, 1996.

Take notice that on June 26, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77252, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by sale to Chevron U.S.A. Inc. (Chevron), Tennessee's Line 823X-100 and related facilities located Offshore Louisiana. The application is on file with the Commission and open to public inspection.

Tennessee states that on July 18, 1975, the Commission issued Tennessee authorization¹ to, among other things, construct a 0.62 mile, 16-inch diameter pipeline lateral ("Line 823X-100") and Meter No. 0-0033, in East Cameron Block 281 "A" (EC 281 "A"), Offshore Louisiana. The facilities were authorized to permit Tennessee to connect reserves acquired by Tennessee and Texas Eastern Transmission Corporation (Texas Eastern), which in turn connects with the interstate pipeline system of Texas Eastern. Tennessee and Texas Eastern were also authorized to effectuate a gas transmission and exchange agreement under which, among other things, Texas Eastern and Tennessee agreed to transport and exchange gas produced from various offshore locations, including EC 281 "A", to mutually agreeable points on their respective systems.

Tennessee states that the gas purchase and sales agreements under which the EC 281 "A" gas reserves were dedicated to Tennessee have terminated and that, currently, this line is utilized only to transport natural gas volumes produced in the EC 281 area for Chevron. Finally, Tennessee indicates that it no longer requires this facility as a means of obtaining gas reserves and that Chevron will continue to utilize Line 823X-100 to gather and transport gas produced by Chevron or any shippers or working interest owners seeking transportation services in the East Cameron area.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the

¹See, 54 FPC 264 (1975).

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17203 Filed 7-5-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-592-000]

**Williams Natural Gas Company; Notice
of Request Under Blanket
Authorization**

July 1, 1996.

Take notice that on June 21, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96-592-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale to United Cities Gas Company (UCG) approximately 2.0 miles of 6-inch lateral pipeline, measuring, regulating and appurtenant facilities located in Johnson County, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with

the Commission and open to public inspection.

WNG states that it will abandon by sale to UCG measuring (setting number 15165), regulating, appurtenant facilities, and approximately 2.0 miles of the Olathe Naval Base 6-inch pipeline beginning in the Northwest Quarter (NW/4) of Section 6, Township 14 South, Range 23 East and ending in the Northeast Quarter (NE/4) of Section 18, Township 14 South, Range 23 East, all located in Johnson County, Kansas. WNG and UCG agree that the facilities sought to be abandoned herein will serve a more useful purpose as a part of the UCG distribution system. WNG states that the cost associated with the abandonment of the facilities is estimated to be \$729 with a salvage value and sales price of \$124,430.

WNG states that this abandonment is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed abandonment will not have an effect on WNG's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

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

Lois D. Cashell,
Secretary.

[FR Doc. 96-17204 Filed 7-5-96; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval

July 1, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested an emergency OMB review of this collection with an approval by June 28, 1996.

DATES: Persons wishing to comment on this information collection should submit comments by August 29, 1996.

ADDRESSES: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3561 or via internet at fain-t@al.eop.gov, and Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Supplemental Information Required for Taxpayer Identifying Number for Debt Collection.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Individuals or households; Business or other for-profit; Small businesses or organizations.

Number of Respondents: 10,469,716.

Estimated Time Per Response: .017 hours.

Total Annual Burden: 177,985 hours

Needs and Uses: The information will be used by the Commission to comply with Public Law 104-134, Omnibus Consolidated Recissions and Appropriations Act of 1996. Chapter 10 requires each Federal agency to obtain from each person doing business with it to furnish to it such person's taxpayer identifying number. In the case of an individual that number is the person's social security number (ssn); in the case of a business, it is the employer identification number (ein) as assigned by the Internal Revenue Service, U.S. Department of the Treasury. Effective July 1996, the U.S. Treasury will "flag" (and notify the Commission) any and all payment requests to anyone doing business the U.S. Government, if their taxpayer identifying number has not been furnished.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 96-17193 Filed 7-5-96; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1119-DR]

Alaska; 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 Alaska (FEMA-1119-DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 24, 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 June 15, 1996.

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

William C. Tidball,
Associate Director, Response and Recovery Directorate.

[FR Doc. 96-17289 Filed 7-5-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1121-DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-1121-DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: June 24, 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, in a letter dated June 24, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on May 8-28, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Adair, Des Moines, Henry, Iowa, Johnson, Keokuk, Lee, Louisa, Madison, Mahaska, Muscatine, and Washington Counties for Public Assistance and Hazard Mitigation.

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

James L. Witt,
Director.

[FR Doc. 96-17290 Filed 7-5-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1118-DR]**North Dakota; 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 Dakota (FEMA-1118-DR), dated June 5, 1996, and related determinations.

EFFECTIVE DATE: June 21, 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 June 21, 1996.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96-17291 Filed 7-5-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1122-DR]**Ohio; Major Disaster and Related Determinations**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA-1122-DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: June 24, 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, in a letter dated June 24, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting

from flooding on May 2, 1996 through May 25, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Adams, Belmont, Brown, Gallia, Hamilton, Jefferson, Meigs, Paulding, Scioto, and Williams Counties for Public Assistance and Hazard Mitigation.

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

James L. Witt,

Director.

[FR Doc. 96-17292 Filed 7-5-96; 8:45 am]

BILLING CODE 6718-02-P

Notice of the Federal Emergency Management Agency's Intent To Conduct a Strategic Review of Its Radiological Emergency Preparedness Activities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce FEMA's intent to conduct a strategic review of its Radiological Emergency Preparedness (REP) activities and to request specific suggestions for accomplishing this review.

DATES: Comments from the public on this review of the REP Program are

encouraged and invited on or before August 22, 1996.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472; (facsimile)(202) 646-4536.

FOR FURTHER INFORMATION CONTACT: O. Megs Hepler, III, Director, Exercises Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2867.

SUPPLEMENTARY INFORMATION: The mission of FEMA's REP Program, which was established in 1979, is to protect the health and safety of the public residing in the vicinity of a commercial nuclear power plant by ensuring that all levels of government have planned and prepared for their response to a possible radiological incident at the plant. As the REP Program has matured, a number of REP Program stakeholders have recommended that the program be restructured in order to become more streamlined and efficient. In light of stakeholders' recommendations and the fact that the REP Program has been in existence for over 16 years, FEMA intends to initiate a comprehensive strategic review of the way its offsite radiological emergency planning and preparedness responsibilities are performed.

This comprehensive strategic review will examine the various mechanisms, policies, procedures, guidance documents, and processes now used to carry out FEMA's REP Program, with a view to improving the efficiency and effectiveness of the program by implementing new policies, procedures, processes and guidance, if necessary. The review will further National Performance Review goals, will be closely coordinated with the U.S. Nuclear Regulatory Commission, and will provide for extensive input from all stakeholders in the REP community—States, utilities, Public Interest Research Groups, interested citizens, other Federal agencies, Congress, etc. The strategic review will also ensure that REP activities are consistent with the current requirements of the Government Performance Review Act.

As a first step, FEMA is publishing this Federal Register notice announcing its intent to conduct the comprehensive strategic review and requesting comments from any interested parties. FEMA welcomes suggestions as to approaches to take in performing this review, as well as specific suggestions on how to streamline the REP program and make it more cost-effective.

When submitting recommendations, commenters should note that the resulting REP Program must still accomplish the program's original mission, i.e., it must continue to ensure that measures can be taken to protect the health and safety of the public in the vicinity of commercial nuclear power plants in the event of a radiological incident.

Dated: June 28, 1996.

James Lee Witt,

Director.

[FR Doc. 96-17293 Filed 7-5-96; 8:45 am]

BILLING CODE 6718-05-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Foreign Cargo International, Inc., 8420 N.W. 58th Street, Miami, FL 33166, Officer: Enrique E. Ros, Jr., President.

Happy International Corp., 147-48 175th Street, Jamaica, NY 11434, Officer: Gordon Kuo, President.

Air & Ocean Shipping, Inc., 1551 Carmen Drive, Elk Grove Village, IL 60007, Officers: Ingo Wagschal, President, Guenter Fischer, Board of Directors.

Marlins Consolidators, Inc., d/b/a, International Cargo Services, 8333 N.W. 66th Street, Miami, FL 33166, Officers: Sarah E. Dion, President, Carmen I. Garcia, Vice President.

Reliable Van & Storage Co., Inc., 550 Division Street, Elizabeth, NJ 07201, Officers: Pat J. Toscano, President, Peter J. Toscano, CEO.

Dated: July 2, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-17247 Filed 7-5-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

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 August 1, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina Fincorp, Inc.*, Rockingham, North Carolina; to become

a bank holding company by acquiring 100 percent of the voting shares of Richmond Savings Bank, SSB, Rockingham, North Carolina.

2. *F & M National Corporation*, Winchester, Virginia; to merge with Allegiance Banc Corporation, Bethesda, Maryland, and thereby indirectly acquire Allegiance Bank, NA, Bethesda, Maryland.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Alabama National Bancorporation*, Birmingham, Alabama; to merge with FIRSTBANC Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lewis Family Partners, L.P.*, Morris, Illinois; to become a bank holding company by acquiring 19.82 percent of the voting shares of Illinois Valley Bancorp, Inc., Morris, Illinois, and thereby indirectly acquire Grundy County National Bank, Morris, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Peoples State Bank, Topeka, Kansas, and Mercantile Bank of Shawnee County, Topeka, Kansas, a *de novo* bank.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Ringsmuth Family Limited Partnership*, Wakefield, Michigan; to become a bank holding company by acquiring 83.8 percent of the voting shares of Wakefield Bancorporation, Inc., Wakefield, Michigan, and thereby indirectly acquire First National Bank of Wakefield, Wakefield, Michigan.

Board of Governors of the Federal Reserve System, July 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17246 Filed 7-5-96; 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 July 22, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Capital Corp of the West*, Merced, California; to engage through its newly formed subsidiary Capital West Group, Inc., Merced, California, in furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to § 225.25(b)(4)(iv) of the Board's Regulation Y, and in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including

private and public financing and loan syndications); and conducting financial feasibility studies, pursuant to § 225.25(b)(4)(vi) of the Board's Regulation Y. These activities, currently limited in geographic scope, will be expanded to nationwide.

In connection with this application Capital Corp of the West, Merced, California, also has applied to engage *de novo* through its subsidiary Capital West Group, Inc., Merced, California, in providing management consulting advice to nonaffiliated financial institutions, and will include, but is not limited to, providing services associated with assisting with organizational planning; assisting with strategic planning and assessments; business plan implementation and monitoring; presenting Board of Director education programs; and facilitating Board of Directors and management retreats, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17245 Filed 7-5-96; 8:45 am]

BILLING CODE 6210-01-F

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents consumer and community interests and the financial services industry. Eight new members will be selected for three-year terms that will begin in January 1997. The Board expects to announce the selection of new members by year-end 1996.

DATES: Nominations should be received by August 31, 1996.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Deanna Aday-Keller, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452-6470. For Telecommunications Device for the Deaf (TTD) users *only*: Dorothea Thompson, (202) 452-3544, Board of Governors of

the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976, at the direction of the Congress, to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 1997, to replace members whose terms expire this year. *Nomination letters should include information about past and present positions held by the nominee; a description of special knowledge, interests or experience related to community reinvestment, consumer credit, or other consumer financial services; and the nominee's address and telephone number.* Individuals may nominate themselves.

The Board is interested in candidates who have some familiarity with community reinvestment or consumer financial services and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of community reinvestment or consumer financial services, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to prepare for and attend meetings (usually for two days, including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end as of December 31, 1996, are:

Katharine W. McKee, Associate Director, Center for Community Self-Help Durham, North Carolina
Alvin J. Cowans, President and CEO, McCoy Federal Credit Union, Orlando, Florida
Elizabeth G. Flores, Consultant, Laredo, Texas
Anne B. Shlay, Associate Director, Institute for Public Policy Studies, Temple University, Philadelphia, Pennsylvania

Reginald J. Smith, President, UMB Mortgage Company, Kansas City, Missouri
John E. Taylor, President and CEO, The National Community, Reinvestment Coalition, Washington, D.C.
Lorraine VanEtten, Vice President and Community, Lending Officer, Standard Federal Bank of Troy, Troy, Michigan
Lily K. Yao, Chairman and CEO, Pioneer Federal Savings Bank, Honolulu, Hawaii

Council members whose terms continue through 1997 or 1998 are:

Richard S. Amador, President and CEO, CHARO Community Development, Corporation, Los Angeles, California—December 31, 1998
Thomas R. Butler, President and Chief Operating Officer, NOVUS Services, Inc., Riverwoods, Illinois—December 31, 1997
Robert A. Cook, Partner, Venable, Baetjer and Howard, Baltimore, Maryland—December 31, 1997
Heriberto Flores, President and CEO, Brightwood Development Corporation, Springfield, Massachusetts—December 31, 1998
Emanuel Freeman, President, Greater Germantown Housing, Development Corporation, Philadelphia, Pennsylvania—December 31, 1997
David C. Fynn, Regulatory Risk Manager, National City Corporation, Cleveland, Ohio—December 31, 1997
Robert G. Greer, Tangleword Corporation, Houston, Texas—December 31, 1997
Kenneth R. Harney, Journalist, Washington Post Writers Group, Chevy Chase, Maryland—December 31, 1997
Gail K. Hillebrand, Litigation Counsel, West Coast Regional Office, Consumers Union of U.S., Inc., San Francisco, California—December 31, 1997
Terry Jorde, President and CEO, Towner County State Bank, Cando, North Dakota—December 31, 1997
Francine Justa, Executive Director, Neighborhood Housing Services, of New York, New York, New York—December 31, 1998
Eugene I. Lehrmann, President, American Association of Retired Persons, Madison, Wisconsin—December 31, 1997
Errol T. Louis, Treasurer/Manager, Central Brooklyn Federal Credit Union, Brooklyn, New York—December 31, 1998
William N. Lund, Acting Director, Office of Consumer Credit, Regulation, State of Maine, Augusta, Maine—December 31, 1998

Ronald A. Prill, Vice President, Credit, Dayton Hudson Corporation, Minneapolis, Minnesota—December 31, 1997

Lisa Rice-Coleman, Executive Director, Fair Housing Center, Toledo, Ohio—December 31, 1997

John R. Rines, President, General Motors, Acceptance Corporation, Detroit, Michigan—December 31, 1997

Margot Saunders, Managing Attorney, National Consumer Law Center, Washington, D.C.—December 31, 1998

Julia M. Seward, Vice President and Corporate Community Reinvestment Officer, Signet Bank, Richmond, Virginia—December 31, 1997

Gregory D. Squires, Department of Sociology, University of Wisconsin-Milwaukee, Milwaukee, Wisconsin—December 31, 1998

George P. Surgeon, President and Chief Executive Officer, Southern Development Bankcorporation, Arkadelphia, Arkansas—December 31, 1998

Theodore J. Wysocki, Jr., Executive Director, CANDU, Chicago, Illinois—December 31, 1998

William W. Wiles,
Secretary of the Board.

[FR Doc. 96-17267 Filed 7-5-96; 8:45 am]

BILLING CODE 6210-01-P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 10, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed amendments to Regulation L (Management Official Interlocks) to conform to statutory changes made by the Riegle Community Development and Regulatory Improvement Act of 1994 and to reduce burden (proposed earlier for public comment; Docket No. R-0907).

2. Proposed determination that the Federal National Mortgage Association is a financial institution for purposes of the netting

provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991.

Discussion Agenda

3. Proposed 1997 Federal Reserve Bank budget objective.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 3, 1996

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17402 Filed 7-03-96; 3:16 pm]

BILLING CODE 6210-01-P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 10, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17403 Filed 7-3-96; 3:16 pm]

BILLING CODE 6210-10-P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D-238]

Locating Federal Facilities on Historic Properties in Our Nation's Central Cities

1. Purpose. This bulletin announces the policy concerning the location of Federal facilities on historic properties in our central cities.

2. Expiration date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background. a. On May 21, 1996, President Clinton signed Executive Order 13006, entitled "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," to encourage "leasing, acquiring, locating, maintaining, or managing" Federal facilities on historic properties in our nation's central cities. So that federal agencies may benefit from GSA's real property management expertise, government-wide policy guidance is being provided concerning the acquisition and use of historic properties to be utilized by federal agencies where operationally appropriate and economically prudent.

b. The Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 601a) directs the Administrator of General Services to "acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives." In the past, some Federal agencies have successfully promoted the acquisition and use of space in "buildings of historic, architectural, and cultural significance" by extending a 10 percent cost preference for these properties.

4. Action. In accordance with Executive Order 13006, and subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. 3122), and Executive Order 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists.

All Federal agencies must use procedures which implement the policy to extend first consideration to locations as prescribed in the Executive order. These implementation procedures

should be consistent with the existing policy set forth in Executive Order 12072 (Federal Space Management), which extends first consideration to central business areas (CBAs), and should consider applicable requirements relating to full and open competition under the Competition in Contracting Act, 41 U.S.C. 253 *et seq.*

Federal agencies are encouraged to consider the Government's previous approach extending preference to historic properties. Where operationally appropriate and economically prudent, Federal agencies may extend first consideration to historic properties using various methods, including but not limited to extending a cost preference (similar to GSAR 570.701-4, Historic Preference); limiting competition to historic districts and/or historic properties; conducting market surveys and market analyses to identify historic properties or districts to be included in the area of consideration; providing notice of a requirement and an opportunity to respond to local, state or regional historic preservation officials; or a combination of the foregoing.

Dated: June 28, 1996.

G. Martin Wagner,

Associate Administrator, Office of Policy, Planning and Evaluation.

[FR Doc. 96-17208 Filed 7-5-96; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Specific List for Categorization of Laboratory Test Systems, Assays, and Examinations by Complexity; Notice of Additional Waived Laboratory Test Systems, Assays, and Examinations; and Notice of Announcement of Boards Approved by HHS

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice with comment period.

SUMMARY: Regulations codified at 42 CFR 493.17, implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100-578, require that the Secretary provide for the categorization of specific laboratory test systems, assays, and examinations by level of complexity. The criteria for such categorizations also are set forth in those regulations.

This Notice announces the addition of test systems to the waived category, and

announces approximately 2400 additional test systems, assays, and examinations that have been categorized and notified between March 15, 1995 and June 7, 1996. These categorizations were effective on the issue date of the notification letter sent to the manufacturer, and are subject to the 30 day comment period for this Notice.

This Notice also announces the waiver of those test systems, assays, and examinations that have met the CDC guidelines reflected in the proposed criteria for waiver as outlined in a Notice of Proposed Rulemaking, 42 CFR Part 493, HSQ-225-P, published September 13, 1995, in the Federal Register (60 FR 47534). These test systems and test system instructions may have been revised in order to meet the criteria for waiver. Please contact the manufacturer of the test system regarding this information.

This Notice is published with an opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the Federal Register notice.

In addition, this Notice announces HHS approval of two certification organizations, the American Board of Histocompatibility and Immunogenetics and the American Board of Medical Genetics, for qualifying individuals as laboratory directors and clinical consultants.

DATES: Effective date: All categorizations in this Notice were effective on the date of the test categorization notification letter sent to the manufacturer. Written comments on the tests initially categorized in this Notice will be considered if they are received at the address indicated below, by no later than 5 p.m. on August 7, 1996. CDC reserves the right to reevaluate and recategorize tests based on the comments received in response to this Notice.

ADDRESSES: Comments on the categorization of tests in this Notice should be addressed to Public Health Service, Attention: CLIA Federal Register Notice, Centers for Disease Control and Prevention, Mail Stop F-11, 4770 Buford Highway, NE, Atlanta, Georgia 30341-3724.

Requests for test complexity categorization should be submitted to: Attention: Test Categorization/CLIA, Centers for Disease Control and Prevention, Mail Stop F-11, 4770 Buford Highway, NE, Atlanta, Georgia 30341-3724.

Requests for waiver status should be submitted to: Attention: Request for Waiver Status/CLIA, Centers for Disease

Control and Prevention, Mail Stop F-11, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Bakes-Martin, (770) 488-7655.

SUPPLEMENTARY INFORMATION: All requests for test categorization should be submitted to the CDC. CDC is reviewing submissions for test categorization concurrently with the FDA's review process for 510(k) clearance or PMA clearance. In order to assure timely review by CDC, manufacturers are requested to submit the package insert and 510(k) number for the product to CDC when the product is submitted to the FDA. However, CDC will not be able to issue the test categorization until the FDA has finished its review process. CDC is currently issuing test categorization notification letters to manufacturers within one week of the FDA 510(k) or Pre-Market Approval (PMA) clearance. Test categorizations are effective as of the date of notification to the applicant. The CDC will publish updates and revisions to the test categorization list periodically in the Federal Register with opportunity for comment. The CDC will also maintain an updated list of categorized tests electronically, available to the public via Internet. For further information regarding this capability, please call (770) 488-7655.

Additions to the Waived Category

The CDC is evaluating requests for waiver based on the guidelines for submission of waiver requests that were sent to manufacturers of laboratory testing devices and other interested parties through correspondence dated December 19, 1994. These guidelines reflect the proposed criteria for waiver that are outlined in the Notice of Proposed Rulemaking, 42 CFR Part 493, HSQ-225-P, published September 13, 1995 in the Federal Register (60 FR 47534).

The following test systems have been granted waived status based upon meeting these guidelines: (25112) HemoCue B-Glucose System for the analyte (2203) glucose; (10170) Cholestech L*D*X Test System for the analytes (1020) cholesterol, (6118) triglyceride, (2550) HDL cholesterol, and (2203) glucose; (58338) Serim PyloriTek Test Kit for the analyte (2512) *Helicobacter pylori*; and (52036) Quidel QuickVue In-Line One-Step Strep A Test for the analyte (5828)

Streptococcus, group A (from throat only).

This Notice also announces that the (10165) ChemTrak AccuMeter, the (31014) Johnson & Johnson ADVANCED CARE Cholesterol Test, and the (07776) Boehringer Mannheim Accu-Chek InstantPlus Cholesterol for the analyte (1020) Cholesterol have been granted waived status following clearance by the FDA for home use.

In this Notice we also are verifying the complexity of two test system/analyte combinations. The test system, (04542) All Qualitative Color Comparison pH Testing for the analyte (0731) Body fluid (other than blood) pH, is the same as the waived dipstick color comparison products for qualitative pH measurement in urine. Therefore, this test system has been added to the list of waived tests.

The second test system, (58217) SmithKline Gastrocult for the analyte (2211) Gastric Occult Blood, is the same test system as that for fecal occult blood. Therefore, this test system is also now included on the list of waived procedures.

Comments and Responses

On May 15, 1995, a test list of approximately 3,000 additional test systems, assays, and examinations categorized by level of complexity was published in the Federal Register (60 FR 25944) with a 30 day comment period. Only one letter containing the following general comments was received in regard to this Notice.

Comment: The commenter expressed concern about the categorization of Growth/No Growth of Bacteria on Solid Culture Media (22167) as a moderate complexity test, and requested that this test system be recategorized as high complexity. The commenter used as an example the primary plating of a normally sterile joint fluid to a selective medium, such as Thayer-Martin, if *Neisseria gonorrhoeae* is suspected. The commenter stated that if *N. gonorrhoeae* were not present, Thayer-Martin may inhibit the growth of other significant organisms. If no other media had been inoculated at the time the Thayer-Martin was set up, the commenter suggested that a "no growth" result could incorrectly be reported.

Response: We disagree with the commenter. In this case, the result that should be reported is "no growth of *N. gonorrhoeae*", since Thayer-Martin media is selective for *Neisseria gonorrhoeae*. Under CLIA, laboratories are required to have protocols for the primary inoculation of cultures from specific sites to appropriate culture media. It is the responsibility of the

laboratory director to review and approve these protocols. A normally sterile joint fluid should be inoculated to a combination of the appropriate enriched, selective, and differential media to permit isolation and enhance the growth of any of a number of possible aerobic or anaerobic organisms that could be present in the fluid. For this culture type, it would not be appropriate to inoculate only Thayer-Martin media.

Primary inoculation of any microbiology culture media, in and of itself, is not considered a complete test system under the CLIA regulations, and is not categorized for complexity. The inoculation of the media becomes part of the test system when the primary media is observed to determine whether growth is present after an incubation period. It is the responsibility of the testing personnel to evaluate the growth or absence of growth. When solid culture media is evaluated, the amount of training, experience, interpretation, and judgment required to determine if any bacterial colonies are present, results in a score that is in the moderate complexity category. If, however, there is any growth that must be interpreted, or the medium being evaluated is a broth or liquid medium, such as thioglycollate, more training, experience, interpretation, and judgment is required, and the examination scores as a high complexity test.

Comment: The commenter requested clarification of the categorization of automated blood culture systems as moderate complexity. This commenter stated that although the loading and monitoring of these automated analyzers might be considered moderate complexity, the analysis of positive bottles detected on these instruments should be categorized as high complexity.

Response: We agree with the commenter. The categorization of automated blood culture systems as moderate complexity includes only the the loading and monitoring of these instruments to detect microbial growth in the bottles or vials. Once a signal for growth is detected, the evaluation of the growth, including Gram stain, and subculturing to isolate and identify the microorganism is the high complexity test system "identification from culture". On an automated blood culture instrument, if a specimen does not signal a positive result for growth, the reporting of a negative result is considered a moderate complexity test, provided no followup testing is performed.

Comment: Concern was expressed by the commenter that an inadequate response was provided in the May 15, 1995 Federal Register to a previous comment on the question of recategorization of "large" hematology analyzers and microscopy procedures from high to moderate complexity. The commenter pointed out that the complexity categorization should take into account whether or not the specimen being analyzed is a normal or abnormal sample.

Response: We disagree with the commenter that a "large" hematology analyzer requires a higher complexity categorization when the results of the sample being processed are abnormal rather than normal. The level of technical expertise needed to operate the analyzer does not vary with the results produced as the results are determined automatically by the instrument. If the analyst chooses to repeat those parameters of the hematologic evaluation that are considered to be abnormal, then the repeat testing would be categorized based upon the test methodology/procedure employed.

The categorization of the microscopic examination of a blood smear (differential) does take into account whether or not the cellular elements present in the sample are those found in normal peripheral blood. The manual differential performed on a normal blood smear requires the analyst to have a general knowledge of cellular morphology and maturation and is categorized as moderate complexity, whereas the manual differential performed on an abnormal specimen requires that the analyst have a comprehensive knowledge of normal/abnormal cellular morphology and maturation and is categorized as high complexity. A more detailed explanation of categorization of blood cell differentials can be found on page 39873 of the July 26, 1993 Federal Register (58 FR 39873).

Corrections

The test system (07689)Bayer GLUCOMETER ENCORE+ Blood Glucose Meter has been added to the list of waived procedures. This test system was previously categorized as moderate complexity. Recently, the FDA cleared this test system for home use and consequently it is now waived. Please note there has been a change in manufacturer name. This product was formerly listed under Ames.

Test System and Analyte Nomenclature

Due to advances in technology, the analyte (4024)Mycobacteria has been

refined, and specific analytes have been designated for test systems that are used to identify specific mycobacterial organisms. These new analytes are: (4008)Mycobacterium avium, (4009)Mycobacterium avium complex, (4011)Mycobacterium gordonae, (4012)Mycobacterium intracellulare, (4014)Mycobacterium kansasii, and (4015)Mycobacterium tuberculosis complex. While these more specific analytes will replace the analyte (4024)Mycobacteria in most instances, the analyte (4024)Mycobacteria will continue to be used with test systems that are not used to identify a specific mycobacterial organism.

Also due to technological advances, a new analyte for thyroid stimulating hormone, (6155)Thyroid Stimulating Hormone (TSH) Third Generation, has been designated for the test systems that are able to detect this analyte.

As a point of clarification, an analyte will be designated specifically as a "urine" analyte when a test procedure requires a modification to the test procedure for the urine analyte as opposed to that required for the "serum" analyte.

Test System and Analyte Modifications

The development of new technology in the specialty of microbiology has necessitated a distinction in the categorization of aerobic/anaerobic culture identification (ID) and the categorization of antimicrobial susceptibility testing (AST). For clarification, we are deleting the test system (04372)All Organism ID and Antimicrobial Susceptibility Testing, and replacing it with two test systems (04636)All Conventional Organism Identification from Culture, and (04637)All Antimicrobial Susceptibility (disk diffusion/dilution) from Culture. These two test systems will be assigned to the analyte (0412)Aerobic &/or Anaerobic Organisms—Unlimited Sources, just as the previous test system (04372) was listed. We realize that there are a number of different techniques used for the conventional methods of identifying aerobic and anaerobic organisms from culture; and that these identification methods can be quite different from the processes used to perform standardized disk diffusion, agar or broth dilution antimicrobial susceptibility testing from culture. Although identification and susceptibility testing from culture are often performed together, they are distinct methods that may be done independently. In an effort to be specific, we are separating the two tests.

Dated: June 28, 1996.

David Satcher,
Director, Centers for Disease Control and
Prevention (CDC).

List of Previously Unpublished Categorizations

The test categorization scoring scheme was based on an assessment of the complexity of the operation of the test procedure and not on an evaluation of data documenting the procedure's performance over time. Therefore, the categorization of a test system, assay or examination as moderate or high complexity should not be interpreted as an indication of the acceptability or unacceptability of the accuracy, precision or overall performance of the procedure.

Complexity: Moderate

Speciality/Subspeciality: Bacteriology

Analyte: Aerobic Organisms From Urine
Specimens Only (0468)

Test System, Assay, Examination:
Culture Kits, Inc. Uri-Two (colony count
only) (10332)

Analyte: Chlamydia (1016)

Test System, Assay, Examination:
BioStar Chlamydia OIA (direct antigen/
visual) (07641)
Johnson & Johnson CDI SureCell (direct
antigen/visual) (31063)
Quidel QuickVue Chlamydia Test (direct
antigen/visual) (52026)

Analyte: Helicobacter Pylori (2512)

Test System, Assay, Examination:
GI Supply HP-FAST (22175)

Analyte: Streptococcus, Group A (5810)

Test System, Assay, Examination:
Abbott TestPack +Plus Strep A with OBC
(dir. Ag/visual) (04625)
Applied Biotech SureStep Strep A Test (dir
antigen/visual) (04559)
Johnson & Johnson CDI SureCell (direct
antigen/visual) (31063)

Analyte: Streptococcus, Group A (From
Throat Only) (5828)

Test System, Assay, Examination:
Binax Strep A Test (direct antigen/visual)
(07684)
Henry Schein OneStep Strep A Test
(25258)
Medix Biotech Contrast Strep A (40223)
Medix Biotech FASTrep A (40225)
Medix Biotech Rapid Strep A (40222)
Orion Diagnostica UniStep Strep A (46194)
Quidel CARDS Q.S. Strep A (52035)
Quidel Concise Performance Plus Strep A
(52034)
Syntron Bioresearch QuikStrip OneStep
Strep A Strip Test (58384)
Syntron QuikPac II OneStep Strep A
(58316)

Analyte: Vibrio cholerae (6716)

Test System, Assay, Examination:
New Horizons Cholera SMART (43088)

Speciality/Subspeciality: Endocrinology

Analyte: Adrenocorticotrophic Hormone
(ACTH) (0458)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: Cortisol (1032)

Test System, Assay, Examination:
TOSOH A1A-1200 (61040)
TOSOH A1A-1200DX (61154)
TOSOH A1A-600 (61039)

Analyte: Cortisol, Urine (direct procedure)
(1033)

Test System, Assay, Examination:
Ciba Corning ACS 180 (10046)

Analyte: Estradiol (1605)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)
Technicon Immuno 1 System (61042)

Analyte: HCG, Serum, Qualitative (2501)

Test System, Assay, Examination:
Boehringer Mannheim AccuStat hCG/
Diluent Reagent (07775)
Excel Scientific OneStep Urine/Serum hCG
Preg Module Test (16133)
Horizon Diagnostics Pregna-Plus hCG
(25225)
Johnson & Johnson CDI SureCell hCG-
Urine/Serum (31066)
Medix Biotech CONTRAST hCG Urine/
Serum Test (40215)
Medix Biotech Rapid hCG (urine/serum)
(40224)
TCPI One Step Pregnancy hCG/Diluent
Reagent (61234)
Worldwide Medical First Check hCG
(cassette) (70181)
Wyntek Diagnostics OSOM hCG-Combo
Test (70177)

Analyte: HCG, Total, Serum, Quantitative
(2555)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)

Analyte: HCG, Urine, Qualitative (non-
waived procedures) (2503)

Test System, Assay, Examination:
Immunostics immuno/cept-d (28429)
Immunostics immuno/cept-d Monoclonal
Beta (28428)
Organon Teknika AuraFlex (46152)

Analyte: HCG, Urine, Quantitative (2534)

Test System, Assay, Examination:
PB Diagnostics Systems OPUS (49001)
PB Diagnostics Systems OPUS Magnum
(49097)
PB Diagnostics Systems OPUS PLUS
(49098)

Analyte: Human Growth Hormone (GH)
(2547)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: Human Placental Lactogen (hPL)
(2533)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: Insulin (2812)

Test System, Assay, Examination:

Sanofi Pasteur Access Immunoassay
System (58257)

Analyte: Progesterone (4914)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Organon Teknika AuraFlex (46152)
Sanofi Pasteur Access Immunoassay
System (58257)
Technicon Immuno 1 System (61042)

Analyte: Prolactin (4915)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)

Analyte: Sex Hormone Binding Globulin
(5819)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: T Uptake (TU) (6156)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 704 (07161)
Boehringer Mannheim Hitachi 717 (07163)
Boehringer Mannheim Hitachi 736 (07164)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 914 (07546)
Boehringer Mannheim Hitachi 917 (07765)
Ciba Corning 550 Express (10038)
Olympus AU 800 (46110)
Olympus Reply (46089)
Roche Cobas Mira (55044)

Analyte: Thyroid Stimulating Hormone
(TSH) (6106)

Test System, Assay, Examination:
Franklin Diagnostics ThyroChek One-Step
Rapid TSH (19025)

Analyte: Thyroid Stimulating Hormone
(TSH) Third Generation (6155)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: Thyroid Stimulating Hormone—
High Sens. (TSH-HS) (6108)

Test System, Assay, Examination:
Abbott AxSYM (04532)

Analyte: Thyroxine (T4) (6109)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000
(07658)
Bio-Rad RADIAS System (07493)
Biocircuits IOS (07745)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Thyroxine (T4), Neonatal (6123)

Test System, Assay, Examination:
Bio-Rad RADIAS System (07493)

Analyte: Thyroxine Binding Globulin (TGB)
(6110)

Test System, Assay, Examination:
Cirrux Diagnostics Immulite (10159)

Analyte: Thyroxine Uptake (T4U) (TU)
(6139)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Biocircuits IOS (07745)

Analyte: Thyroxine, Free (FT4) (6111)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 750 XRC (31027)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 950 IRC (31028)
PB Diagnostics Systems OPUS Magnum (49097)	Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem DT II (31030)
PB Diagnostics Systems OPUS PLUS (49098)	Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem DT SC Module (31031)
Analyte: Triiodothyronine Uptake (T3U) (TU) (6120)	Roche Cobas INTEGRA (55179)	Roche Cobas INTEGRA (55179)
<i>Test System, Assay, Examination:</i>	Select Medical Systems Selecta 20/60 (58349)	Select Medical Systems Selecta 20/60 (58349)
Beckman Synchron CX 4 Delta (07762)		
Beckman Synchron CX 5 Delta (07763)		
Beckman Synchron CX 7 Delta (07764)		
Bio-Chem Laboratory Systems ATAC 8000 (07658)		
Roche Cobas INTEGRA (55179)		
Analyte: Triiodothyronine, Free (FT3) (6121)	Analyte: Albumin (0414)	Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH) (0419)
<i>Test System, Assay, Examination:</i>	<i>Test System, Assay, Examination:</i>	<i>Test System, Assay, Examination:</i>
Roche Cobas Core Automated System (55119)	Abaxis Piccolo Portable Blood Analyzer (04608)	Beckman Synchron CX 4 Delta (07762)
Sanofi Pasteur Access Immunoassay System (58257)	Beckman Synchron CX 4 Delta (07762)	Beckman Synchron CX 5 Delta (07763)
	Beckman Synchron CX 5 Delta (07763)	Beckman Synchron CX 7 Delta (07764)
	Beckman Synchron CX 7 Delta (07764)	
	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Analyte: Ammonia, Plasma/Serum (0427)
	Boehringer Mannheim Hitachi 917 (07765)	<i>Test System, Assay, Examination:</i>
<i>Speciality/Subspeciality: General Chemistry</i>	Johnson & Johnson CDI Ektachem 250 (31019)	Beckman Synchron CX 4 Delta (07762)
Analyte: Acid Phosphatase (0407)	Johnson & Johnson CDI Ektachem 400 (31020)	Beckman Synchron CX 5 Delta (07763)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 500 (31021)	Beckman Synchron CX 7 Delta (07764)
Instrumentation Laboratory ILAB 1800 (28323)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 900 (28322)	Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 250 (31019)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)	Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem DT II (31030)	Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem 950 IRC (31028)
		Johnson & Johnson CDI Ektachem DT 60 (31029)
Analyte: Alanine Aminotransferase (ALT) (SGPT) (0404)	Analyte: Alkaline Phosphatase (ALP) (0416)	Johnson & Johnson CDI Ektachem DT II (31030)
<i>Test System, Assay, Examination:</i>	<i>Test System, Assay, Examination:</i>	
Abaxis Piccolo Portable Blood Analyzer (04608)	Abaxis Piccolo Portable Blood Analyzer (04608)	<i>Test System, Assay, Examination:</i>
Beckman Synchron CX 4 Delta (07762)	Beckman Synchron CX 4 Delta (07762)	Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 5 Delta (07763)	Beckman Synchron CX 5 Delta (07763)	Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 7 Delta (07764)	Beckman Synchron CX 7 Delta (07764)	Beckman Synchron CX 5 Delta (07763)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)	Boehringer Mannheim Hitachi 917 (07765)	Bio-Chem Laboratory Systems ATAC 8000 (07658)
Johnson & Johnson CDI Ektachem 250 (31019)	Johnson & Johnson CDI Ektachem 250 (31019)	Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 400 (31020)	Johnson & Johnson CDI Ektachem 400 (31020)	Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)	Johnson & Johnson CDI Ektachem 500 (31021)	Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 700 P (31025)
		Johnson & Johnson CDI Ektachem 700 XR (31026)

Johnson & Johnson CDI Ektachem 750 XRC (31027)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Boehringer Mannheim Hitachi 917 (07765)	Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)	Johnson & Johnson CDI Ektachem 250 (31019)	Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 400 (31020)	Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 500 (31021)	Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Analyte: Blood Gases With pH (0708)
Analyte: Amylase, Pancreatic Isoenzymes (p-Amylase) (0500)	Johnson & Johnson CDI Ektachem 700 (31023)	<i>Test System, Assay, Examination:</i>
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	AVL OMNI Combi Analyzer (04609)
Beckman Synchron CX 4 Delta (07762)	Johnson & Johnson CDI Ektachem 700 P (31025)	Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Beckman Synchron CX 5 Delta (07763)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Nova Stat Profile Ultra A (43108)
Beckman Synchron CX 7 Delta (07764)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Nova Stat Profile Ultra B (43109)
Boehringer Mannheim Hitachi 917 (07765)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Nova Stat Profile Ultra C (43110)
Analyte: Apolipoprotein A1 (0462)	Roche Cobas INTEGRA (55179)	Nova Stat Profile Ultra D (43111)
<i>Test System, Assay, Examination:</i>	Analyte: Bilirubin, Neonatal (0705)	Nova Stat Profile Ultra E (43112)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	<i>Test System, Assay, Examination:</i>	Nova Stat Profile Ultra F (43115)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 250 (31019)	Nova Stat Profile Ultra G (43116)
Wako Diagnostics 30R (70002)	Johnson & Johnson CDI Ektachem 400 (31020)	Nova Stat Profile Ultra H (43117)
Analyte: Apolipoprotein B (0457)	Johnson & Johnson CDI Ektachem 500 (31021)	Nova Stat Profile Ultra I (43118)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Nova Stat Profile Ultra J (43119)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Johnson & Johnson CDI Ektachem 700 (31023)	Nova Stat Profile Ultra K (43120)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Radiometer ABL System 605 (55196)
Analyte: Aspartate Aminotransferase (AST) (SGOT) (0405)	Johnson & Johnson CDI Ektachem 700 P (31025)	Radiometer ABL System 615 (55197)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 700 XR (31026)	Radiometer ABL System 625 (55198)
Abaxis Piccolo Portable Blood Analyzer (04608)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)
Beckman Synchron CX 4 Delta (07762)	Johnson & Johnson CDI Ektachem DT 60 (31029)	Analyte: Blood pH (No Blood Gases) (0721)
Beckman Synchron CX 5 Delta (07763)	Johnson & Johnson CDI Ektachem DT II (31030)	<i>Test System, Assay, Examination:</i>
Beckman Synchron CX 7 Delta (07764)	Analyte: Bilirubin, Total (0706)	Radiometer BPH5 Blood pH System (55158)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	<i>Test System, Assay, Examination:</i>	Analyte: C-Peptide (1040)
Boehringer Mannheim Hitachi 917 (07765)	Abaxis Piccolo Portable Blood Analyzer (04608)	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem 250 (31019)	Beckman Synchron CX 4 Delta (07762)	Cirrus Diagnostics Immulite (10159)
Johnson & Johnson CDI Ektachem 500 (31021)	Beckman Synchron CX 5 Delta (07763)	TOSOH A1A-1200 (61040)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Beckman Synchron CX 7 Delta (07764)	TOSOH A1A-1200DX (61154)
Johnson & Johnson CDI Ektachem 700 (31023)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	TOSOH A1A-600 (61039)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Boehringer Mannheim Hitachi 917 (07765)	Analyte: Calcium, Ionized (1004)
Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 250 (31019)	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 400 (31020)	AVL OMNI Combi Analyzer (04609)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 500 (31021)	Nova Stat Profile Ultra B (43109)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Nova Stat Profile Ultra C (43110)
Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 700 (31023)	Nova Stat Profile Ultra I (43118)
Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Nova Stat Profile Ultra J (43119)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 700 P (31025)	Nova Stat Profile Ultra K (43120)
Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Radiometer ABL System 605 (55196)
Analyte: Bilirubin, Direct (0704)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Radiometer ABL System 615 (55197)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Radiometer ABL System 625 (55198)
Abaxis Piccolo Portable Blood Analyzer (04608)	Johnson & Johnson CDI Ektachem DT II (31030)	Radiometer EML 105 (55187)
Beckman Synchron CX 4 Delta (07762)	Analyte: Bilirubin, Total (0706)	SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)
Beckman Synchron CX 5 Delta (07763)	<i>Test System, Assay, Examination:</i>	Analyte: Calcium, Total (1005)
Beckman Synchron CX 7 Delta (07764)	Abaxis Piccolo Portable Blood Analyzer (04608)	<i>Test System, Assay, Examination:</i>
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Beckman Synchron CX 4 Delta (07762)	Abaxis Piccolo Portable Blood Analyzer (04608)
Boehringer Mannheim Hitachi 917 (07765)	Beckman Synchron CX 5 Delta (07763)	Beckman Synchron CX 4 Delta (07762)
Johnson & Johnson CDI Ektachem 250 (31019)	Beckman Synchron CX 7 Delta (07764)	Beckman Synchron CX 5 Delta (07763)
Johnson & Johnson CDI Ektachem 400 (31020)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Beckman Synchron CX 7 Delta (07764)
Johnson & Johnson CDI Ektachem 500 (31021)	Boehringer Mannheim Hitachi 917 (07765)	Bio-Chem Laboratory Systems ATAC 8000 (07658)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 250 (31019)	Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 400 (31020)	Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem 500 (31021)	Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 700 P (31025)	
Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 700 XR (31026)	
Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem DT 60 (31029)	
Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem DT II (31030)	

- Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 P (31025)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 Roche Cobas INTEGRA (55179)
- Analyte: Carbon Dioxide, Total (CO₂) (1003)
Test System, Assay, Examination:
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Bio-Chem Laboratory Systems ATAC 8000 (07658)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DTE Module (31033)
 Medica EasyStat Na/K/Cl (40249)
 Nova Stat Profile Ultra F (43115)
 Nova Stat Profile Ultra G (43116)
 Nova Stat Profile Ultra H (43117)
 Radiometer ABL System 605 (55196)
 Radiometer ABL System 615 (55197)
 Radiometer ABL System 625 (55198)
 Radiometer EML 105 (55187)
 Roche Cobas INTEGRA (55179)
 Select Medical Systems Selecta 20/60 (58349)
- Analyte: Cholesterol (1020)
Test System, Assay, Examination:
 Abaxis Piccolo Portable Blood Analyzer (04608)
 Actimed Laboratories ENA.C.T Total Cholesterol Test (04573)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Bio-Chem Laboratory Systems ATAC 8000 (07658)
 Boehringer Mannheim Accutrend GC Cholesterol Test (07600)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 P (31025)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 PrismaSystems PROCHEM (49105)
 Roche Cobas INTEGRA (55179)
 Select Medical Systems Selecta 20/60 (58349)
- Analyte: Creatine Kinase (CK) (1034)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Bio-Chem Laboratory Systems ATAC 8000 (07658)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 P (31025)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 PrismaSystems PROCHEM (49105)
 Roche Cobas INTEGRA (55179)
 Select Medical Systems Selecta 20/60 (58349)
- Analyte: Creatine Kinase MB Fraction (CKMB) (1002)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
- Johnson & Johnson CDI Ektachem DT II (31030)
 Roche Cobas INTEGRA (55179)
 Select Medical Systems Selecta 20/60 (58349)
 Analyte: Cholinesterase (1021)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 917 (07765)
 Instrumentation Laboratory ILAB 1800 (28323)
 Instrumentation Laboratory ILAB 900 (28322)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 Roche Cobas INTEGRA (55179)
- Analyte: Cerebrospinal Fluid (CSF) Protein (1014)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
- Analyte: Chloride (1018)
Test System, Assay, Examination:

Beckman Synchron CX 5 Delta (07763)	Analyte: Deoxyhemoglobin (Reduced Hemoglobin) (1318)	Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 7 Delta (07764)	<i>Test System, Assay, Examination:</i>	Beckman Synchron CX 4 Delta (07762)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	AVL OMNI Combi Analyzer (04609)	Beckman Synchron CX 5 Delta (07763)
Boehringer Mannheim Hitachi 917 (07765)	Instrumentation Laboratory IL682 CO-Oximeter System (28368)	Beckman Synchron CX 7 Delta (07764)
Instrumentation Laboratory ILAB 1800 (28323)	Nova Co-Oximeter (43114)	Bio-Chem Laboratory Systems ATAC 8000 (07658)
Instrumentation Laboratory ILAB 900 (28322)	Radiometer ABL 520 (55055)	Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)	Radiometer ABL 620 (55137)	Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Johnson & Johnson CDI Ektachem 500 (31021)	Radiometer ABL System 625 (55198)	Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Analyte: Ferritin (1902)	Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 700 (31023)	<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Behring Nephelometer (07273)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 P (31025)	Behring Nephelometer 100 (07272)	Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Behring Nephelometer II (07563)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Schiapparelli Biosystems ACE (58288)	Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem DT II (31030)	Analyte: Folate (Folic acid) (1907)	Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem DT SC Module (31031)	<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 950 IRC (31028)
Organon Teknika AuraFlex (46152)	Abbott IMX (04056)	Johnson & Johnson CDI Ektachem DT 60 (31029)
Princeton BioMeditech Cardiac STATUS CK-MB/Myoglobin (49156)	Schiapparelli Biosystems ACE (58288)	Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)	Technicon Immuno 1 System (61042)	Nova Stat Profile Ultra B (43109)
Technicon Immuno 1 System (61042)	Analyte: Folate, Red Blood Cell (RBC Folate) (1930)	Nova Stat Profile Ultra C (43110)
Analyte: Creatinine (1035)	<i>Test System, Assay, Examination:</i>	Nova Stat Profile Ultra G (43116)
<i>Test System, Assay, Examination:</i>	Technicon Immuno 1 (with UIW) (61229)	Nova Stat Profile Ultra H (43117)
Abaxis Piccolo Portable Blood Analyzer (04608)	Analyte: Fructosamine (1914)	Nova Stat Profile Ultra J (43119)
Beckman Synchron CX 4 Delta (07762)	<i>Test System, Assay, Examination:</i>	Nova Stat Profile Ultra K (43120)
Beckman Synchron CX 5 Delta (07763)	Bio-Chem Laboratory Systems ATAC 6000 (07189)	Radiometer ABL System 605 (55196)
Beckman Synchron CX 7 Delta (07764)	Boehringer Mannheim Hitachi 917 (07765)	Radiometer ABL System 615 (55197)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	LXN Fructosamine Test System (37106)	Radiometer ABL System 625 (55198)
Boehringer Mannheim Hitachi 917 (07765)	Roche Cobas INTEGRA (55179)	Radiometer EML 105 (55187)
Johnson & Johnson CDI Ektachem 250 (31019)	Analyte: Gamma Glutamyl Transferase (GGT) (2201)	Roche Cobas INTEGRA (55179)
Johnson & Johnson CDI Ektachem 400 (31020)	<i>Test System, Assay, Examination:</i>	Select Medical Systems Selecta 20/60 (58349)
Johnson & Johnson CDI Ektachem 500 (31021)	Beckman Synchron CX 4 Delta (07762)	Analyte: Glutaraldehyde (2224)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Beckman Synchron CX 5 Delta (07763)	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem 700 (31023)	Beckman Synchron CX 7 Delta (07764)	Boehringer Mannheim Hitachi 717 (07163)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Analyte: Glycated Hemoglobin, Total (2221)
Johnson & Johnson CDI Ektachem 700 P (31025)	Boehringer Mannheim Hitachi 917 (07765)	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 250 (31019)	Bio-Rad Variant (07498)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 500 (31021)	Helena Laboratories ColumnMate II (25198)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Analyte: Glycosylated Hemoglobin (Hgb A1C) (2204)
Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 700 (31023)	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 700 P (31025)	Analyte: HDL Cholesterol (2550)
Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem 700 XR (31026)	<i>Test System, Assay, Examination:</i>
	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Abbott Spectrum (Canyon Control tube) (04610)
	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Abbott Spectrum (Ref Diag Magnetic HDL Sep) (04595)
	Johnson & Johnson CDI Ektachem DT II (31030)	Abbott Spectrum (Sigma ISOSPIN) (04632)
	Johnson & Johnson CDI Ektachem DT SC Module (31031)	Abbott Spectrum EPX (Ref Diag Magnetic HDL Sep) (04596)
	Roche Cobas INTEGRA (55179)	Abbott Spectrum EPX (Sigma ISOSPIN) (04633)
	Select Medical Systems Selecta 20/60 (58349)	Abbott TDX (Ref Diag Magnetic HDL Sep) (04597)
	Analyte: Glucose (2203)	Abbott VP (Sigma ISOSPIN) (04634)
	<i>Test System, Assay, Examination:</i>	

Baxter Paramax (Ref Diag Magnetic HDL Sep) (07605)

Beckman CX (Canyon Control tube) (07646)

Beckman Synchron CX 4 (Ref Diag Magnetic HDL Sep) (07606)

Beckman Synchron CX 4 (Sigma ISOSPIN) (07698)

Beckman Synchron CX 4 CE (Sigma ISOSPIN) (07699)

Beckman Synchron CX 5 (Ref Diag Magnetic HDL Sep) (07607)

Beckman Synchron CX 5 (Sigma ISOSPIN) (07700)

Beckman Synchron CX 5 CE (Ref Diag Magnetic HDL Sep) (07609)

Beckman Synchron CX 5 CE (Sigma ISOSPIN) (07701)

Beckman Synchron CX 7 (Ref Diag Magnetic HDL Sep) (07608)

Bio-Chem Laboratory Systems ATAC 6000 (Sigma ISOSPIN) (07702)

Bio-Chem Laboratory Systems ATAC 8000 (07658)

Boehringer Mannheim Hitachi (Canyon Control tube) (07647)

Boehringer Mannheim Hitachi 704 (Ref Diag Magnetic HDL Sep) (07610)

Boehringer Mannheim Hitachi 704 (Sigma ISOSPIN) (07703)

Boehringer Mannheim Hitachi 705 (Ref Diag Magnetic HDL Sep) (07611)

Boehringer Mannheim Hitachi 705 (Sigma ISOSPIN) (07704)

Boehringer Mannheim Hitachi 717 (Ref Diag Magnetic HDL Sep) (07612)

Boehringer Mannheim Hitachi 717 (Sigma ISOSPIN) (07705)

Boehringer Mannheim Hitachi 736 (Ref Diag Magnetic HDL Sep) (07613)

Boehringer Mannheim Hitachi 736 (Sigma ISOSPIN) (07706)

Boehringer Mannheim Hitachi 737 (Ref Diag Magnetic HDL Sep) (07614)

Boehringer Mannheim Hitachi 737 (Sigma ISOSPIN) (07707)

Boehringer Mannheim Hitachi 747 (Ref Diag Magnetic HDL Sep) (07615)

Boehringer Mannheim Hitachi 747 (Sigma ISOSPIN) (07708)

Boehringer Mannheim Hitachi 911 (Ref Diag Magnetic HDL Sep) (07616)

Boehringer Mannheim Hitachi 911 (Sigma ISOSPIN) (07709)

Boehringer Mannheim Hitachi 914 (Ref Diag Magnetic HDL Sep) (07617)

ChemTrak AccuMeter HDL Cholesterol Test (10311)

Ciba Corning 550 Express (Ref Diag Magnetic HDL Sep) (10288)

Ciba Corning 550 Express (Sigma ISOSPIN) (10322)

Ciba Corning 570 Alliance (Sigma ISOSPIN) (10323)

Coulter Dacos (Ref Diag Magnetic HDL Sep) (10289)

Coulter Dacos (Sigma ISOSPIN) (10324)

Du Pont ACA (Ref Diag Magnetic HDL Sep) (13360)

Du Pont Dimension (Ref Diag Magnetic HDL Sep) (13361)

EM Diagnostic Systems EPOS (Sigma ISOSPIN) (16113)

Electronucleonics Gem-Profiler (Sigma ISOSPIN) (16114)

Electronucleonics Gemini (Sigma ISOSPIN) (16115)

Electronucleonics Gemstar (Sigma ISOSPIN) (16116)

Electronucleonics Gemstar II (Sigma ISOSPIN) (16117)

Instrumentation Lab. ILAB 900 (Ref Diag Magnetic HDL Sep) (28378)

Instrumentation Lab.IL Monarch 1000 (Ref Diag Magn HDL Sep) (28375)

Instrumentation Lab.IL Monarch 2000 (Ref Diag Magn HDL Sep) (28376)

Instrumentation Lab.IL Monarch Plus (Ref Diag Magn HDL Sep) (28377)

Instrumentation Laboratory IL Monarch 1000 (Sigma ISOSPIN) (28414)

Instrumentation Laboratory IL Monarch 2000 (Sigma ISOSPIN) (28415)

Instrumentation Laboratory IL Monarch Plus (Sigma ISOSPIN) (28416)

Instrumentation Laboratory ILAB 1800 (Sigma ISOSPIN) (28421)

Instrumentation Laboratory ILAB 900 (Sigma ISOSPIN) (28420)

Johnson & Johnson CDI Ektachem (Canyon Control tube) (31034)

Johnson & Johnson CDI Ektachem 250 (31019)

Johnson & Johnson CDI Ektachem 250 (DMA One Shots) (31035)

Johnson & Johnson CDI Ektachem 250 (MHS SPINPRO) (31037)

Johnson & Johnson CDI Ektachem 250 (Ref Diag Magn HDL Sep) (31038)

Johnson & Johnson CDI Ektachem 400 (31020)

Johnson & Johnson CDI Ektachem 400 (DMA One Shots) (31039)

Johnson & Johnson CDI Ektachem 400 (MHS SPINPRO) (31040)

Johnson & Johnson CDI Ektachem 400 (Ref Diag Magn HDL Sep) (31041)

Johnson & Johnson CDI Ektachem 500 (31021)

Johnson & Johnson CDI Ektachem 500 (DMA One Shots) (31042)

Johnson & Johnson CDI Ektachem 500 (MHS SPINPRO) (31044)

Johnson & Johnson CDI Ektachem 500 (Ref Diag Magn HDL Sep) (31045)

Johnson & Johnson CDI Ektachem 550 XRC (31022)

Johnson & Johnson CDI Ektachem 550 XRC Anal (DMA One Shots) (31046)

Johnson & Johnson CDI Ektachem 700 (31023)

Johnson & Johnson CDI Ektachem 700 (DMA One Shots) (31047)

Johnson & Johnson CDI Ektachem 700 (MHS SPINPRO) (31049)

Johnson & Johnson CDI Ektachem 700 (Ref Diag Magn HDL Sep) (31050)

Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)

Johnson & Johnson CDI Ektachem 700 C Series (DMA One Shots) (31051)

Johnson & Johnson CDI Ektachem 700 P (31025)

Johnson & Johnson CDI Ektachem 700 P (DMA One Shots) (31052)

Johnson & Johnson CDI Ektachem 700 P (MHS SPINPRO) (31053)

Johnson & Johnson CDI Ektachem 700 XR (31026)

Johnson & Johnson CDI Ektachem 700 XR (DMA One Shots) (31054)

Johnson & Johnson CDI Ektachem 700 XR (MHS SPINPRO) (31055)

Johnson & Johnson CDI Ektachem 750 XRC (31027)

Johnson & Johnson CDI Ektachem 750 XRC (DMA One Shots) (31056)

Johnson & Johnson CDI Ektachem 950 IRC (31028)

Johnson & Johnson CDI Ektachem DT 60 (31029)

Johnson & Johnson CDI Ektachem DT 60 (DMA One Shots) (31057)

Johnson & Johnson CDI Ektachem DT 60 (MHS SPINPRO) (31059)

Johnson & Johnson CDI Ektachem DT 60 (Ref Diag Magn HDL Sep) (31060)

Johnson & Johnson CDI Ektachem DT II (31030)

Johnson & Johnson CDI Ektachem DT II (DMA One Shots) (31061)

Johnson & Johnson CDI Ektachem DT II (Ref Diag Magn HDL Sep) (31062)

Kodak Ektachem (Canyon Control tube) (34088)

Kodak Ektachem 250 (Ref Diag Magnetic HDL Sep) (34072)

Kodak Ektachem 400 (Ref Diag Magnetic HDL Sep) (34073)

Kodak Ektachem 500 (Ref Diag Magnetic HDL Sep) (34074)

Kodak Ektachem 700 (Ref Diag Magnetic HDL Sep) (34075)

Kodak Ektachem DT 60 (Ref Diag Magnetic HDL Sep) (34070)

Kodak Ektachem DT II (Ref Diag Magnetic HDL Sep) (34071)

LSI ASCA Chemistry System (Sigma ISOSPIN) (37103)

Olympus AU 5000 (Ref Diag Magnetic HDL Sep) (46171)

Olympus AU 5000 (Sigma ISOSPIN) (46196)

Olympus AU 5021 (Sigma ISOSPIN) (46197)

Olympus AU 5031 (Sigma ISOSPIN) (46198)

Olympus AU 5041 (Sigma ISOSPIN) (46199)

Olympus AU 5061 (Sigma ISOSPIN) (46200)

Olympus AU 5121 (Sigma ISOSPIN) (46201)

Olympus AU 5131 (Sigma ISOSPIN) (46202)

Olympus AU 5200 (Ref Diag Magnetic HDL Sep) (46172)

Olympus AU 5200 (Sigma ISOSPIN) (46203)

Olympus AU 5211 (Sigma ISOSPIN) (46204)

Olympus AU 5221 (Sigma ISOSPIN) (46205)

Olympus AU 5223 (Sigma ISOSPIN) (46206)

Olympus AU 5231 (Sigma ISOSPIN) (46207)

Olympus AU 800 (Ref Diag Magnetic HDL Sep) (46170)

Olympus AU 800 (Sigma ISOSPIN) (46208)

Olympus Demand (Ref Diag Magnetic HDL Sep) (46169)

Olympus Demand (Sigma ISOSPIN) (46209)

Olympus Reply (Ref Diag Magnetic HDL Sep) (46168)

Olympus Reply (Sigma ISOSPIN) (46210)

Olympus Reply/AU560 (Sigma ISOSPIN) (46211)

- Prisma Systems PROCHEM (Ref Diag Magnetic HDL Sep) (49128)
 Roche Cobas (Canyon Control tube) (55160)
 Roche Cobas Bio (Ref Diag Magnetic HDL Sep) (55148)
 Roche Cobas Bio (Sigma ISOSPIN) (55180)
 Roche Cobas FARA (Ref Diag Magnetic HDL Sep) (55150)
 Roche Cobas FARA (Sigma ISOSPIN) (55181)
 Roche Cobas FARA II (Sigma ISOSPIN) (55182)
 Roche Cobas INTEGRA (55179)
 Roche Cobas Mira (Ref Diag Magnetic HDL Sep) (55149)
 Roche Cobas Mira (Sigma ISOSPIN) (55183)
 Roche Cobas Mira Plus (Sigma ISOSPIN) (55184)
 Roche Cobas Mira S (Sigma ISOSPIN) (55185)
 Schiapparelli Biosystems ACE (Ref Diag Magnetic HDL Sep) (58354)
 Technicon AXON (Ref Diag Magnetic HDL Sep) (61170)
 Technicon AXON (Sigma ISOSPIN) (61214)
 Technicon Assist (Sigma ISOSPIN) (61213)
 Technicon Chem 1 (Ref Diag Magnetic HDL Sep) (61175)
 Technicon DAX 24 (Ref Diag Magnetic HDL Sep) (61171)
 Technicon DAX 48 (Ref Diag Magnetic HDL Sep) (61172)
 Technicon DAX 72 (Ref Diag Magnetic HDL Sep) (61173)
 Technicon DAX 96 (Ref Diag Magnetic HDL Sep) (61174)
 Technicon RA 1000 (Ref Diag Magnetic HDL Sep) (61177)
 Technicon RA 1000 (Sigma ISOSPIN) (61215)
 Technicon RA 2000 (Ref Diag Magnetic HDL Sep) (61178)
 Technicon RA 500 (Ref Diag Magnetic HDL Sep) (61176)
 Technicon RA 500 (Sigma ISOSPIN) (61216)
 Technicon RA XT (Ref Diag Magnetic HDL Sep) (61179)
 Technicon RA XT (Sigma ISOSPIN) (61217)
 Wako Diagnostics 30R (Ref Diag Magnetic HDL Sep) (70170)
 Wako Diagnostics 30R (Sigma ISOSPIN) (70176)
- Analyte: Haptoglobin (2511)
Test System, Assay, Examination:
 Roche Cobas INTEGRA (55179)
- Analyte: Hemoglobin F (2516)
Test System, Assay, Examination:
 Radiometer ABL 520 (55055)
 Radiometer ABL 620 (55137)
 Radiometer ABL System 625 (55198)
- Analyte: Hemoglobin Fractions (2544)
Test System, Assay, Examination:
 Bio-Rad Variant (07498)
 Primus Variant System 99 (49159)
- Analyte: Iron (2814)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
- Bio-Chem Laboratory Systems ATAC 8000 (07658)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 Roche Cobas INTEGRA (55179)
- Analyte: Iron Binding Capacity, Unsat. (UIBC) No Pretreat. (2823)
Test System, Assay, Examination:
 Boehringer Mannheim Hitachi 917 (07765)
 Olympus AU 5000 (46001)
 Olympus AU 5200 (46143)
 Olympus AU 800 (46110)
 Roche Cobas INTEGRA (55179)
 Roche Cobas Mira (55044)
 Roche Cobas Mira Plus (55096)
 Roche Cobas Mira S (55045)
- Analyte: LDL Cholesterol (3748)
Test System, Assay, Examination:
 Abbott Spectrum (Genzyme immunosep tube) (04612)
 Abbott Spectrum EPX (Genzyme immunosep tube) (04611)
 Abbott Spectrum II (Genzyme immunosep tube) (04613)
 Abbott VP (Genzyme immunosep tube) (04614)
 Baxter Paramax (Genzyme immunosep tube) (07657)
 Beckman Synchron CX 4 (Genzyme immunosep tube) (07659)
 Beckman Synchron CX 5 (Genzyme immunosep tube) (07660)
 Bio-Chem Lab. Sys. ATAC 2000/2100 (Genzyme immunosep tube) (07656)
 Bio-Chem Lab. Sys. ATAC 6000 (Genzyme immunosep tube) (07655)
 Boehringer Mannheim Hitachi 704 (Genzyme immunosep tube) (07648)
 Boehringer Mannheim Hitachi 705 (Genzyme immunosep tube) (07649)
 Boehringer Mannheim Hitachi 717 (Genzyme immunosep tube) (07650)
 Boehringer Mannheim Hitachi 736 (Genzyme immunosep tube) (07651)
 Boehringer Mannheim Hitachi 737 (Genzyme immunosep tube) (07652)
 Boehringer Mannheim Hitachi 747 (Genzyme immunosep tube) (07653)
 Boehringer Mannheim Hitachi 911 (Genzyme immunosep tube) (07654)
 Ciba Corning 550 Express (Genzyme immunosep tube) (10302)
 Coulter Dacos (Genzyme immunosep tube) (10301)
 Coulter Optichem 120 (Genzyme immunosep tube) (10303)
- DuPont Dimension (Genzyme immunosep tube/Dedicated channel) (13377)
 DuPont Dimension AR (Genzyme immunosep tube/Dedicated chan) (13378)
 EM Diagnostic Systems EPOS (Genzyme immunosep tube) (16101)
 Electronucleonics Gem-Profiler (Genzyme immunosep tube) (16102)
 Electronucleonics GemStar (Genzyme immunosep tube) (16103)
 Electronucleonics GemStar II (Genzyme immunosep tube) (16104)
 Instrumentation Lab.IL Monarch 1000(Genzyme immunosep tube) (28391)
 Instrumentation Lab.IL Monarch 2000(Genzyme immunosep tube) (28393)
 Instrumentation Lab.IL Monarch Plus(Genzyme immunosep tube) (28392)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Kodak Ektachem DT II (34057)
 LSI ASCA Chemistry System (Genzyme Immunosep tube) (37099)
 Olympus AU 5000 (Genzyme immunosep tube) (46189)
 Olympus AU 800 (Genzyme immunosep tube) (46190)
 Olympus Demand (Genzyme immunosep tube) (46191)
 Olympus Reply (Genzyme immunosep tube) (46192)
 Roche Cobas Bio (Genzyme immunosep tube) (55161)
 Roche Cobas FARA (Genzyme immunosep tube) (55162)
 Roche Cobas FARA II (Genzyme immunosep tube) (55163)
 Roche Cobas Mira (Genzyme immunosep tube) (55164)
 Schiapparelli Biosystems ACE (Genzyme immunosep tube) (58366)
 Technicon AXON (Genzyme immunosep tube) (61193)
 Technicon Assist (Genzyme immunosep tube) (61188)
 Technicon Chem 1 (Genzyme immunosep tube/Dedicated channel) (61189)
 Technicon RA 1000 (Genzyme immunosep tube) (61191)
 Technicon RA 500 (Genzyme immunosep tube) (61190)
 Technicon RA XT (Genzyme immunosep tube) (61192)
- Analyte: Lactate Dehydrogenase (LDH) (3701)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Bio-Chem Laboratory Systems ATAC 8000 (07658)
 Boehringer Mannheim Hitachi 917 (07765)
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
 Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)

Johnson & Johnson CDI Ektachem 700 P (31025)	Johnson & Johnson CDI Ektachem 400 (31020)	Beckman Synchron CX 4 Delta (07762)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem 500 (31021)	Beckman Synchron CX 5 Delta (07763)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Beckman Synchron CX 7 Delta (07764)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Johnson & Johnson CDI Ektachem 700 (31023)	Analyte: Microprotein, Urine (4027)
Johnson & Johnson CDI Ektachem DT II (31030)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 Delta (07764)
Johnson & Johnson CDI Ektachem DT SC Module (31031)	Johnson & Johnson CDI Ektachem 700 P (31025)	Analyte: Myoglobin (4023)
Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem 700 XR (31026)	<i>Test System, Assay, Examination:</i> Princeton BioMeditech Cardiac STATus CK-MB/Myoglobin (49156)
Select Medical Systems Selecta 20/60 (58349)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Sanofi Pasteur Access Immunoassay System (58257)
Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1) (3702)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Analyte: Oxyhemoglobin/Oxygen Saturation (4604)
<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 917 (07765) Roche Cobas INTEGRA (55179)	Johnson & Johnson CDI Ektachem DT 60 (31029)	<i>Test System, Assay, Examination:</i> A-VOX Systems AVOXimeter 1000 (04537) A-VOX Systems AVOXimeter 2000 (04538) AVL OMNI Combi Analyzer (04609) Instrumentation Laboratory IL682 CO-Oximeter System (28368) Nova Co-Oximeter (43114) Nova Stat Profile Ultra A (43108) Nova Stat Profile Ultra B (43109) Nova Stat Profile Ultra C (43110) Nova Stat Profile Ultra E (43112) Nova Stat Profile Ultra F (43115) Nova Stat Profile Ultra G (43116) Nova Stat Profile Ultra H (43117) Nova Stat Profile Ultra I (43118) Nova Stat Profile Ultra J (43119) Nova Stat Profile Ultra K (43120) Radiometer ABL 510 (55054) Radiometer ABL System 615 (55197) Radiometer ABL System 625 (55198)
Analyte: Lactic Acid (Lactate) (3704)	Johnson & Johnson CDI Ektachem DT II (31030)	
<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 Delta (07764) Boehringer Mannheim Accusport Lactate Monitoring System (07663) Johnson & Johnson CDI Ektachem 250 (31019) Johnson & Johnson CDI Ektachem 500 (31021) Johnson & Johnson CDI Ektachem 550 XRC (31022) Johnson & Johnson CDI Ektachem 700 (31023) Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024) Johnson & Johnson CDI Ektachem 700 XR (31026) Johnson & Johnson CDI Ektachem 750 XRC (31027) Johnson & Johnson CDI Ektachem 950 IRC (31028) Johnson & Johnson CDI Ektachem DT 60 (31029) Johnson & Johnson CDI Ektachem DT II (31030) Nova Stat Profile Ultra A (43108) Nova Stat Profile Ultra C (43110) Nova Stat Profile Ultra H (43117) Nova Stat Profile Ultra K (43120)		
Analyte: Leucine Aminopeptidase (LAP) (3709)	Analyte: Magnesium (4002)	
<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 Delta (07764)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 Delta (07764) Bio-Chem Laboratory Systems ATAC 8000 (07658) Boehringer Mannheim Hitachi 917 (07765) Johnson & Johnson CDI Ektachem 250 (31019) Johnson & Johnson CDI Ektachem 400 (31020) Johnson & Johnson CDI Ektachem 500 (31021) Johnson & Johnson CDI Ektachem 550 XRC (31022) Johnson & Johnson CDI Ektachem 700 (31023) Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024) Johnson & Johnson CDI Ektachem 700 P (31025) Johnson & Johnson CDI Ektachem 700 XR (31026) Johnson & Johnson CDI Ektachem 750 XRC (31027) Johnson & Johnson CDI Ektachem 950 IRC (31028) Johnson & Johnson CDI Ektachem DT 60 (31029) Johnson & Johnson CDI Ektachem DT II (31030) Roche Cobas INTEGRA (55179) Select Medical Systems Selecta 20/60 (58349)	
Analyte: Lipase (3711)	Analyte: Magnesium, Ionized (4018)	Analyte: Phosphorus (4906)
<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 CE (07174) Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 CE (07491) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 (07073) Beckman Synchron CX 7 Delta (07764) Boehringer Mannheim Hitachi 917 (07765) Instrumentation Laboratory ILAB 1800 (28323) Instrumentation Laboratory ILAB 900 (28322) Johnson & Johnson CDI Ektachem 250 (31019)	<i>Test System, Assay, Examination:</i> Nova Stat Profile Ultra C (43110)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762) Beckman Synchron CX 5 Delta (07763) Beckman Synchron CX 7 Delta (07764) Bio-Chem Laboratory Systems ATAC 8000 (07658) Boehringer Mannheim Hitachi 917 (07765) Johnson & Johnson CDI Ektachem 250 (31019) Johnson & Johnson CDI Ektachem 400 (31020) Johnson & Johnson CDI Ektachem 500 (31021) Johnson & Johnson CDI Ektachem 550 XRC (31022) Johnson & Johnson CDI Ektachem 700 (31023) Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024) Johnson & Johnson CDI Ektachem 700 P (31025) Johnson & Johnson CDI Ektachem 700 XR (31026) Johnson & Johnson CDI Ektachem 750 XRC (31027) Johnson & Johnson CDI Ektachem 950 IRC (31028) Johnson & Johnson CDI Ektachem DT 60 (31029) Johnson & Johnson CDI Ektachem DT II (31030) Roche Cobas INTEGRA (55179) Select Medical Systems Selecta 20/60 (58349)
	Analyte: Methemoglobin (4032)	
	<i>Test System, Assay, Examination:</i> AVL OMNI Combi Analyzer (04609) Instrumentation Laboratory IL682 CO-Oximeter System (28368) Nova Co-Oximeter (43114) Radiometer ABL 520 (55055) Radiometer ABL 620 (55137) Radiometer ABL System 625 (55198) Radiometer OSM 3 (55059)	
	Analyte: Microprotein, CSF (4026)	
	<i>Test System, Assay, Examination:</i>	

Analyte: Potassium (4910)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Analyte: Sulphemoglobin (5836)
<i>Test System, Assay, Examination:</i>	Johnson & Johnson CDI Ektachem 750 XRC (31027)	<i>Test System, Assay, Examination:</i>
AVL OMNI Combi Analyzer (04609)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	AVL OMNI Combi Analyzer (04609)
Abaxis Piccolo Portable Blood Analyzer (04608)	Johnson & Johnson CDI Ektachem DT 60 (31029)	Analyte: Transferrin (6114)
Beckman Synchron CX 5 Delta (07763)	Johnson & Johnson CDI Ektachem DT II (31030)	<i>Test System, Assay, Examination:</i>
Beckman Synchron CX 7 Delta (07764)	Roche Cobas INTEGRA (55179)	Beckman Synchron CX 4 Delta (07762)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Select Medical Systems Selecta 20/60 (58349)	Beckman Synchron CX 5 Delta (07763)
Boehringer Mannheim Hitachi 917 (07765)	Analyte: Protein, Total (urine) (4972)	Beckman Synchron CX 7 Delta (07764)
Du Pont Na+K+Plus Analyzer (13394)	<i>Test System, Assay, Examination:</i>	Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)	Boehringer Mannheim Hitachi 917 (07765)	Roche Cobas INTEGRA (55179)
Johnson & Johnson CDI Ektachem 250 (31019)	Analyte: Reduced Hemoglobin (Deoxyhemoglobin) (5523)	Analyte: Triglyceride (6118)
Johnson & Johnson CDI Ektachem 400 (31020)	<i>Test System, Assay, Examination:</i>	<i>Test System, Assay, Examination:</i>
Johnson & Johnson CDI Ektachem 500 (31021)	Radiometer OSM 3 (55059)	Beckman Synchron CX 4 Delta (07762)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Analyte: Sodium (5805)	Beckman Synchron CX 5 Delta (07763)
Johnson & Johnson CDI Ektachem 700 (31023)	<i>Test System, Assay, Examination:</i>	Beckman Synchron CX 7 Delta (07764)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	AVL OMNI Combi Analyzer (04609)	Bio-Chem Laboratory Systems ATAC 8000 (07658)
Johnson & Johnson CDI Ektachem 700 XR (31026)	Beckman Synchron CX 5 Delta (07763)	Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Beckman Synchron CX 7 Delta (07764)	Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	Bio-Chem Laboratory Systems ATAC 8000 (07658)	Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem DT II (31030)	Boehringer Mannheim Hitachi 917 (07765)	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem DTE Module (31033)	Du Pont Na+K+Plus Analyzer (13394)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Medica EasyStat Na/K (40248)	Instrumentation Laboratory IL BGGE (IL 1660) (28438)	Johnson & Johnson CDI Ektachem 700 (31023)
Medica EasyStat Na/K/Cl (40249)	Johnson & Johnson CDI Ektachem 250 (31019)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Nova Stat Profile Ultra B (43109)	Johnson & Johnson CDI Ektachem 400 (31020)	Johnson & Johnson CDI Ektachem 700 P (31025)
Nova Stat Profile Ultra C (43110)	Johnson & Johnson CDI Ektachem 500 (31021)	Johnson & Johnson CDI Ektachem 700 XR (31026)
Nova Stat Profile Ultra F (43115)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	Johnson & Johnson CDI Ektachem 750 XRC (31027)
Nova Stat Profile Ultra G (43116)	Johnson & Johnson CDI Ektachem 700 (31023)	Johnson & Johnson CDI Ektachem 950 IRC (31028)
Nova Stat Profile Ultra H (43117)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	Johnson & Johnson CDI Ektachem DT 60 (31029)
Nova Stat Profile Ultra I (43118)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Johnson & Johnson CDI Ektachem DT II (31030)
Nova Stat Profile Ultra J (43119)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	Roche Cobas INTEGRA (55179)
Nova Stat Profile Ultra K (43120)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Select Medical Systems Selecta 20/60 (58349)
Radiometer ABL System 605 (55196)	Johnson & Johnson CDI Ektachem DT II (31030)	Analyte: Troponin T, Cardiac (cTnT) (6154)
Radiometer ABL System 615 (55197)	Johnson & Johnson CDI Ektachem DTE Module (31033)	<i>Test System, Assay, Examination:</i>
Radiometer ABL System 625 (55198)	Medica EasyStat Na/K (40248)	Boehringer Mannheim CARDIAC T Rapid Assay (07690)
Radiometer EML 105 (55187)	Medica EasyStat Na/K/Cl (40249)	Analyte: Urea (BUN) (6403)
Roche Cobas INTEGRA (55179)	Nova Stat Profile Ultra A (43108)	<i>Test System, Assay, Examination:</i>
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)	Nova Stat Profile Ultra B (43109)	Abaxis Piccolo Portable Blood Analyzer (04608)
Analyte: Protein, Total (4921)	Nova Stat Profile Ultra C (43110)	Beckman Synchron CX 4 Delta (07762)
<i>Test System, Assay, Examination:</i>	Nova Stat Profile Ultra E (43112)	Beckman Synchron CX 5 Delta (07763)
Abaxis Piccolo Portable Blood Analyzer (04608)	Nova Stat Profile Ultra F (43115)	Beckman Synchron CX 7 Delta (07764)
Beckman Synchron CX 4 Delta (07762)	Nova Stat Profile Ultra G (43116)	Bio-Chem Laboratory Systems ATAC 8000 (07658)
Beckman Synchron CX 5 Delta (07763)	Nova Stat Profile Ultra H (43117)	Boehringer Mannheim Hitachi 917 (07765)
Beckman Synchron CX 7 Delta (07764)	Nova Stat Profile Ultra I (43118)	Johnson & Johnson CDI Ektachem 250 (31019)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Nova Stat Profile Ultra J (43119)	Johnson & Johnson CDI Ektachem 400 (31020)
Boehringer Mannheim Hitachi 917 (07765)	Nova Stat Profile Ultra K (43120)	Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 250 (31019)	Radiometer ABL System 605 (55196)	Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 400 (31020)	Radiometer ABL System 615 (55197)	Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 500 (31021)	Radiometer ABL System 625 (55198)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	Radiometer EML 105 (55187)	Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 (31023)	Roche Cobas INTEGRA (55179)	
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)	
Johnson & Johnson CDI Ektachem 700 P (31025)		

Johnson & Johnson CDI Ektachem 700 XR (31026)	Boehringer Mannheim Hitachi 911 (DRI pH-Detect) (07753)	Analyte: Beta-2 microglobulin (0703)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Olympus AU 5000 (DRI pH-Detect) (46216)	<i>Test System, Assay, Examination:</i> Instrumentation Laboratory ILAB 1800 (28323)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	<i>Speciality/Subspeciality: General Immunology</i>	Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem DT 60 (31029)	Analyte: Allergen Specific IgE (0417)	Organon Teknika AuraFlex (46152)
Johnson & Johnson CDI Ektachem DT II (31030)	<i>Test System, Assay, Examination:</i> Quidel QuickVue One-Step Allergen Screen (52028)	Analyte: Bladder Tumor Associated Analytes (0737)
Nova Stat Profile Ultra F (43115)	Analyte: Alpha-1-Acid Glycoprotein (Orosomucoid) (0420)	<i>Test System, Assay, Examination:</i> Bard BTA Test Kit (07736)
Nova Stat Profile Ultra G (43116)	<i>Test System, Assay, Examination:</i> Roche Cobas INTEGRA (55179)	Analyte: C-Reactive Protein (CRP) (1001)
Nova Stat Profile Ultra H (43117)	Analyte: Alpha-1-Antitrypsin (0421)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762)
Nova Stat Profile Ultra I (43118)	<i>Test System, Assay, Examination:</i> Roche Cobas INTEGRA (55179)	Beckman Synchron CX 5 Delta (07763)
Nova Stat Profile Ultra J (43119)	Analyte: Anti-DNA Antibodies (0435)	Beckman Synchron CX 7 Delta (07764)
Nova Stat Profile Ultra K (43120)	<i>Test System, Assay, Examination:</i> Roche Cobas INTEGRA (55179)	Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)	Analyte: Anti-DNP Antibodies (0436)	Johnson & Johnson CDI Ektachem 250 (31019)
Select Medical Systems Selecta 20/60 (58349)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-dsDNA (25251)	Johnson & Johnson CDI Ektachem 950 IRC (31028)
Analyte: Uric Acid (6404)	Analyte: Anti-ENA Antibodies (0507)	Randox Laboratories CRP Latex Test (55202)
<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC ENA Screen(6)(SS-A,SS-B,Sm,Sm/RNP,Scl-70,Jo-1) (25248)	Roche Cobas INTEGRA (55179)
Beckman Synchron CX 5 Delta (07763)	Analyte: Anti-Jo-1 (0438)	Analyte: CD4 Positive Lymphocytes (1116)
Beckman Synchron CX 7 Delta (07764)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-Jo-1 (25253)	<i>Test System, Assay, Examination:</i> Biometric Imaging IMAGN 2000 (absolute count) (07599)
Bio-Chem Laboratory Systems ATAC 8000 (07658)	Analyte: Anti-RNP-Sm Antibodies (0502)	Biometric Imaging Volumet 1000 (absolute count) (07735)
Boehringer Mannheim Hitachi 917 (07765)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-Sm/RNP (25255)	Analyte: CD8 Positive Lymphocytes (1118)
Johnson & Johnson CDI Ektachem 250 (31019)	Analyte: Anti-SS-A/Ro (0446)	<i>Test System, Assay, Examination:</i> Biometric Imaging IMAGN 2000 (absolute count) (07599)
Johnson & Johnson CDI Ektachem 400 (31020)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-SS-A (25247)	Biometric Imaging Volumet 1000 (absolute count) (07735)
Johnson & Johnson CDI Ektachem 500 (31021)	Analyte: Anti-SS-B/La (0447)	Analyte: Complement C3 (1029)
Johnson & Johnson CDI Ektachem 550 XRC (31022)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-SS-B (25249)	<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 700 (31023)	Analyte: Anti-Scl-70 (0448)	Roche Cobas INTEGRA (55179)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-Scl-70 (25252)	Analyte: Complement C4 (1030)
Johnson & Johnson CDI Ektachem 700 P (31025)	Analyte: Anti-Sm (Smith) (0450)	<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 700 XR (31026)	<i>Test System, Assay, Examination:</i> Hycor HY-TEC Anti-Sm (25254)	Roche Cobas INTEGRA (55179)
Johnson & Johnson CDI Ektachem 750 XRC (31027)	Analyte: Anti-Streptolysin O (ASO) (0452)	Analyte: Complement, Total (1046)
Johnson & Johnson CDI Ektachem 950 IRC (31028)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762)	<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 704 (07161)
Johnson & Johnson CDI Ektachem DT 60 (31029)	Beckman Synchron CX 5 Delta (07763)	Boehringer Mannheim Hitachi 717 (07163)
Johnson & Johnson CDI Ektachem DT II (31030)	Beckman Synchron CX 7 Delta (07764)	Boehringer Mannheim Hitachi 747 (07166)
Roche Cobas INTEGRA (55179)	Immunostics immuno/aSO (qualitative) (28427)	Boehringer Mannheim Hitachi 917 (07765)
Select Medical Systems Selecta 20/60 (58349)	Immunostics immuno/aSO (semi-quantitative) (28426)	Instrumentation Laboratory ILAB 1800 (28323)
Analyte: Vitamin B12 (6707)	Olympus AU 800 (46110)	Instrumentation Laboratory ILAB 900 (28322)
<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 911 (07377)	Olympus Reply/AU560 (46129)	Olympus AU 800 (46110)
PB Diagnostics Systems OPUS (49001)	Roche Cobas FARA II (55041)	Olympus Reply/AU560 (46129)
BB Diagnostics Systems OPUS Magnum (49097)	Roche Cobas Mira (55044)	Roche Cobas FARA II (55041)
BB Diagnostics Systems OPUS PLUS (49098)	Wako Diagnostics 30R (70002)	Roche Cobas Mira (55044)
Schiapparelli Biosystems ACE (58288)	Analyte: Febrile Agglutinins (1901)	Wako Diagnostics 30R (70002)
Analyte: pH, Urine (4978)	<i>Test System, Assay, Examination:</i> Immunostics immuno/febrile antigens (rapid slide test) (28430)	Analyte: Febrile Agglutinins (1901)
<i>Test System, Assay, Examination:</i> Boehringer Mannheim Hitachi 704 (DRI pH-Detect) (07750)	Immunostics immuno/febrile antigens (test tube titration) (28431)	<i>Test System, Assay, Examination:</i> SA Scientific SAS Febrile Antigen Set (slide) (58391)
Boehringer Mannheim Hitachi 717 (DRI pH-Detect) (07751)	SA Scientific SAS Febrile Antigen Set (slide) (58391)	SA Scientific SAS Febrile Antigen Set (tube) (58392)
Boehringer Mannheim Hitachi 747 (DRI pH-Detect) (07752)	Analyte: Anti-Thyroglobulin Antibodies (0453)	
Boehringer Mannheim Hitachi 747 (STC Auto-Lyte) (07767)	<i>Test System, Assay, Examination:</i> Organon Teknika AuraFlex (46152)	

Analyte: Helicobacter Pylori Antibodies (2513)

Test System, Assay, Examination:
Cortecs Ltd Helisal Rapid Blood Test (10317)
Orion Diagnostica Pyloriset Dry (46157)
Quidel QuickVue One-Step H. pylori Test (52027)
Washington Biotechnology PS II (70172)

Analyte: Hepatitis B Surface Antigen (HBsAg) (2524)

Test System, Assay, Examination:
Abbott IMX (04056)

Analyte: Immunoglobulins IgA (2803)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Immunoglobulins IgE (2805)

Test System, Assay, Examination:
Pharmacia CAP System/AutoCap Phadiatop FEIA (49158)

Analyte: Immunoglobulins IgG (2806)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Immunoglobulins IgM (2808)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Infectious Mononucleosis Antibodies (Mono) (2809)

Test System, Assay, Examination:
Immunostics immuno/color-im Test (28432)
Immunostics immuno/lex-im Test (28433)
Worldwide Medical First Check Mono (70189)

Analyte: Lyme Disease Antibodies (Borrelia Burgdorferi Abs) (3714)

Test System, Assay, Examination:
General Biometrics ImmunoDOT Borrelia DotBlot G Test (22178)
General Biometrics ImmunoDOT Borrelia DotBlot M Test (22177)
Vitek Systems VIDAS Lyme IgG and IgM (LYT) (67097)

Analyte: Mycoplasma pneumoniae Antibodies (4016)

Test System, Assay, Examination:
Shared Systems M. pneumoniae Rapid Latex (qualitative) (58355)
Shared Systems M. pneumoniae Rapid Latex (semi-quant.) (58356)

Analyte: Rheumatoid Factor (RF) (5508)

Test System, Assay, Examination:
Hycor HY-TEC Anti-RF (25250)

Immunostics immuno/ra (screening) (28423)

Immunostics immuno/ra (semi-quantitative) (28422)
Olympus AU 800 (46110)
Olympus Reply (46089)
Polymedco Rheumatoid Factors (RF) Latex Agglutination (49157)
Shared Systems Chromalex Rheumatoid Factor Latex Test Sys. (58382)

Analyte: Rubella Antibodies (5510)

Test System, Assay, Examination:
Abbott AxSYM Rubella IgM (04630)
Abbott IMX Rubella IgM (04638)
Sanofi Pasteur Access Immunoassay System (58257)
Seradyn ColorSlide Rubella (58369)
Technicon Immuno 1 Rubella IgG (61227)
Worldwide Medical First Check Rubella (70183)

Analyte: Thyroid Peroxidase Autoantibodies (TPO) (6135)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)

Analyte: Toxoplasma Gondii Antibodies (6113)

Test System, Assay, Examination:
Abbott IMX Toxo IgG (04639)
Abbott IMX Toxo IgM (04593)
Cirrus Diagnostics Immulite (10159)
Sanofi Pasteur Access Immunoassay System Toxo IgG (58376)

Analyte: Troponin-I (Cardiac) (6153)

Test System, Assay, Examination:
Baxter Stratus II (07051)
Baxter Stratus II Intellect (07376)
PB Diagnostics Systems OPUS (49001)
PB Diagnostics Systems OPUS Magnum (49097)
PB Diagnostics Systems OPUS PLUS (49098)

Speciality/Subspeciality: Hematology

Analyte: APTT Factor Substitution (0517)

Test System, Assay, Examination:
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Activated Partial Thromboplastin Time (APTT) (0409)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Cardiovascular Diagnostics TAS Analyzer HMT (10279)
Instrumentation Laboratory IL ACL Futura System (28395)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Coagulation Index, Native Whole Blood (1130)

Test System, Assay, Examination:
Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)

Analyte: Fibrinogen (1905)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Instrumentation Laboratory IL ACL Futura System (28395)

Medical Laboratory MLA Electra 1400C (40208)

Analyte: Hematocrit (2514)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra E (43112)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)
Sysmex F-520 (58370)
Sysmex F-820 (58371)
Sysmex SF-3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: Hemoglobin (2515)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
American Optical AO Hb-Meter Hemoglobinometer (04620)
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Radiometer ABL 620 (55137)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer OSM 3 (55059)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)

- Sysmex F-520 (58370)
 Sysmex F-820 (58371)
 Sysmex SF-3000 (58360)
 Texas International Laboratories Hematil
 18 (61205)
- Analyte:** Leukocytes, Fecal (3723)
Test System, Assay, Examination:
 All Methylene Blue Wet Mount Preps for
 Fecal Leukocytes (04657)
- Analyte:** Lupus Anticoagulants (3728)
Test System, Assay, Examination:
 Bio/Data Microsample Coagulation
 Analyzer, MCA 310 (07597)
- Analyte:** Platelet Aggregation (4928)
Test System, Assay, Examination:
 Centocor AggreStat (10328)
- Analyte:** Platelet Count (4908)
Test System, Assay, Examination:
 Becton Dickinson QBC AccuRead (07747)
 BioChem Immunosystems Baker System
 9100+ (07711)
 BioChem Immunosystems Baker System
 9110+ (07712)
 BioChem Immunosystems Baker System
 9118+ (07713)
 BioChem Immunosystems Baker System
 9120+ (07714)
 Coulter MD II Series Analyzer (10318)
 Danam Datacell 18MS (13356)
 Roche Cobas MICROS CT16 (55175)
 Roche Cobas MICROS CT18 (55177)
 Roche Cobas MICROS CT8 (55173)
 Roche Cobas MICROS OT16 (55176)
 Roche Cobas MICROS OT18 (55178)
 Roche Cobas MICROS OT8 (55174)
 Sysmex F-820 (58371)
 Sysmex SF-3000 (58360)
 Texas International Laboratories Hematil
 18 (61205)
- Analyte:** Prothrombin Time (PT) (4922)
Test System, Assay, Examination:
 Bio/Data Microsample Coagulation
 Analyzer, MCA 310 (07597)
 Instrumentation Laboratory IL ACL Futura
 System (28395)
 International Technidyne Factor VI Pt+
 (28360)
 International Technidyne Hemochron 400
 HNPT (28355)
 International Technidyne Hemochron 401
 HNPT (28356)
 International Technidyne Hemochron 800
 HNPT (28357)
 International Technidyne Hemochron 8000
 HNPT (28359)
 International Technidyne Hemochron 801
 HNPT (28358)
 International Technidyne ProTIME
 Microcoagulation System (28387)
 Medical Laboratory MLA Electra 1400C
 (40208)
- Analyte:** Prothrombin Time Factor
 Substitution (4976)
Test System, Assay, Examination:
 Medical Laboratory MLA Electra 1400C
 (40208)
- Analyte:** Red Blood Cell Count (Erythrocyte
 Count) (RBC) (5502)
Test System, Assay, Examination:
 BioChem Immunosystems Baker System
 9100+ (07711)
- BioChem Immunosystems Baker System
 9110+ (07712)
 BioChem Immunosystems Baker System
 9118+ (07713)
 BioChem Immunosystems Baker System
 9120+ (07714)
 Coulter MD II Series Analyzer (10318)
 Danam Datacell 18MS (13356)
 Roche Cobas MICROS CT16 (55175)
 Roche Cobas MICROS CT18 (55177)
 Roche Cobas MICROS CT5 (55171)
 Roche Cobas MICROS CT8 (55173)
 Roche Cobas MICROS OT16 (55176)
 Roche Cobas MICROS OT18 (55178)
 Roche Cobas MICROS OT5 (55172)
 Roche Cobas MICROS OT8 (55174)
 Sysmex F-520 (58370)
 Sysmex F-820 (58371)
 Sysmex SF-3000 (58360)
 Texas International Laboratories Hematil
 18 (61205)
- Analyte:** Reticulocyte Count (5506)
Test System, Assay, Examination:
 Abbott Cell-Dyn 3500 R (04666)
 Becton Dickinson FACSCalibur (with retic
 count software) (07640)
 Becton Dickinson FACSort (with retic
 count software) (07638)
- Analyte:** Semen (5822)
Test System, Assay, Examination:
 Medical Electronic Systems Sperm Quality
 Analyzer (40221)
- Analyte:** Thrombin Time (6105)
Test System, Assay, Examination:
 Bio/Data Microsample Coagulation
 Analyzer, MCA 310 (07597)
 Medical Laboratory MLA Electra 1400C
 (40208)
- Analyte:** White Blood Cell Count (Leukocyte
 Count) (WBC) (7002)
Test System, Assay, Examination:
 Becton Dickinson QBC AccuRead (07747)
 BioChem Immunosystems Baker System
 9100+ (07711)
 BioChem Immunosystems Baker System
 9110+ (07712)
 BioChem Immunosystems Baker System
 9118+ (07713)
 BioChem Immunosystems Baker System
 9120+ (07714)
 Coulter MD II Series Analyzer (10318)
 Danam Datacell 18MS (13356)
 Roche Cobas MICROS CT16 (55175)
 Roche Cobas MICROS CT18 (55177)
 Roche Cobas MICROS CT5 (55171)
 Roche Cobas MICROS CT8 (55173)
 Roche Cobas MICROS OT16 (55176)
 Roche Cobas MICROS OT18 (55178)
 Roche Cobas MICROS OT5 (55172)
 Roche Cobas MICROS OT8 (55174)
 Sysmex F-520 (58370)
 Sysmex F-820 (58371)
 Sysmex SF-3000 (58360)
 Texas International Laboratories Hematil
 18 (61205)
- Analyte:** White Blood Cell Differential (WBC
 Diff) (7001)
Test System, Assay, Examination:
 Becton Dickinson QBC AccuRead (07747)
 BioChem Immunosystems Baker System
 9100+ (07711)
- BioChem Immunosystems Baker System
 9110+ (07712)
 BioChem Immunosystems Baker System
 9118+ (07713)
 BioChem Immunosystems Baker System
 9120+ (07714)
 Coulter MD II Series Analyzer (10318)
 Danam Datacell 18MS (13356)
 Roche Cobas MICROS CT16 (55175)
 Roche Cobas MICROS CT18 (55177)
 Roche Cobas MICROS CT5 (55171)
 Roche Cobas MICROS CT8 (55173)
 Roche Cobas MICROS OT16 (55176)
 Roche Cobas MICROS OT18 (55178)
 Roche Cobas MICROS OT5 (55172)
 Roche Cobas MICROS OT8 (55174)
 Sysmex F-520 (58370)
 Sysmex F-820 (58371)
 Sysmex SF-3000 (58360)
 Texas International Laboratories Hematil
 18 (61205)
- Speciality/Subspeciality:** Mycology
Analyte: Yeast, *C. Albicans* Only (7602)
Test System, Assay, Examination:
 BioMerieux Vitek *Albicans* ID (07773)
- Speciality/Subspeciality:** Toxicology /
 TDM
Analyte: Acetaminophen (0406)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
 Johnson & Johnson CDI Ektachem 250
 (31019)
 Johnson & Johnson CDI Ektachem 500
 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC
 (31022)
 Johnson & Johnson CDI Ektachem 700
 (31023)
 Johnson & Johnson CDI Ektachem 750 XRC
 (31027)
 Johnson & Johnson CDI Ektachem 950 IRC
 (31028)
 Roche Cobas INTEGRA (55179)
- Analyte:** Amikacin (0425)
Test System, Assay, Examination:
 Roche Cobas INTEGRA (55179)
- Analyte:** Amphetamines (0428)
Test System, Assay, Examination:
 Beckman Synchron CX 4 (CEDIA DAU/
 automated curve) (07754)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 (CEDIA DAU/
 automated curve) (07755)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 (CEDIA DAU/
 automated curve) (07756)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 704 (CEDIA
 DAU/automated curve) (07757)
 Boehringer Mannheim Hitachi 717 (CEDIA
 DAU/automated curve) (07758)
 Boehringer Mannheim Hitachi 747 (CEDIA
 DAU/automated curve) (07759)
 Boehringer Mannheim Hitachi 911 (CEDIA
 DAU/automated curve) (07760)
 Boehringer Mannheim Hitachi 917 (07765)
 Du Pont Dimension AR (13087)
 Du Pont Dimension XL (13355)
 Fingerprint Biotech FINGERPRINT-DOA
 Screening Device (19023)
 Olympus AU 5000 (CEDIA DAU/
 automated curve) (46217)
 Princeton BioMeditech AbuSign AMP
 (49150)
 Princeton BioMeditech AccuSign AMP
 (49152)

- Princeton BioMeditech BioSign AMP (49153)
Princeton BioMeditech DOA-AMP (49151)
Roche Cobas INTEGRA (55179)
Worldwide Medical First Check AMP (70187)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
- Analyte: Barbiturates (0701)
- Test System, Assay, Examination:*
Abbott AxSYM (04532)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Roche Cobas INTEGRA (55179)
- Analyte: Benzodiazepines (0702)
- Test System, Assay, Examination:*
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Benzodiazepines (58389)
- Analyte: Cannabinoids (THC) (1009)
- Test System, Assay, Examination:*
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
- Boehringer Mannheim FRONTLINE CANNABIS (07771)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT-DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign DOA 2 (THC/COC) (49160)
Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Cannabinoids (58364)
Worldwide Medical First Check Panel 2 (THC/COC) (70179)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
Worldwide Medical First Check THC (70185)
- Analyte: Carbamazepine (1010)
- Test System, Assay, Examination:*
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Roche Cobas INTEGRA (55179)
- Analyte: Carboxyhemoglobin (1012)
- Test System, Assay, Examination:*
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Nova Co-Oximeter (43114)
Radiometer ABL System 625 (55198)
- Analyte: Cocaine Metabolites (1023)
- Test System, Assay, Examination:*
Abbott AxSYM (04532)
Applied Biotech SureStep Drug Screen Cocaine Test (04665)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim FRONTLINE COCAINE (07770)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
- Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT-DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign DOA 2 (THC/COC) (49160)
Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Cocaine (58361)
Technical Chem. & Prod. One Step Urine DoA Cocaine (61208)
Worldwide Medical First Check COC (70184)
Worldwide Medical First Check Panel 2 (THC/COC) (70179)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
- Analyte: Digitoxin (1303)
- Test System, Assay, Examination:*
Abbott AxSYM (04532)
- Analyte: Digoxin (1304)
- Test System, Assay, Examination:*
Abbott IMX (04056)
Beckman Synchron CX 4 (Emit 2000) (07675)
Beckman Synchron CX 4 CE (Emit 2000) (07677)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (Emit 2000) (07679)
Beckman Synchron CX 5 CE (Emit 2000) (07681)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (Emit 2000) (07683)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 704 (Emit 2000) (07669)
Boehringer Mannheim Hitachi 717 (Emit 2000) (07671)
Boehringer Mannheim Hitachi 911 (Emit 2000) (07673)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont ACA III (DGN A) (13390)
Du Pont ACA IV (DGN A) (13391)
Du Pont ACA Star (DGN A) (13400)
Du Pont ACA V (DGN A) (13392)
Instrumentation Laboratory IL Monarch 1000(IL Test Digoxin) (28400)
Instrumentation Laboratory IL Monarch 2000(IL Test Digoxin) (28401)
Instrumentation Laboratory IL Monarch Plus(IL Test Digoxin) (28402)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)

- Jonhson & Johnson CDI Ektachem 250 (31019)
 Jonhson & Johnson CDI Ektachem 950 IRC (31028)
 Roche Cobas INTEGRA (55179)
 Roche Cobas Mira (Emit 2000) (55166)
 Roche Cobas Mira Plus (Emit 2000) (55170)
 Roche Cobas Mira S (Emit 2000) (55168)
 Technicon RA 1000 (Bayer Digoxin DGN) (61200)
 Technicon RA 2000 (Bayer Digoxin DGN) (61201)
 Technicon RA 500 (Bayer Digoxin DGN) (61202)
 Technicon RA XT (Bayer Digoxin DGN) (61203)
- Analyte: Ethanol (Alcohol) (1608)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 704 (whole blood) (07738)
 Boehringer Mannheim Hitachi 717 (whole blood) (07739)
 Boehringer Mannheim Hitachi 737 (whole blood) (07740)
 Boehringer Mannheim Hitachi 747 (whole blood) (07741)
 Boehringer Mannheim Hitachi 911 (whole blood) (07742)
 Boehringer Mannheim Hitachi 914 (whole blood) (07743)
 Boehringer Mannheim Hitachi 917 (07765)
 Jonhson & Johnson CDI Ektachem 500 (31021)
 Jonhson & Johnson CDI Ektachem 700 (31023)
 Jonhson & Johnson CDI Ektachem 700 XR (31026)
 Jonhson & Johnson CDI Ektachem 950 IRC (31028)
 Roche Cobas INTEGRA (55179)
- Analyte: Ethanol (Alcohol), Whole Blood (1632)
Test System, Assay, Examination:
 Boehringer Mannheim Hitachi 917 (07765)
- Analyte: Gentamicin (2202)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 917 (07765)
 Ciba Corning ACS 180 (10046)
 Roche Cobas INTEGRA (55179)
- Analyte: Lidocaine (3710)
Test System, Assay, Examination:
 Roche Cobas INTEGRA (55179)
- Analyte: Lithium (3712)
Test System, Assay, Examination:
 Johnson & Johnson CDI Ektachem 250 (31019)
 Johnson & Johnson CDI Ektachem 400 (31020)
 Johnson & Johnson CDI Ektachem 500 (31021)
 Johnson & Johnson CDI Ektachem 550 XRC (31022)
 Johnson & Johnson CDI Ektachem 700 (31023)
- Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
 Johnson & Johnson CDI Ektachem 700 P (31025)
 Johnson & Johnson CDI Ektachem 700 XR (31026)
 Johnson & Johnson CDI Ektachem 750 XRC (31027)
 Johnson & Johnson CDI Ektachem 950 IRC (31028)
 Johnson & Johnson CDI Ektachem DT 60 (31029)
 Johnson & Johnson CDI Ektachem DT II (31030)
 Johnson & Johnson CDI Ektachem DT SC Module (31031)
 Johnson & Johnson CDI Ektachem DTE Module (31033)
 Roche Cobas INTEGRA (55179)
- Analyte: Lysergic Acid Diethylamide (LSD) (3715)
Test System, Assay, Examination:
 Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
- Analyte: Methadone (4003)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
 Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
 Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
 Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
 Boehringer Mannheim Hitachi 917 (07765)
 Boehringer Mannheim Hitachi 917 (CEDIA DAU/automated curve) (07769)
 Du Pont Dimension AR (13087)
 Du Pont Dimension XL (13355)
 Roche Cobas INTEGRA (55179)
- Analyte: Methamphetamine/Amphetamine (4036)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
- Analyte: Methamphetamines (4004)
Test System, Assay, Examination:
 Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
 Princeton BioMeditech AccuSign MET (49163)
 Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
- Analyte: Methaqualone (4005)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 Delta (07764)
 Roche Cobas INTEGRA (55179)
- Analyte: N-Acetylprocainamide (NAPA) (4301)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
 Roche Cobas INTEGRA (55179)
- Analyte: Opiates (4601)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
- Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim FRONTLINE OPIATES (07772)
 Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
 Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
 Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
 Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
 Boehringer Mannheim Hitachi 917 (07765)
 Du Pont Dimension AR (13087)
 Du Pont Dimension XL (13355)
 Fingerprint Biotech FINGERPRINT—DOA Screening Device (19023)
 Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
 Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
 Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
 Roche Cobas INTEGRA (55179)
 Technical Chem. & Prod. One Step Urine DoA Opiate (61207)
 Worldwide Medical First Check MOP (70186)
 Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
 Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
 Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
- Analyte: Phencyclidine (PCP) (4901)
Test System, Assay, Examination:
 Abbott AxSYM (04532)
 Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
 Beckman Synchron CX 5 Delta (07763)
 Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
 Beckman Synchron CX 7 Delta (07764)
 Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
 Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
 Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
 Boehringer Mannheim Hitachi 911 (07377)
 Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
 Boehringer Mannheim Hitachi 917 (07765)
 Du Pont Dimension AR (13087)
 Du Pont Dimension XL (13355)
 Fingerprint Biotech FINGERPRINT—DOA Screening Device (19023)
 Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
 Roche Cobas INTEGRA (55179)
- Analyte: Phenobarbital (4902)
Test System, Assay, Examination:
 Beckman Synchron CX 4 Delta (07762)
 Beckman Synchron CX 5 Delta (07763)

- Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)
- Analyte: Phenytoin (4903)
Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Roche Cobas INTEGRA (55179)
- Analyte: Phenytoin, Free (4904)
Test System, Assay, Examination:
Roche Cobas FARA II (55041)
Roche Cobas INTEGRA (55179)
- Analyte: Primidone (4912)
Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)
- Analyte: Procainamide (4913)
Test System, Assay, Examination:
Abbott AxSYM (04532)
PB Diagnostics Systems OPUS Magnum (49097)
PB Diagnostics Systems OPUS PLUS (49098)
Roche Cobas INTEGRA (55179)
- Analyte: Propoxyphene (4917)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)
- Analyte: Quinidine (5202)
Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)
- Analyte: Salicylates (5801)
Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
- Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Roche Cobas INTEGRA (55179)
- Analyte: Theophylline (6104)
Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Ciba Corning ACS 180 (10046)
Cirrus Diagnostics Immulite (10159)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
- Analyte: Tobramycin (6112)
Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
- Analyte: Tricyclic Antidepressants (6117)
Test System, Assay, Examination:
Abbott AxSYM (04532)
- Analyte: Valproic Acid (6701)
Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)
- Analyte: Valproic Acid, Free (6702)
Test System, Assay, Examination:
Roche Cobas FARA II (55041)
Roche Cobas INTEGRA (55179)
- Analyte: Vancomycin (6703)
Test System, Assay, Examination:
Ciba Corning ACS 180 (10046)
Roche Cobas INTEGRA (55179)
- Speciality/Subspeciality: Urinalysis*
Analyte: Urinary Sediment Microscopic Elements (6405)
Test System, Assay, Examination:
- DAVSTAR Cen-Slide System (13396)
Dia Sys R/S 1000 (13397)
Dia Sys R/S 2000 (13398)
- Analyte: Urine Qualitative Dipstick Chemistries (6406)
Test System, Assay, Examination:
Boehringer Mannheim Chemstrip Criterion Urine Analyzer (07716)
- Speciality/Subspeciality: Virology*
Analyte: Herpes Simplex (2529)
Test System, Assay, Examination:
Johnson & Johnson CDI SureCell (direct antigen/visual) (31063)
- Analyte: Rotavirus (5509)
Test System, Assay, Examination:
Vitek Systems Vidas (67038)
- Complexity: High
Speciality/Subspeciality: Bacteriology
Analyte: Aerobic &/or Anaerobic Organisms-Unlimited Sources (0412)
Test System, Assay, Examination:
AB Biodisk Etest (including culture) (04592)
All Antimicrobial Suscept. (disk diffusion/dilution) fr cult (04637)
All Conventional Organism Identification (ID) from culture (04636)
Becton Dickinson BBL CRYSTAL ANR ID System (inc. culture) (07561)
Difco DrySlide NEISSERIA (including culture) (13407)
- Analyte: Aerobic Organisms From Urine Specimens Only (0468)
Test System, Assay, Examination:
Culture Kits, Inc. Uri-Two (nonconfirmatory ID) (10333)
- Analyte: Chlamydia (1016)
Test System, Assay, Examination:
Abbott IMX Select (04229)
Abbott LCx Chlamydia trachomatis Assay (04541)
DAKO IDEIA Chlamydia Blocking Reagents (13322)
Sanofi Pasteur Access Immunoassay System (58257)
- Analyte: Enterococcus (1612)
Test System, Assay, Examination:
Becton Dickinson Enterococcus Screening Test (inc. culture) (07715)
- Analyte: Escherichia Coli (1604)
Test System, Assay, Examination:
LMD Laboratories E. coli 0157 ELISA Assay (dir. ag/spectro) (37092)
LMD Laboratories E. coli 0157 ELISA Assay (dir. ag/visual) (37091)
Meridian Premier EHEC (spectrophotometric) (40205)
Meridian Premier EHEC (visual) (40204)
- Analyte: Haemophilus Influenzae, Type B (2510)
Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
- Analyte: Moraxella Catarrhalis (4037)
Test System, Assay, Examination:

- Difco DrySlide CATARRALIS (including culture) (13408)
 Analyte: Neisseria Gonorrhoeae (4302)
Test System, Assay, Examination:
 Abbott LCx Neisseria gonorrhoeae Assay (04545)
- Analyte: Neisseria Meningitidis, Group A (4304)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
 Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)
- Analyte: Neisseria Meningitidis, Group B (4306)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
- Analyte: Neisseria Meningitidis, Group C (4308)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
 Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)
- Analyte: Neisseria Meningitidis, Group W135 (4311)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
 Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)
- Analyte: Neisseria Meningitidis, Group Y (4312)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
 Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)
- Analyte: Salmonella (5802)
Test System, Assay, Examination:
 SA Scientific SAS Salmonella H Antisera (including culture) (58363)
- Analyte: Shigella (5804)
Test System, Assay, Examination:
 SA Scientific SAS Shigella Antisera (including culture) (58387)
- Analyte: Staphylococcus (5807)
Test System, Assay, Examination:
 Murex Staphaurex Plus (including culture) (40200)
- Analyte: Streptococcus Pneumoniae (5808)
Test System, Assay, Examination:
 Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
- Analyte: Streptococcus, Group A (5810)
Test System, Assay, Examination:
 Abbott TestPack +Plus Strep A with OBC (inc. culture) (04626)
 Becton Dickinson Directigen 1-2-3 Group A Strep (inc cult.) (07662)
 Johnson & Johnson CDI SureCell (including culture) (31065)
- Analyte: Streptococcus, Group B (5811)
Test System, Assay, Examination:
- Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
Speciality/Subspeciality: Endocrinology
 Analyte: 17 Alpha-OH Progesterone (0109)
Test System, Assay, Examination:
 Neometrics ACCUSCREEN 17alpha-hydroxyprogesterone RIA Kit (43105)
- Analyte: 5-Hydroxyindolacetic Acid, Urine (5-HIAA) (0101)
Test System, Assay, Examination:
 Bio-Rad Urinary 5-HIAA by HPLC (07687)
- Analyte: Androstenedione (0460)
Test System, Assay, Examination:
 Diagnostic Products Corp. Coat-A-Count Dir. Androstenedione (13411)
- Analyte: Angiotensin I (0479)
Test System, Assay, Examination:
 Pharmaceutical Discovery A-I Photodiagnostic (49155)
- Analyte: Angiotensin II (0520)
Test System, Assay, Examination:
 ALPCO Angiotensin II RIA (04631)
- Analyte: Calcitonin (1041)
Test System, Assay, Examination:
 CIS-US ELSA-hCT (10312)
 Nichols Institute Chemiluminescence Calcitonin Assay (43113)
- Analyte: Catecholamines, Urine (1055)
Test System, Assay, Examination:
 Bio-Rad MDMS/CDMS (07778)
- Analyte: Collagen Type I, C-telopeptides (1131)
Test System, Assay, Examination:
 Diagnostic Systems DSL 10-1700 ACTIVE CrossLaps ELISA (13416)
- Analyte: Collagen Type I, Crosslink Deoxypyridinoline (Dpd) (1127)
Test System, Assay, Examination:
 Metra Biosystems PYRILINKS-D (40251)
- Analyte: Collagen Type I, Crosslink N-telopeptides (NTx) (1125)
Test System, Assay, Examination:
 Ostex International Osteomark (46193)
- Analyte: Collagen Type I, Crosslink Pyridinium (Pyd, Dpd) (1126)
Test System, Assay, Examination:
 Metra Biosystems PYRILINKS (40250)
 Metra Biosystems PYRILINKS Polyclonal (40252)
- Analyte: Cortisol, Urine (Extraction Procedure) (1095)
Test System, Assay, Examination:
 Ciba Corning ACS 180 (10046)
- Analyte: Dehydroepiandrosterone (DHEA) (1309)
Test System, Assay, Examination:
 Diagnostic Systems DSL 10-9000 ACTIVE DHEA EIA (13410)
- Analyte: Estradiol (1605)
Test System, Assay, Examination:
 Diagnostic Systems Ultra Sensitive Estradiol RIA (13412)
- Analyte: Estradiol-unconjugated (1607)
Test System, Assay, Examination:
 Diagnostic Systems ACTIVE Ultra-Sens. Unconjugated Estradiol (13409)
- Analyte: Follicle Stimulating Hormone (FSH) (1908)
Test System, Assay, Examination:
 Johnson & Johnson CDL Amerlite Analyzer (31016)
- Analyte: HCG, Beta, Serum, Quantitative (2502)
Test System, Assay, Examination:
 Johnson & Johnson CDL Amerlite Analyzer (31016)
- Analyte: HCG, Total, Serum, Quantitative (2555)
Test System, Assay, Examination:
 Diagnostic Systems DSL 8300 ACTIVE INTACT hCG IRMA (13419)
- Analyte: HCG, Urine, Quantitative (2534)
Test System, Assay, Examination:
 Johnson & Johnson CDL Amerlite Analyzer (31016)
- Analyte: Human Growth Hormone (GH) (2547)
Test System, Assay, Examination:
 Diagnostic Systems DSL 10-1900 ACTIVE hGH ELISA (13415)
- Analyte: Insulin-like Growth Factor-1 (IGF-1) (2818)
Test System, Assay, Examination:
 Diagnostic Systems Active IGF-1 ELISA (13381)
 Diagnostic Systems DSL 2800 ACTIVE No-extrac.IGF-1 C-T IRMA (13418)
 ImmunoDiagnostic Systems OCTEIA IGF-1 IEMA Kit (28385)
 Nichols Institute Insulin-Like Growth Factor I (IGF-I,IRMA) (43106)
- Analyte: Insulin-like Growth Factor Bind. Protein3 (IGFBP-3) (2832)
Test System, Assay, Examination:
 Diagnostic Systems Active IGFBP-3 ELISA (13382)
 Nichols Institute IGFBP-3 Radioimmunoassay Kit (43104)
- Analyte: Luteinizing Hormone (LH) (3713)
Test System, Assay, Examination:
 Diagnostic Systems DSL 4600 ACTIVE LH Coated-Tube IRMA (13417)
 Nichols Institute Chemiluminescence LH Assay (43107)
- Analyte: Metanephrines, Urine (4025)
Test System, Assay, Examination:
 Bioanalytical Systems Urinary Metanephrine Kit (07686)
- Analyte: Parathyroid Hormone—Intact (4924)
Test System, Assay, Examination:
 CIS-US ELSA-PTH (10299)
 Diagnostic Systems Active I-PTH ELISA Kit (13402)
 Scantibodies Laboratory Intact PTH Assay (58348)
- Analyte: Prolactin (4915)
Test System, Assay, Examination:

Diagnostic Systems DSL 4500 ACTIVE Prolactin Ctd-Tube IRMA (13414) Johnson & Johnson CDL Amerlite Analyzer (31016) Analyte: Testosterone, Free (6122) <i>Test System, Assay, Examination:</i> Diagnostic Systems ACTIVE Free Testosterone RIA (13393) Analyte: Thyroid Stimulating Hormone (TSH) (Neonatal) (6107) <i>Test System, Assay, Examination:</i> Diagnostic Products Corp. Coat-A-Count IRMA (13109) Analyte: Thyroid Stimulating Hormone— High Sens. (TSH-HS) (6108) <i>Test System, Assay, Examination:</i> Johnson & Johnson CDL Amerlite Analyzer (31016) Analyte: Thyroxine (T4) (6109) <i>Test System, Assay, Examination:</i> Biomerica T4 Microwell EIA (07635) Diagnostic Systems DSL-3200 ACTIVE Thyroxine RIA (13406) Analyte: Thyroxine (T4), Neonatal (6123) <i>Test System, Assay, Examination:</i> Wallac Oy DELFIA Neonatal Thyroxine (T4) Kit (70168) Analyte: Thyroxine Binding Globulin (TBG) (6110) <i>Test System, Assay, Examination:</i> Johnson & Johnson CDL Amerlite Analyzer (31016) Analyte: Thyroxine, Free (FT4) (6111) <i>Test System, Assay, Examination:</i> Johnson & Johnson CDL Amerlite Analyzer (31016) Analyte: Triiodothyronine (T3) (6119) <i>Test System, Assay, Examination:</i> Biomerica T3 Microwell EIA (07774) Diagnostic Systems DSL 3100 ACTIVE T3 Coated-Tube RIA (13413) Analyte: Triiodothyronine, Free (FT3) (6121) <i>Test System, Assay, Examination:</i> Roche Cobas Core Free T3 EIA (manual) (55135) <i>Speciality/Subspeciality: General Chemistry</i> Analyte: 1-Methylhistidine (0107) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: 3-Methylhistidine (0108) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Acid Phosphatase (0407) <i>Test System, Assay, Examination:</i> Horizon Acid Phosphatase Manual Procedure (25222) Analyte: Alanine (0511) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	Analyte: Alanine Aminotransferase (ALT) (SGPT) (0404) <i>Test System, Assay, Examination:</i> HiChem Alanine Transaminase (ALT) Reagent Kit (manual) (25227) Horizon ALT (SGPT) Manual Procedure (25216) MeDiTech Alanine Aminotransferase (ALT) (manual) (40216) Ortho ALT Microwell Test System (manual) (46167) Analyte: Albumin (0414) <i>Test System, Assay, Examination:</i> Horizon Serum Albumin Manual Procedure (25204) Analyte: Alkaline Phosphatase (ALP) (0416) <i>Test System, Assay, Examination:</i> Horizon Alkaline Phosphatase (pNPP Rate) Manual Procedure (25205) MeDiTech Alkaline Phosphatase (ALP) (manual) (40240) Analyte: Alkaline Phosphatase Bone Specific (BAP) (0518) <i>Test System, Assay, Examination:</i> Metra Biosystems Alkphase-B (40227) Analyte: Alpha-Amino-n-butyric Acid (0512) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH) (0419) <i>Test System, Assay, Examination:</i> TECO Diagnostics HBDH Reagent Set (manual) (61152) Analyte: Ammonia, Plasma/Serum (0427) <i>Test System, Assay, Examination:</i> Boehringer Mannheim Ammonia (manual) (07766) Analyte: Amylase (0429) <i>Test System, Assay, Examination:</i> Horizon Amylase Manual Procedure (25207) Analyte: Anserine (0514) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Apolipoprotein A1 (0462) <i>Test System, Assay, Examination:</i> Horizon Apolipoprotein A-1 (APO A-1) Manual Procedure (25221) Randox Laboratories Test Kit (manual) (55106) Analyte: Apolipoprotein B (0457) <i>Test System, Assay, Examination:</i> Horizon Apolipoprotein B (APO B) Manual Procedure (25220) Randox Laboratories Test Kit (manual) (55106) Analyte: Arginine (0515) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Asparagine (0509) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	Analyte: Aspartate Aminotransferase (AST) (SGOT) (0405) <i>Test System, Assay, Examination:</i> HiChem Aspartate Transaminase (AST) (manual) (25234) Horizon AST (SGOT) Manual Procedure (25215) MeDiTech Aspartate Aminotransferase (AST) (manual) (40241) Analyte: Beta-Alanine (0732) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Bilirubin, Total (0706) <i>Test System, Assay, Examination:</i> Horizon Total Bilirubin Manual Procedure (25199) Analyte: Calcium, Total (1005) <i>Test System, Assay, Examination:</i> Horizon Calcium (Liquid) Manual Procedure (25208) Synermed Calcium (manual) (58375) Analyte: Carbon Dioxide, Total (CO2) (1003) <i>Test System, Assay, Examination:</i> Randox Laboratories CO2 (TOTAL) (manual) (55201) TECO Diagnostics Carbon Dioxide (manual) (61150) TRACE Scientific CO2-DST (manual) (61212) Analyte: Cerebrospinal Fluid (CSF) Protein (1014) <i>Test System, Assay, Examination:</i> Randox Laboratories Test Kit (manual) (55106) Analyte: Chloride (1018) <i>Test System, Assay, Examination:</i> Horizon Chloride Manual Procedure (25209) Analyte: Cholesterol (1020) <i>Test System, Assay, Examination:</i> Horizon Cholesterol Manual Procedure (25210) Analyte: Citrulline (1105) <i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171) Analyte: Creatine Kinase (CK) (1034) <i>Test System, Assay, Examination:</i> Horizon Creatine Kinase Manual Procedure (25211) MeDiTech Creatine Kinase (CK) (manual) (40220) Analyte: Creatine Kinase MB Fraction (CKMB) (1002) <i>Test System, Assay, Examination:</i> Horizon Creatine Kinase MB Manual Procedure (25203) Analyte: Creatinine (1035) <i>Test System, Assay, Examination:</i> Chimera CR Perfect Urine Creatinine (manual) (10295) Horizon Creatinine Manual Procedure (25206) Analyte: Ferritin (1902) <i>Test System, Assay, Examination:</i>
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United Biotech UBI MAGIWEL Ferritin Quantitative (64032)	Analyte: Human Hemoglobin in Feces (2565)	Technicon Chem 1 (Genzyme immunosep tube/HDL channel) (61194)
Analyte: Folate, Red Blood Cell (RBC Folate) (1930)	<i>Test System, Assay, Examination:</i> SmithKline HemeSelect (58403)	Analyte: Lactate Dehydrogenase (LDH) (3701)
<i>Test System, Assay, Examination:</i> Technicon Immuno 1 (manual calculations) (61230)	Analyte: Hydroxyproline (2560)	<i>Test System, Assay, Examination:</i> Horizon Lactate Dehydrogenase (LDH) Manual Procedure (25217)
Analyte: Galactose, Total (2223)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	MeDiTech Lactate Dehydrogenase (LD) (manual) (40217)
<i>Test System, Assay, Examination:</i> ICN ImmuChem Galactose Microwell Enzyme Assay (28390)	Analyte: Iron (2814)	Analyte: Leucine (3749)
Isolab Fluoroscan II Neonatal Chemistry System (28367)	<i>Test System, Assay, Examination:</i> Horizon Iron/IBC Manual Procedure (25224)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)
Analyte: Galactose-1-Phosphate Uridyl Transferase (2215)	Analyte: Iron Binding Capacity (Post Saturation/Separation) (2815)	Analyte: Lysine (3750)
<i>Test System, Assay, Examination:</i> Isolab Fluoroscan II Neonatal Chemistry System (28367)	<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)
Analyte: Gamma Glutamyl Transferase (GGT) (2201)	Beckman Synchron CX 5 Delta (07763)	Analyte: Methionine (4031)
<i>Test System, Assay, Examination:</i> Diagnostic Chemicals GGT Assay Kit (13395)	Beckman Synchron CX 7 Delta (07764)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)
HiChem Gamma-GT Reagent Kit (manual) (25182)	Boehringer Mannheim Hitachi 917 (07765)	Analyte: Microalbumin (4019)
Horizon Gamma Glutamyl Transpeptidase Manual Procedure (25200)	Johnson & Johnson CDI Ektachem 250 (31019)	<i>Test System, Assay, Examination:</i> ALPCO ORGenTec Micro-Albumin PIN Assay (04663)
Analyte: Glucose (2203)	Johnson & Johnson CDI Ektachem 400 (31020)	Wako Micro-Albumin B (manual) (70173)
<i>Test System, Assay, Examination:</i> HiChem Glucose/HK Reagent Kit (manual) (25235)	Johnson & Johnson CDI Ektachem 500 (31021)	Analyte: Mucopolysaccharides, Urinary (4038)
Horizon Glucose (Hexokinase) Manual Procedure (25219)	Johnson & Johnson CDI Ektachem 550 XRC (31022)	<i>Test System, Assay, Examination:</i> Glyco FACE Qualitative Urinary Carbohydrate Analysis Kit (22181)
Horizon Glucose (Oxidase) Manual Procedure (25218)	Johnson & Johnson CDI Ektachem 700 (31023)	Analyte: Oligosaccharides, Urinary (4607)
Analyte: Glutamine (2218)	Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)	<i>Test System, Assay, Examination:</i> Glyco FACE Qualitative Urinary Carbohydrate Analysis Kit (22181)
<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	Johnson & Johnson CDI Ektachem 700 XR (31026)	Analyte: Phenylalanine (4942)
Analyte: Glycated Hemoglobin, Total (2221)	Johnson & Johnson CDI Ektachem 750 XRC (31027)	<i>Test System, Assay, Examination:</i> Isolab Fluoroscan II Neonatal Chemistry System (28367)
<i>Test System, Assay, Examination:</i> Horizon Glycohemoglobin Manual Procedure (25201)	Johnson & Johnson CDI Ektachem 950 IRC (31028)	Waters Pico-Tag Amino Acid Analysis System (70171)
Analyte: Glycine (2219)	Analyte: Iron Binding Capacity, Unsat. (UIBC) no pretreat. (2823)	Analyte: Phosphorus (4906)
<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	<i>Test System, Assay, Examination:</i> Horizon Iron/IBC Manual Procedure (25224)	<i>Test System, Assay, Examination:</i> Horizon Inorganic Phosphorus Manual Procedure (25202)
Analyte: Glycosylated Hemoglobin (Hgb A1C) (2204)	Reagents Applications RAICHEM Test Kit (manual) (55075)	Analyte: Protein Fractions (4920)
<i>Test System, Assay, Examination:</i> Bio-Rad MDMS/CDMS (07778)	Analyte: Isoleucine (2833)	<i>Test System, Assay, Examination:</i> Sebia Hydrigel Protein Kit (manual) (58367)
Analyte: HDL Cholesterol (2550)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	Analyte: Protein, Total (4921)
<i>Test System, Assay, Examination:</i> Beckman Synchron CX 4 Delta (07762)	Analyte: LDL Cholesterol (3748)	<i>Test System, Assay, Examination:</i> Horizon Total Protein Manual Procedure (25214)
Beckman Synchron CX 5 Delta (07763)	<i>Test System, Assay, Examination:</i> Abbott Vision (Genzyme immunosep tube/HDL channel) (04615)	Analyte: Protein, Total (Urine) (4972)
Beckman Synchron CX 7 Delta (07764)	DuPont Dimension (Genzyme immunosep tube/HDL channel) (13379)	<i>Test System, Assay, Examination:</i> Randox Laboratories Test Kit (manual) (55106)
Boehringer Mannheim Hitachi 917 (07765)	DuPont Dimension AR (Genzyme immunosep tube/HDL channel) (13380)	Analyte: Taurine (6141)
Horizon HDL Cholesterol Manual Procedure (25226)	Johnson & Johnson CDI Ektachem 250 (Genzyme tube/chol slid) (31036)	<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)
Sigma Diagnostics HDL ISOSPIN (manual) (58388)	Johnson & Johnson CDI Ektachem 500 (Genzyme tube/chol slid) (31043)	Analyte: Thyroglobulin (6124)
Analyte: Histidine (2563)	Johnson & Johnson CDI Ektachem 700 (Genzyme tube/Chol slid) (31048)	<i>Test System, Assay, Examination:</i>
<i>Test System, Assay, Examination:</i> Waters Pico-Tag Amino Acid Analysis System (70171)	Johnson & Johnson CDI Ektachem DT 60 (Genzyme tube/HDLslid) (31058)	
	Kodak Ektachem 250 (Genzyme immunosep tube/Choles. slide) (34089)	
	Kodak Ektachem 500 (Genzyme immunosep tube/Choles. slide) (34090)	
	Kodak Ektachem 700 (Genzyme immunosep tube/Choles. slide) (34091)	
	Kodak Ektachem DT 60 (Genzyme immunosep tube/HDL slide) (34092)	

- ALPCO ORGenTec PIA Thyroglobulin EIA (04616)
 Analyte: Triglyceride (6118)
Test System, Assay, Examination:
 Horizon Triglyceride (INT) Manual Procedure (25223)
 MeDiTech Triglycerides (Glycerol Blk) (manual) (40218)
 Analyte: Tyrosine (6143)
Test System, Assay, Examination:
 Waters Pico-Tag Amino Acid Analysis System (70171)
 Analyte: Urea (BUN) (6403)
Test System, Assay, Examination:
 HiChem BUN/Urea Reagent Kit (manual) (25259)
 Horizon Blood Urea Nitrogen (BUN) Manual Procedure (25212)
 MeDiTech Blood Urea Nitrogen (manual) (40219)
 Randox Laboratories Test Kit (manual) (55106)
 Analyte: Uric Acid (6404)
Test System, Assay, Examination:
 Horizon Uric Acid Manual Procedure (25213)
 Analyte: Valine (6717)
Test System, Assay, Examination:
 Waters Pico-Tag Amino Acid Analysis System (70171)
Specialty/Subspecialty: General Immunology
 Analyte: Allergen Specific IgE (0417)
Test System, Assay, Examination:
 Hycor HY-TEC Specific IgE EIA Assay (25175)
 Hycor Specific IgE EIA (25230)
 Analyte: Anti-Cardioliipin Antibodies (0434)
Test System, Assay, Examination:
 INOVA Diagnostics QUANTA Lite ACA Screen (HRP) (28406)
 INOVA Diagnostics QUANTA Lite IgA ACA (HRP) (28407)
 INOVA Diagnostics QUANTA Lite IgG ACA (HRP) (28403)
 INOVA Diagnostics QUANTA Lite IgM ACA (28386)
 Immco Diagnostics Anti-Cardioliipin IgA Antibody (ACA) Test (28329)
 Immco Diagnostics Anti-Cardioliipin IgG Antibody (ACA) Test (28328)
 Immco Diagnostics Anti-Cardioliipin IgM Antibody (ACA) Test (28327)
 Immuno Probe Cardioliipin A EIA (28389)
 Immuno Probe Cardioliipin G EIA (28437)
 Immuno Probe Cardioliipin G,M,A EIA (28405)
 Immuno Probe Cardioliipin IgG,M,A EIA Test Kit (28405)
 Immuno Probe Cardioliipin M EIA (28388)
 MarDx Cardioliipin IgA EIA (40247)
 MarDx Cardioliipin IgG EIA (40245)
 MarDx Cardioliipin IgG,M,A EIA (40244)
 MarDx Cardioliipin IgM EIA (40246)
 elias usa Varelisa Cardioliipin Abs Screen (16122)
 Analyte: Anti-Centromere Antibodies (0487)
Test System, Assay, Examination:
- elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-DNA Antibodies (0435)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-dsDNA Elisa Assay (04649)
 ALPCO ORGenTec Anti-dsDNA Pin Immuno Assay (04623)
 INOVA Diagnostics QUANTA Lite ssDNA SemiQuant. ELISA (28436)
 MarDx Anti-dsDNA (Immunoglobulin) EIA (40253)
 elias usa Varelisa Combined DNA Antibodies (16107)
 elias usa Varelisa dsDNA Antibodies (FARR version) (16100)
 Analyte: Anti-ENA Antibodies (0507)
Test System, Assay, Examination:
 ALPCO ORGenTec ENAScreen (SS-A,SS-B,Sm,RNP/Sm,Scl-70,Jo1) (04650)
 ALPCO ORGenTec ENAScreen PIN Immuno Assay (04656)
 Helix Diagnostics ENA+Screen (RNP,Sm,SS-A,SS-B,Scl-70,Jo-1) (25241)
 Hemagen ENA Screen 4 Kit (RNP, Sm, SS-A, SS-B) (25228)
 Hemagen ENA Screen 6 Kit (RNP, Sm, SS-A, SS-B, Scl-70,Jo-1) (25229)
 MarDx ENA EIA Test Kit (40212)
 Analyte: Anti-Glomerular Basement Membrane (GBM) Antibodies (0524)
Test System, Assay, Examination:
 Scimedx GMB Antibody (computer calculations) (58408)
 Scimedx GMB Antibody (manual calculations) (58409)
 Analyte: Anti-Histone Antibodies (0437)
Test System, Assay, Examination:
 TheraTest Laboratories EL-ANA Profiles Test (61018)
 elias usa Varelisa Histone Antibodies (qualitative) (16106)
 elias usa Varelisa Histone Antibodies (semi-quantitative) (16105)
 Analyte: Anti-Jo-1 (0438)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-JO-1 PIN Immuno Assay (04653)
 Helix Diagnostics Anti-Jo-1 EIA Antibody Test (25231)
 elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-Mitochondrial Antibodies (AMTA) (0439)
Test System, Assay, Examination:
 MarDx Mitochondria EIA Test Kit (40211)
 Analyte: Anti-Myeloperoxidase (MPO) Antibodies (0505)
Test System, Assay, Examination:
 INOVA Diagnostics QUANTA Lite MPO ELISA (28439)
 Scimedx MPO Antibody (auto reader w/ data reduction) (58405)
 Scimedx MPO Antibody (manual) (58404)
 elias usa Varelisa MPO-ANCA EIA (qualitative) (16130)
 elias usa Varelisa MPO-ANCA EIA (semi-quantitative) (16129)
 Analyte: Anti-Neutrophil Cytoplasm Antibodies (0440)
Test System, Assay, Examination:
- Scimedx Anti-PR3 Antibody EIA (computer calculations) (58386)
 Scimedx Anti-PR3 Antibody EIA (manual calculations) (58385)
 elias usa Varelisa PR3-ANCA EIA (qualitative) (16124)
 elias usa Varelisa PR3-ANCA EIA (semi-quantitative) (16123)
 Analyte: Anti-Nuclear Antibodies (ANA) (0441)
Test System, Assay, Examination:
 Immuno Concepts HEp-2000 Colorzyme ANA-Ro Test System (28396)
 Roche Image Titer (RIAS) Antinuclear Antibody (ANA) Kit (55199)
 TheraTest Laboratories EL-ANAscr (61220)
 elias usa Varelisa ANA-Screen (4) (16111)
 Analyte: Anti-Parietal Cell Antibodies (0442)
Test System, Assay, Examination:
 elias usa Varelisa Parietal Cell Abs (qualitative) (16109)
 elias usa Varelisa Parietal Cell Abs (semi-quantitative) (16108)
 Analyte: Anti-Phosphatidylserine Antibodies (0521)
Test System, Assay, Examination:
 Reaads Anti-Phosphatidylserine Semi-Quantitative Test Kit (55186)
 Analyte: Anti-RNP-Sm Antibodies (0502)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-RNP/Sm Pin Immuno Assay (04647)
 Hemagen RNP-Sm ENA Kit (qualitative) (25189)
 Hemagen RNP-Sm ENA Kit (semi-quantitative) (25194)
 elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-SS-A/Ro (0446)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-SS-A(Ro) PIN Immuno Assay (04651)
 elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-SS-B/La (0447)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-SS-B(La) Pin Immuno Assay (04648)
 elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-Scl-70 (0448)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-Scl 70 PIN Immuno Assay (04652)
 Helix Diagnostics Anti-Scl-70 EIA Antibody Test (25232)
 TheraTest Laboratories EL-ANA Profiles Test (61018)
 Analyte: Anti-Serine Protease 3 (PR3) Antibodies (0522)
Test System, Assay, Examination:
 INOVA Diagnostics QUANTA Lite PR3 ELISA (28440)
 Analyte: Anti-Sm (Smith) (0450)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-Sm(Smith) Pin Immuno Assay (04646)
 elias usa Varelisa ANA Profile (16110)
 Analyte: Anti-Thyroglobulin Antibodies (0453)
Test System, Assay, Examination:

- ALPCO ORGenTec Anti-TG Elisa (04621)
ALPCO ORGenTec Anti-TG PIA (04618)
ALPCO ORGenTec Anti-TG/TPO PIA
Combikit (04617)
Bayer Serodia-ATG (07695)
Fujirebio Serodia-ATG (19024)
MarDx Thyroglobulin EIA Test Kit (40235)
Sheild Diagnostics DIASTAT Anti-Tg Kit
(qualitative) (58373)
Sheild Diagnostics DIASTAT Anti-Tg Kit
(quantitative) (58372)
- Analyte: Anti-Thyroid Microsomal
Antibodies (AMA) (0455)
Test System, Assay, Examination:
Cogent Diagnostics AUTOSTAT II
Autoantibody Test Kit (10267)
MarDx Microsomal EIA (40242)
MarDx Microsomal EIA Test Kit (40242)
- Analyte: Anti-Trypanosoma Cruzi
Antibodies (0503)
Test System, Assay, Examination:
Hemagen Chagas' Kit (25159)
- Analyte: Anti-U1-snRNP Antibodies (0501)
Test System, Assay, Examination:
elias usa Varelisa ANA Profile (16110)
- Analyte: B1 positive Lymphocytes (0735)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: B4 positive Lymphocytes (0736)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: Beta-2 Microglobulin (0703)
Test System, Assay, Examination:
The Binding Site B2 Microglobulin RID Kit
(61233)
- Analyte: C-Reactive Protein (CRP) (1001)
Test System, Assay, Examination:
Hemagen CRP 150 EIA (25256)
- Analyte: C1-Esterase Inhibitor (C1INH)
(1051)
Test System, Assay, Examination:
Kent Radial Immunodiffusion Test (34010)
- Analyte: CD3 (IgG1) Positive Lymphocytes
(1111)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: CD3 (IgG1)/B4 Positive
Lymphocytes (1112)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: CD3 (IgG1)/T4 Positive
Lymphocytes (1113)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
- Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: CD3 (IgG1)/T8 Positive
Lymphocytes (1114)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: CD3/CD19/CD45 Positive
Lymphocytes (1120)
Test System, Assay, Examination:
Becton Dickinson FACScan Flow
Cytometer (07497)
Becton Dickinson FACSORT Flow Cytometer
(07637)
- Analyte: CD3/CD4/CD45 Positive
Lymphocytes (1121)
Test System, Assay, Examination:
Becton Dickinson FACScan Flow
Cytometer (07497)
Becton Dickinson FACSORT Flow Cytometer
(07637)
- Analyte: CD3/T4/T8 Positive Lymphocytes
(1122)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
Coulter Epics Flow Cytometer (10246)
- Analyte: CD4 Protein (1124)
Test System, Assay, Examination:
T Cell Diagnostics TRAx CD4 Test Kit
(61195)
- Analyte: Complement C1q (1064)
Test System, Assay, Examination:
Kent Radial Immunodiffusion Test (34010)
- Analyte: Complement C5 (1031)
Test System, Assay, Examination:
The Binding Site Human Complement C5
RID (61206)
- Analyte: Complement, Total (1046)
Test System, Assay, Examination:
Incstar Complement Activation EIA Test
System (CAE) (28404)
- Analyte: Cytomegalovirus Antibodies (1039)
Test System, Assay, Examination:
Centocor CAPTIA CMV-M (10306)
Centocor CAPTIA CMV-TA (EIA) (10300)
Quest International SeraQuest CMV IgG
(52030)
- Analyte: Epstein-Barr Virus Antibodies
(1603)
Test System, Assay, Examination:
Granbio Inc. EBNA IgG EIA Kit (22180)
Gull Laboratories EBNA IgG (Quantitative)
ELISA Test (22168)
Gull Laboratories EBV-EA(D) IgG ELISA
(qualitative) (22172)
Gull Laboratories EBV-EA(D) IgG ELISA
(quantitative) (22169)
Immuno Probe EBNA IgG ELISA (28411)
Incstar EBNA IgG ELISA (28372)
Incstar EBV VCA IgG ELISA (28371)
Incstar EBV VCA IgM ELISA (28373)
- MRL Diagnostics EBNA RIFA Antibody
Test (40202)
Zeus EBNA IgG ELISA Test System (79048)
Zeus EBV-VCA IgM ELISA Test System
(79046)
- Analyte: Helicobacter Pylori Antibodies
(2513)
Test System, Assay, Examination:
Enteric Products HM-CAP EIA Test
(16076)
- Analyte: Hepatitis B Surface Antigen
(HBsAg) (2524)
Test System, Assay, Examination:
Abbott IMX HBsAg Confirmatory (04658)
- Analyte: Immunoglobulins IgA (2803)
Test System, Assay, Examination:
Randox Laboratories IgA (manual) (55203)
- Analyte: Immunoglobulins IgE (2805)
Test System, Assay, Examination:
Hycor HY-TEC Total IgE EIA Assay
(25174)
- Analyte: Immunoglobulins IgG (2806)
Test System, Assay, Examination:
Randox Laboratories IgG (manual) (55205)
- Analyte: Immunoglobulins IgM (2808)
Test System, Assay, Examination:
Randox Laboratories IgM (manual) (55204)
- Analyte: Leukocyte Common Antigen (LCA)
(3756)
Test System, Assay, Examination:
BioTek Sol'n TechMate/ChemMate Spc.
Stain LCA-CD45 (tissue) (07538)
- Analyte: MY4 Positive Lymphocytes (4033)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: Mo2 Positive Lymphocytes (4034)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: Rheumatoid Factor (RF) (5508)
Test System, Assay, Examination:
TheraTest Laboratories EL-RF/3 (IgM-IgG-
IgA) Kit (61157)
- Analyte: Rubella Antibodies (5510)
Test System, Assay, Examination:
Centocor CAPTIA Rubella-G (10305)
Centocor CAPTIA Rubella-M (10304)
- Analyte: T1 Positive Lymphocytes (6157)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
- Analyte: T11 Positive Lymphocytes (6146)
Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

- Analyte: T11/B1 Positive Lymphocytes (6147)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: T11/B4 Positive Lymphocytes (6148)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: T3 Positive Lymphocytes (6149)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: T4 Positive Lymphocytes (6150)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: T4/T8 Positive Lymphocytes (6151)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: T8 Positive Lymphocytes (6152)
Test System, Assay, Examination:
 Coulter EPICS Profile (10329)
 Coulter EPICS Profile II (10219)
 Coulter EPICS XL (10330)
 Coulter EPICS XL-MCL (10331)
- Analyte: Thyroid Peroxidase Autoantibodies (TPO) (6135)
Test System, Assay, Examination:
 ALPCO ORGenTec Anti-TG/TPO PIA Kombikit (04617)
 ALPCO ORGenTec Anti-TPO Elisa (04622)
 ALPCO ORGenTec Anti-TPO PIA (04619)
 Biomerica Anti-Thyroid Peroxidase (Anti-TPO) ELISA (07728)
 Shield Diagnostics DIASTAT Anti-TPO Kit (qualitative) (58377)
 Shield Diagnostics DIASTAT Anti-TPO Kit (semi-quantitative) (58378)
- Analyte: Toxoplasma Gondii Antibodies (6113)
Test System, Assay, Examination:
 BioWhittaker TOXOSTAT Test (07564)
 Centocor CAPTIA Toxo-G (10308)
 Centocor CAPTIA Toxo-M (10307)
- Analyte: Treponema pallidum Antibodies (Includes Reagin) (6115)
Test System, Assay, Examination:
 ADI Visuwell Syphilis Antibody (04546)
 BIOMIRA Diagnostics Visuwell Reagin II (07688)
 Centocor CAPTIA Syphilis-G (10310)
 Centocor CAPTIA Syphilis-M (10309)
- ANALYTE: Varicella-Zoster Virus Antibodies (6704)
Test System, Assay, Examination:
- Gull Laboratories VZV IgG ELISA Test (22170)
Specialty/Subspecialty: Hematology
- Analyte: Activated Partial Thromboplastin Time (APTT) (0409)
Test System, Assay, Examination:
 Behring Pathromtin SL APTT (manual) (07777)
 Ortho SynthASil APTT (manual) (46195)
- Analyte: Alpha-2-Antiplasmin (0463)
Test System, Assay, Examination:
 Medical Laboratory MLA Electra 1400C (40208)
- ANALYTE: Antithrombin III (ATIII) (0456)
Test System, Assay, Examination:
 Helena Laboratories Chrom Z-AT (manual) (25242)
 Helena Laboratories PACKS-4 (25029)
 Instrumentation Laboratory IL ACL Futura System (28395)
 Medical Laboratory MLA Electra 1400C (40208)
- Analyte: Coagulation Factors (1044)
Test System, Assay, Examination:
 Behring Fibrintimer A (07516)
 Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
 Helena Laboratories Chrom Z-Factor VIII:C (manual) (25239)
 Helena Laboratories PACKS-4 (25029)
 Medical Laboratory MLA Electra 1400C (40208)
 Pharmacia Hepar Chromogenix Coamatic Factor VIII (49149)
- Analyte: Coagulation Index, Modified Whole Blood (1128)
Test System, Assay, Examination:
 Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)
- Analyte: Coagulation Index, Modified/Recalcified PRP/PPP (1129)
Test System, Assay, Examination:
 Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)
- Analyte: Fibrin Split Products (Fibrin Degradation) (1904)
Test System, Assay, Examination:
 AGEN Dimertest Gold EIA (04580)
- Analyte: Fibrinogen (1905)
Test System, Assay, Examination:
 Bio/Data MCA 210 (von Clauss Methodology) (07696)
 Bio/Data MCA 310 (von Clauss Methodology) (07697)
- Analyte: Heparin (2518)
Test System, Assay, Examination:
 American Bioproducts ROTACHROM HBPM/LMWH (04583)
 American Bioproducts ROTACHROM Heparin (04584)
 American Bioproducts STACHROM Heparin Assay (04560)
 American Bioproducts STACLOT Heparin (manual) (04582)
 Chromogenix COACUTE Heparin (manual) (10313)
- Analyte: Lupus Anticoagulants (3728)
Test System, Assay, Examination:
 Becton Dickinson BBL Fibrometer (Am.Diag.DDVtest/DVVconfirm) (07691)
 Bio/Data MCA 210 (Am. Diagnostica DVVtest/DVVconfirm) (07692)
 Bio/Data MCA 310 (Am. Diagnostica DVVtest/DVVconfirm) (07693)
 Diagnostica Stago ST4 (Am.Diagnostica DDVtest/DVVconfirm) (13405)
 General Diagnostics Coag-A-Mate X2 (Am.Diag.DVVtest/cfrm) (22179)
 Instrumentation Laboratory IL ACL 300(Am.Diag.DVVtest/cfrm) (28412)
 Instrumentation Laboratory IL ACL 300+(Am.Diag.DVVtst/cfrm) (28413)
 Medical Laboratory MLA Electra 700 (Am.Diag.DVVtest/cfrm) (40228)
 Medical Laboratory MLA Electra 800 (Am.Diag.DVVtest/cfrm) (40229)
 Medical Laboratory MLA Electra 900C(Am.Diag.DVVtest/cfrm) (40230)
 Medical Laboratory MLA Electra1000C(Am.Diag.DVVtest/cfrm) (40231)
- Analyte: Plasminogen (4907)
Test System, Assay, Examination:
 Helena Laboratories Chrom Z-PLG (manual) (25240)
 Helena Laboratories PACKS-4 (25029)
 Medical Laboratory MLA Electra 1400C (40208)
- Analyte: Plasminogen Activator Inhibitor (PAI) (4936)
Test System, Assay, Examination:
 Medical Laboratory MLA Electra 1400C (40208)
- Analyte: Platelet Count (4908)
Test System, Assay, Examination:
 Coulter Z1 (10325)
- Analyte: Protein C (4929)
Test System, Assay, Examination:
 Helena Laboratories Chrom Z-Protein C (manual) (25237)
 Helena Laboratories PACKS-4 (25029)
 Medical Laboratory MLA Electra 1400C (40208)
- Analyte: Protein C Resistance (4973)
Test System, Assay, Examination:
 Chromogenix COATEST APC Resistance (manual) (10286)
- Analyte: Protein S (4930)
Test System, Assay, Examination:
 Diagnostica Stago ASSERACHROM Free Protein S (13404)
 Diagnostica Stago ASSERACHROM Total Protein S (13403)
- Analyte: Prothrombin Time (PT) (4922)
Test System, Assay, Examination:
 Helena Laboratories Thromboplastin Reagent-LI (manual) (25244)
 Ortho RecombiPlasTin II (manual) (46149)
 Pacific Hemostasis ThromboScreen Thromboplastin-DS (manual) (49154)
- Analyte: Red Blood Cell Count (Erythrocyte Count) (RBC) (5502)
Test System, Assay, Examination:
 Coulter Z1 (10325)

- Analyte: Reptilase Time (5521)
Test System, Assay, Examination:
Biopool Venom Time Reagent (manual) (07737)
- Analyte: Reticulocyte Count (5506)
Test System, Assay, Examination:
Becton Dickinson FACSCalibur Flow Cytometer (07639)
Becton Dickinson FACSsort Flow Cytometer (07637)
- Analyte: White Blood Cell Count (Leukocyte Count) (WBC) (7002)
Test System, Assay, Examination:
Coulter Z1 (10325)
- Analyte: White Blood Cell Differential (WBC Diff) (7001)
Test System, Assay, Examination:
IRIS The White IRIS Leukocyte Differential Analyzer (28408)
- Analyte: von Willebrand Factor (6708)
Test System, Assay, Examination:
American Diagnostica Rellplate vWF EID Kit (04662)
- Speciality/Subspeciality:*
Mycobacteriology
- Analyte: Mycobacteria (4024)
Test System, Assay, Examination:
Becton Dickinson BACTEC 9000MB (07746)
- Analyte: Mycobacterium Avium (4008)
Test System, Assay, Examination:
Gen-Probe AccuProbe—M. avium specific (including culture) (22129)
- Analyte: Mycobacterium Avium Complex (4009)
Test System, Assay, Examination:
DynaGen MycoAKT Kit for M. avium Complex (inc. culture) (13383)
Gen-Probe AccuProbe—M. avium complex (including culture) (22128)
Syngene Snap Culture ID Diagnostic Kit/M. avium complex (58069)
- Analyte: Mycobacterium Gordoniae (4011)
Test System, Assay, Examination:
Gen-Probe AccuProbe—M. gordonae (including culture) (22130)
- Analyte: Mycobacterium Intracellulare (4012)
Test System, Assay, Examination:
Gen-Probe AccuProbe—M. intracellulare specific (inc cult) (22131)
- Analyte: Mycobacterium Kansasii (4014)
Test System, Assay, Examination:
DynaGen MycoAKT Kit for M. kansasii (including culture) (13384)
Gen-Probe AccuProbe—M. kansasii (including culture) (22127)
- Analyte: Mycobacterium Tuberculosis Complex (4015)
Test System, Assay, Examination:
Becton Dickinson BACTEC TB System (NAP Differentiat. Test) (07084)
Becton Dickinson BACTEC TB System (Susceptibility Test) (07222)
DynaGen MycoAKT Kit for M. tuberculosis Complex (inc. cult) (13385)
- Gen-Probe AccuProbe—M. tuberculosis complex (inc culture) (22132)
Syngene Snap Culture ID Diagnostic Kit/M. tuberculosis cplx (58152)
- Speciality/Subspeciality: Mycology*
- Analyte: Fungi—Fungal Elements Only (1910)
Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)
- Analyte: Yeast (7601)
Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)
- Speciality/Subspeciality: Parasitology*
- Analyte: Acanthamoeba (0523)
Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)
- Analyte: Cryptosporidium (1109)
Test System, Assay, Examination:
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/spectro) (04655)
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/visual) (04654)
- Analyte: Entamoeba Histolytica (1631)
Test System, Assay, Examination:
TechLab Entamoeba Test (spectrophotometer) (61169)
TechLab Entamoeba Test (visual) (61168)
- Analyte: Giardia lamblia (2222)
Test System, Assay, Examination:
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/spectro) (04655)
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/visual) (04654)
TechLab CeLLabs Giardia-Cel IF Test (61218)
Trend Scientific Giardia Direct Detection RS Test (61204)
- Analyte: Microsporidia (4039)
Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)
- Analyte: Pneumocystis (4926)
Test System, Assay, Examination:
DAKO Quick Staining Kit for Pneumocystis carinii (13376)
Remel Calcofluor White Stain Kit (55206)
- Speciality/Subspeciality: Toxicology / TDM*
- Analyte: Amphetamines (0428)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
STC Diagnostics Amphetamines M-Plate EIA (Sudormed Patch) (58374)
- Analyte: Barbiturates (0701)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
- Analyte: Benzodiazepines (0702)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Bio-Rad REMEDI HS-Urine Benzodiazepine Assay (07744)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
- Analyte: Cannabinoids (THC) (1009)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Meco Industries MECTEST Cannabinoid Radioimmunoassay (40234)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
- Analyte: Cocaine Metabolites (1023)
Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)

Analyte: Streptococcus, Group A (From Throat Only) (5828)

Test System, Assay, Examination:

Quidel QuickVue In-Line One-Step Strep A Test (25 test kit) (52036)

Speciality/Subspeciality: Endocrinology

Analyte: Ovulation Test (LH) by Visual Color Comparison (9461)

Test System, Assay, Examination:

Quidel Conceive Ovulation Predictor (52029)

Syntron Bioresearch BeSure OneStep Ovulation Predictor Kit (58365)

Analyte: Urine HCG by Visual Color Comparison Tests (9642)

Test System, Assay, Examination:

3C Diagnostics MIT One-Step Immediate Pregnancy Test (01001)

AmeriTek One step dBEST Dipstick (04661)

AmeriTek One step dBEST Disk (04659)

AmeriTek One step dBEST Midstream (04660)

Applied Biotech SureStrip hCG Pregnancy Test (04635)

Bionike A/Q Pregnancy Test (07636)

Boehringer Mannheim Accu-Stat hCG (07710)

Excel Scientific OneStep Urine/Serum hCG Preg Module Test (16133)

Horizon Diagnostics Pregna-Plus hCG (25225)

Immunostics immuno hCG Detector Pregnancy Test (28418)

Immunostics immuno hCG Detector Stix (28417)

International Newtech Develop. MiniStrip HCG ONESTEP (28394)

Johnson & Johnson CDI SureCell hCG-Urine (31067)

Johnson & Johnson CDI SureCell hCG-Urine/Serum (31066)

Medix Biotech CONTRAST hCG Urine/Serum Test (40215)

Medix Biotech Rapid hCG (urine/serum) (40224)

Mizuho USA Quick Checker hCG Pregnancy Test (40207)

Quidel CAMEO Home Pregnancy Test (52031)

Quidel CARDS Q.S. hCG (52032)

Quidel Concise Performance Plus hCG (52033)

Sea-Band Pregnancy Test (58362)

Selfcare early Pregnancy test (test casset) (58401)

Selfcare early Pregnancy test (test stick) (58400)

Simex Medical DiagnoStrip hCG (58397)

Syntron Platform OneStep Pregnancy Test (58407)

Worldwide Medical First Check hCG (cassette) (70181)

Worldwide Medical First Check hCG (test stick) (70182)

Wyntek Diagnostics OSOM Pregnancy Test for Home Use (70175)

Wyntek Diagnostics OSOM hCG-Combo Test (70177)

Wyntek Diagnostics OSOM hCG-Urine Test (70174)

Speciality/Subspeciality: General Chemistry

Analyte: Body Fluids (Other Than Blood) pH (0731)

Test System, Assay, Examination:

All Qualitative Color Comparison pH Testing (04542)

Analyte: Cholesterol (1020)

Test System, Assay, Examination:

Boehringer Mannheim Accu-Chek

InstantPlus Cholesterol (07776)

ChemTrak AccuMeter (10165)

Cholestech L.D.X. (10170)

Johnson & Johnson ADVANCED CARE

Cholesterol Test (31014)

Analyte: Fecal Occult Blood (9191)

Test System, Assay, Examination:

Dipro Diagnostics Hemdetect (13308)

Immunostics hema screen (28419)

Analyte: Gastric Occult Blood (2211)

Test System, Assay, Examination:

SmithKline Gastroccult (58217)

Analyte: Glucose (2203)

Test System, Assay, Examination:

Cholestech L.D.X. (10170)

HemoCue B-Glucose System (25112)

Analyte: Glucose Monitoring Devices (FDA Cleared/Home Use) (9221)

Test System, Assay, Examination:

Bayer GLUCOMETER ELITE Blood Glucose Meter (07685)

Bayer GLUCOMETER ENCORE QA+ Blood Glucose Meter (07689)

Chronimed Supreme Blood Glucose Meter (10315)

Chronimed Supreme Blood Glucose Test Strips (10316)

Johnson & Johnson Lifescan ONE TOUCH II Bld Glucose Monitor (31017)

Johnson & Johnson Lifescan ONE TOUCH II Glucose Test Strips (31018)

LifeScan ONE TOUCH Profile Complete Diabetes Tracking Sys. (37101)

Lifescan SureStep Blood Glucose Monitoring System (37090)

MediSense MediSense 2 Blood Glucose Testing System (40214)

MediSense Precision QID Blood Glucose Testing System (40213)

Analyte: HDL Cholesterol (2550)

Test System, Assay, Examination:

Cholestech L.D.X. (10170)

Analyte: Microalbumin (4019)

Test System, Assay, Examination:

Boehringer Mannheim Chemstrip Micral (urine dipstick) (07717)

Analyte: Triglyceride (6118)

Test System, Assay, Examination:

Cholestech L.D.X. (10170)

Speciality/Subspeciality: Hematology

Analyte: Erythrocyte Sedimentation Rate, Nonautomated Waived (9161)

Test System, Assay, Examination:

Becton Dickinson SedItainer ESR System (07694)

Analyte: Spun Microhematocrit (9581)

Test System, Assay, Examination:

StatSpin Technologies CritSpin (58368)

Vulcon Technologies Microspin 24 (67098)

Speciality/Subspeciality: Urinalysis

Analyte: Urine Dipstick or Tablet Analytes, Nonautomated (9641)

Test System, Assay, Examination:

Chemtech Labs URISTRIP (10294)

Genesis Labs DIA SCREEN Urine Reagent Strips (22176)

TECO Diagnostics Urine Reagent Strips 1 (61151)

TECO Diagnostics Urine Reagent Strips 8 (61187)

TECO Diagnostics Urine Reagent Strips 9 (61219)

Announcement of Boards Approved by HHS

In the personnel regulations at § 493.1443(b)(3)(i), individuals with an earned doctoral degree in a chemical, physical, biological or clinical laboratory science and certification by a board approved by HHS may qualify as a laboratory director. Under § 493.1455(a), individuals who meet the director qualification requirements of § 493.1443(b)(3)(i) may qualify as a clinical consultant. Under these provisions, four boards have been approved by HHS, and HHS has authority to recognize any certification board having comparable requirements. The American Board of Histocompatibility and Immunogenetics (ABHI) and the American Board of Medical Genetics (ABMG) applied for approval and submitted documentation on the education, training and experience required for certification. Both boards were determined to have credentialing requirements comparable to the boards currently approved by HHS, and ABHI and ABMG were subsequently notified that they meet CLIA requirements for board approval.

In this Notice we are announcing HHS approval of ABHI and ABMG certification to qualify individuals as laboratory directors and clinical consultants under the CLIA regulations. Individuals with a doctoral degree in a chemical, physical, biological or clinical laboratory science and certification by ABHI or ABMG meet the CLIA qualification requirements to serve as a laboratory director or clinical consultant.

[FR Doc. 96-17097 Filed 7-5-96; 8:45 am]

BILLING CODE 4163-18-P

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for STD Faculty Expansion, Program Announcement 616; 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 committee meeting.

NAME: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreements for STD Faculty Expansion, Program Announcement 616.

TIME AND DATE: 8:30 a.m.-5 p.m., August 8, 1996.

PLACE: 11 Corporate Square, Building 11, Conference Room A, Corporate Square Boulevard, Atlanta, Georgia 30329.

STATUS: Closed.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and

evaluation of applications received in response to Program Announcement 616.

The meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. 552b(c) (4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92-463.

CONTACT PERSON FOR MORE INFORMATION: John R. Lehnerr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, M/S E07, Atlanta, Georgia 30333, telephone 404/639-8025.

Dated: July 1, 1996.
Carolyn J. Russell,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-17220 Filed 7-5-96; 8:45 am]

BILLING CODE 4163-18-M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The Office of Child Support Enforcement OCSE-156 Child Support Enforcement Program Quarterly Data Report and OCSE-158 Child Support Enforcement Program Annual Data Summary Report.

OMB No.: 0970-0057.

Description: The authority to collect and report the information requested on these forms is found in sections 452(a)(4), 452(a)(5), 452(a)(10), and 469 of the Social Security Act. These data are highly aggregated used in a management function to establish the effectiveness and efficiency of State child support programs. The Federal Office of Child Support Enforcement will use the data to carry out its oversight role and submit the Annual Report to Congress.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-156	54	4	3.7	799.2
OCSE-158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.0.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests 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 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 on 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 within 60 days of this publication.

Dated: June 27, 1996.
Larry Guerrero,
Director, Office of Information Services.
[FR Doc. 96-17190 Filed 7-5-96; 8:45 am]
BILLING CODE 4184-01-M

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: June 1996

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and

combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of June, 1996. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since June 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider

comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205-3598 PHONE: (202) 401-9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the Federal Register (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of June, 1996

As part of our procedures, we are publishing a monthly notice in the Federal Register of all new and pending proposals. This notice contains proposals for the month of June, 1996.

PROJECT TITLE: California—Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

DATE RECEIVED: 3/14/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Glen Brooks, (916) 657-3291.

PROJECT TITLE: California—Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

DATE RECEIVED: 11/9/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657-2367.

PROJECT TITLE: California—Assistance Payments Demonstration Project/California Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to California to allow two additional AFDC benefit reductions: (1) reduce the Maximum Aid Payment (MAP) by 4.9 percent across-the-board statewide; and (2) divide California counties into two regions based on housing costs, and reduce both the Need Standard and the MAP in the region with the lower costs. In addition, the State is requesting blanket authority for future reductions in AFDC payment levels in conjunction with welfare reform state law changes.

DATE RECEIVED: 3/13/96.

TYPE: AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657-2367.

PROJECT TITLE: California—Assistance Payments Demonstration Project/California Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to allow one additional provision: income of a senior parent living in the same household with a minor parent with a dependent child will not be deemed to the minor parent's child.

DATE RECEIVED: 3/13/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657-2367.

PROJECT TITLE: Georgia—Jobs First Project.

DESCRIPTION: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.

DATE RECEIVED: 7/5/94.

TYPE: AFDC.

CURRENT STATUS: Pending (not previously published).

CONTACT PERSON: Nancy Meszaros, (404) 657-3608.

PROJECT TITLE: Georgia—Fraud Detection Project.

DESCRIPTION: Would seek to reduce the incidence of fraud in the AFDC and Food Stamps programs by imposing stronger penalties on individuals convicted of committing such fraud. Georgia proposes to change the fraud penalty to one year for the first violation and permanently for the second violation.

DATE RECEIVED: 7/1/96.

TYPE: AFDC.

CURRENT STATUS: New.

CONTACT PERSON: Betty Williams-Kirby, (404) 657-3604.

PROJECT TITLE: Hawaii—Pursuit Of New Opportunities (PONO).

DESCRIPTION: Would, limit benefits to 60 months in a lifetime for all households except those exempt from work requirements; for all non-exempt households, progressively reduce the grant amount, by 20% after 2 months, then in annual stages to 50% in the fifth year of eligibility; exclude the income of dependent, minor student recipients from the 185% Gross Income Test; require all non-high school graduate or non-GED certified minor parent heads of households to participate in educational activities; use a Benefit Reduction Rate formula to allow participants to offset progressive grant reductions by keeping a larger portion of any earned income; eliminate all of AFDC-UP categorical requirements; strengthen JOBS participation requirements by eliminating certain exemptions such as,

remoteness due to excessive travel time, current work activity, the non-principal earner in a two parent household, or full-time VISTA participants, etc.; allow families to retain up to \$5,000 in resources; disregard one motor vehicle, regardless of equity value, needed for self-sufficiency purposes; delete the \$50 child support pass-through; disregard all student loans, grants and scholarships as income.

DATE RECEIVED: 05/07/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Kristine Foster, (808) 586-5729.

PROJECT TITLE: Indiana—Impacting Families Welfare Reform Demonstration—Amendments.

DESCRIPTION: Statewide, proposes expansions and amendments to current demonstration to impose a lifetime 24-month limit on cash assistance and categorical Medicaid eligibility (12 months for resident alien); allow 1 month AFDC credit (to a maximum of 24 at any one time) for each 6 consecutive months full-time employment; count each month of AFDC receipt from another state within the previous 3 years as 1 month against the lifetime limit; restrict permissible "specified relatives" for AFDC children and minor parents; extend AFDC, Medicaid, and food stamp fraud disqualification penalties; establish 3 unexcused absences per year as the statewide definition of unacceptable school attendance; provide a voucher equal to 50% of assistance amount for family cap child for goods and services related to child care; divert AFDC grants to subsidize child care costs; establish an option for an employed AFDC recipient to receive guaranteed child care or an AFDC payment equal to the family's benefit before employment; require a child's mother to establish paternity as a condition of eligibility for the child and the caretaker; establish additional conditions of eligibility for AFDC; impose penalties for illegal drug use; base CWEP hours on the combined value of AFDC and Medicaid assistance; make JOBS volunteers subject to the same sanctions as mandatory participants; continue eligibility for AFDC recipients until countable income reaches 100% of the federal poverty guidelines; expand voluntary quit definition and penalties; impose income limits on transitional Medicaid and child care and limit each to 12 months in a person's lifetime; with some exceptions, deny Medicaid under all coverage provisions to those determined ineligible as a result of AFDC welfare reform provisions; restrict Medicaid

payments made to employees with employer's health care benefits to the lesser of the employee's insurance premium or the amount the state would otherwise pay; and require minor parents to live with a legally responsible adult and count the income and resources of non-parent adults. Additional provisions: Food Stamp recipients could be required to participate CWEP and job search; increase AFDC and Food Stamp penalties for non-compliance with CWEP and job search; require cooperation with child support as condition of eligibility for Food Stamps.

DATE RECEIVED: 12/14/95; Amendment received 2/6/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: James H. Hmurovich, (317) 232-4704.

PROJECT TITLE: Kansas—Actively Creating Tomorrow for Families Demonstration.

DESCRIPTION: Amended pending demonstration to provide that the demonstration would: replace \$30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income, income and resources of children in school and interest income; count income and resources of adults, and at State option children, who receive SSI; exempt one vehicle without regard for equity value; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; eliminate eight week job search limitation; allow alcohol and drug screening and treatment as a JOBS activity; eliminate the 20-hour work requirement limit for parents with children under 6; delay the effective date of changes in household composition; make work requirements in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities and violations of employment and JOBS requirements.

DATE RECEIVED: 7/26/94;

amendment received 4/30/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Diane Dystra, (913) 296-3028.

PROJECT TITLE: Maryland.

DESCRIPTION: Statewide, would expand, with some modifications, previously approved Family Investment Program (FIP) pilot county provisions to be statewide and introduce new provisions: replace the current \$90 and \$30-and-one-third exclusions with a flat 20% earned income deduction, 50% for self-employed earned income; limit the

child care disregard to \$175 in all cases; allow case managers to set AFDC certification periods up to 1 year and require eligibility to be re-established before the end of each certification period; modify JOBS exemption requirements; allow \$2,000 in countable resources and exclude one vehicle per household, life insurance, and certain real property; count stepparent income only if it is more than 50% of the poverty level; allow non-custodial parents and stepparents to participate in JOBS; provide welfare avoidance grants of up to 3 months benefit amount (up to 12 months in special circumstances); allow IV-A child care funds in lieu of AFDC for families diverted from cash assistance; impose immediate full-family sanctions for fraud and for failure to cooperate with JOBS or child support enforcement requirements; reduce the adverse notification period to 5 days; eliminate the \$50 child support pass-through; allow only 1 assistance unit per family or payee; eliminate deprivation as an eligibility factor; change treatment of lump sums; eliminate JOBS assessment and employability plans; and modify JOBS program requirements.

DATE RECEIVED: 4/26/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Kathy Cook, (410) 767-7055.

PROJECT TITLE: To Strengthen Michigan Families (Amendments).

DESCRIPTION: Statewide, would require attendance at a joint orientation held by the Michigan Jobs Commission and the Family Independence Agency for all adult AFDC, Refugee Cash Assistance (RCA), and food stamp applicants and recipients as a condition of eligibility; during the first 2 months of eligibility for benefits, remove full family's AFDC, RCA, and food stamp benefits for non-compliance with JOBS or Food Stamp Program (FSP) employment and training (E&T) requirements, for a minimum of one month; after the first two months of eligibility, reduce grant by 25 percent for noncompliance with work requirements and after 4 months of noncompliance close the case for a minimum of one month or until compliance; after 4 months non-compliance with child support enforcement requirements close the case until compliance; increase the asset limit to \$3,000, count only liquid assets, and treat all lump sums as liquid assets rather than income for AFDC and FSP; modify redetermination requirements for AFDC and FSP; deny AFDC benefits to persons who have entered the State

for employment purposes but do not intend to remain in Michigan; provide for the immediate effect of negative actions, allow specific case changes to be reflected in the month following the month of change, and create an agency overpayment standard for recovery purposes of \$1,000 for AFDC and FSP; modify existing AFDC assistance unit composition rules to include stepparents, stepsiblings, spouses and certain children age 18-19, and to exclude non-parent caretakers when the parent (except a minor parent) is in the home; allow a dependent child to live with an unrelated caretaker; eliminate the 185 percent of need test and apply the same earned income disregards to applicants and recipients; budget income of mandatory ineligibles; replace the dependent care disregard with vendor payments based on the Child Day Care Services program eligibility requirements; replace the 75th percentile rule for child care costs with reimbursement rates that represent reasonable child care market rates; eliminate deprivation as an eligibility criterion; modify QC review requirements; provide AFDC benefits to a pregnant woman starting at any point in the pregnancy rather than just the last trimester; use 100 percent title IV-A funds to provide advance EITC payments to eligible, employed AFDC recipients; budget the actual sponsor's contribution to a sponsored alien when determining the client's AFDC and food stamp eligibility and treat contribution as unearned income of the sponsored alien when budgeting against the needs of the group; extend AFDC eligibility only to U.S. citizens, legal permanent resident aliens, and certain other legal entrants; apply additional income exclusions for AFDC and FSP for a variety of income types, including inconsequential income, donations based on need, dependent child earnings, adoption subsidies, child support refunds, training payments, etc.; require reporting of gross income changes for AFDC and FSP only if \$100 or more; define dependent child as a child who is unemancipated according to state law; provide law enforcement officers with the address of an AFDC or food stamps recipient who is a fugitive felon or who the law enforcement office believes has a fugitive felon living in the home; deny assistance to any AFDC or food stamp applicant or recipient who is identified as a fugitive felon; pay current monthly child support collections directly to the family and budget them against the AFDC grant, after the \$50 disregard is applied; revise child support distribution cycle; extend

transitional child care to 24 months and eliminate the requirement that a family receive AFDC in at least 3 of the 6 months immediately preceding the first month of AFDC ineligibility; place title IV-E funding (except for adoption subsidy payments) in a block grant; use JOBS funds to pay for transportation and other employment-related expenses; assign an individual to CWEP for 20 hours per week irrespective of the family's AFDC benefit level or receipt of child support; count all mandatory and optional JOBS components toward the AFDC-UP participation rate; expand the JOBS target population; waive employment and training exemptions for RCA participants to match the AFDC waiver granted to Michigan in October 1994; adopt the current AFDC waiver proposal regarding earned income disregards for RCA; limit the groups eligible for Medicaid; provide 12 months transitional Medicaid for AFDC cases that close due to child support payments and eliminate the requirement that a family receive AFDC in at least 3 or the 6 months before ineligibility; allow an age test for children's Medicaid eligibility rather than a birth date test; limit automatic Medicaid coverage to newborns of Medicaid recipients; include blind individuals in the definition of disability for Medicaid eligibility; determine a family's Medicaid eligibility recognizing that it operates as a single economic unit and use income and resource standards based on family composition rather than separate standards for individual members; define countable income and distinguish income from resources for Medicaid to be consistent with AFDC proposal; eliminate the burial fund and burial space exclusions for Medicaid; provide for long-term care through a combination of private insurance and Medicaid; modify Medicaid policy regarding trusts; allow State agency's disability or blindness determination for non-cash Medicaid clients to be final; eliminate advance notice requirement for Medicaid negative actions; and allow Medicaid Buy-In for persons with no employer-based coverage whose transitional Medicaid coverage ends.

DATE RECEIVED: 6/27/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: New.

CONTACT PERSON: Dan Cleary, (517) 335-0015.

PROJECT TITLE: Minnesota—Work First Program.

DESCRIPTION: In pilot counties, would provide vendor payments in lieu of regular AFDC benefits for applicants' rent and utilities for up to six months; sanction for at least six months job-

ready applicants who fail to comply with job search and other applicants who fail to participate in JOBS orientation; and require part-time CWEP of unemployed, nonexempt job-ready individuals who fail to participate in job search for 32 hours/week or who after eight weeks of job search are not employed for at least 32 hours/week or not self-employed with a net income equal to the family's AFDC benefit. Individuals who refuse to participate in CWEP or are terminated from a CWEP job would incur a whole family sanction and become ineligible for AFDC for at least six months. Non-job-ready participants would be assigned appropriate education and training. Post-placement services would be provided for up to 180 days and Transitional Child Care and Medicaid without regard to AFDC receipt in 3 of the 6 months preceding ineligibility.

DATE RECEIVED: 4/4/96.

TYPE: AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Gus Avenido, (612) 296-1884.

PROJECT TITLE: Minnesota—AFDC Barrier Removal Project.

DESCRIPTION: Statewide, would expand AFDC-UP eligibility; treat minor parents living with a caretaker parent on AFDC as a separate filing unit and disregard the caretaker parents' earned income up to 200 percent of the federal poverty guideline; disregard earned income of dependent children who are at least half-time students as well as all their savings deposited into an individual development account; increase the auto-equity limit to \$4,500; cease recovering overpayments (once every two years per case) due to an individual's new employment resulting in ineligibility; and determine AFDC benefit amount for a family in which all members have resided in the State for less than 12 months based on the payment standard of the state of immediate prior residence if less than Minnesota's. Minnesota has amended this application to include a proposed provision in which families who have resided in the State of Minnesota for less than 30 days would not be eligible for AFDC with the following exceptions: (1) either the child or caretaker relative was born in Minnesota; (2) either the child or caretaker relative has resided in the State for 365 consecutive days in the past; (3) either the child or the caretaker relative went to Minnesota to join a close relative who has resided in the State for at least one year; or (4) the caretaker relative went to Minnesota to accept a bona fide offer of employment for which he or she was eligible. For

purposes of the exemption close relative is defined as a parent, grandparent, brother, sister, spouse, or child. The State would allow county agencies to waive the 30 day requirement in cases of emergency or where unusual hardship would result from denial of benefits.

DATE RECEIVED: 4/4/96; amendment received 5/28/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Ann Sessoms, (612) 296-0978.

PROJECT TITLE: New York—Learnfare Program.

DESCRIPTION: Would phase in statewide a provision that would require AFDC children in grades 1 through 6 to attend school regularly by mandating a sanction of removal of the child's needs from the budget group for three months in those cases, where after counseling, the child has 5 or more unexcused absences in a quarter. Benefits for parents will be terminated, for failure without good cause, to sign the release form for educational records.

DATE RECEIVED: 5/31/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Jeff Gaskell, (518) 486-3415.

PROJECT TITLE: New York—Intentional Program Violation Demonstration.

DESCRIPTION: Statewide would change the sanction for Intentional Program Violations making the period of ineligibility of the person committing the violation dependant on both the number of offenses and the amount of the overpayment incurred as a result of the violation.

DATE RECEIVED: 5/31/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Jeff Gaskell, (518) 486-3415.

PROJECT TITLE: Oklahoma—Welfare Self-Sufficiency Initiative.

DESCRIPTION: In four pilots conducted in five counties each, would 1) extend transitional child care to up to 24 months; 2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; 3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and 4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.

DATE RECEIVED: 10/27/95.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Raymond Haddock, (405) 521-3076.

PROJECT TITLE: Pennsylvania—School Attendance Improvement Program.

DESCRIPTION: In 7 sites, would require school attendance as condition of eligibility..

DATE RECEIVED: 9/12/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Patricia H. O'Neal, (717) 787-4081.

PROJECT TITLE: Pennsylvania—Savings for Education Program.

DESCRIPTION: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

DATE RECEIVED: 12/29/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Patricia H. O'Neal, (717) 787-4081.

PROJECT TITLE: Tennessee—Families First.

DESCRIPTION: Description: Statewide, would impose 18 month time limit with 60 month lifetime limit on cash assistance for non-exempt families (extensions available under certain circumstances); require full-time (40 hours) work or combination of work and other activities such as education, training, or job search, unless exempt; eliminate many JOBS exemptions including lowering youngest-child exemption to those with a child less than 16 weeks of age; remove limits on periods of job search; impose a family cap with no increase in benefits for additional children; require unmarried teen parents without high school diploma or GED to participate in education or other approved activity; deny AFDC for three months if recipients voluntarily quit job or if applicant voluntarily quits employment within two months of AFDC application; impose whole family sanction for noncompliance with employment, training or work preparation activities; impose sanctions without a prior conciliation period; provide transitional child care and transitional Medicaid for 18 months and without regard to months of AFDC receipt; change earned income disregards; eliminate the 100-hour rule, work history and quarters of work requirements when AFDC recipient marries and disregard new stepparent's income up to set limit; hold harmless

child support arrearages owed by the new husband/wife to his/her child in the new family unit as long as the parent continues to reside in the home; require that applicants and recipients sign Personal Responsibility Plan as condition of eligibility and assure that children attend school, receive regular immunizations and health checks, and the caretaker cooperates with child support enforcement; impose significant sanction for failure of children to attend school or obtain immunizations; impose whole family sanction for failure to cooperate with child support enforcement; deny AFDC for 10 years for those convicted of fraudulently receiving benefits from two states simultaneously; allow low-income entrepreneurs to establish special accounts up to \$5,000; conform AFDC and Food Stamp rules by increasing resource limit to \$2,000 and counting lump sum income as a resource in the month received and after, if retained; and increase auto limit to \$4,600. In 12 counties allow individual development accounts up to \$5,000 and in 1 county operate a Responsible Fatherhood Demonstration Pilot using IV-D funds.

DATE RECEIVED: 5/1/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Glenda Shearon, (615) 313-5652.

PROJECT TITLE: Utah—Single-Parent Employment Demonstration (Amendments).

DESCRIPTION: Would amend the current Single Parent Employment Demonstration (SPED), requiring preschool children to be immunized and other children to attend school; considering as a single filing unit each family with a child in common, including all children in the household related to either parent; permitting parents removed from the grant due to non-cooperation or fraud to remain eligible for JOBS services, including support services; and allowing a "best estimate" of earnings in lieu of actual earnings so long as estimate is within \$100 of actual earnings. These amendments would initially be limited to the Kearns office and later expanded to other SPED sites.

DATE RECEIVED: 2/7/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Bill Biggs, (801) 538-4337.

PROJECT TITLE: Utah—Single Parent Employment Demonstration (Amendments).

DESCRIPTION: Would amend the current Single Parent Employment Demonstration, establishing a 36 month

lifetime limit on a family's receipt of AFDC, with exceptions; and count toward the time limit months of AFDC receipt in another state.

DATE RECEIVED: July 2, 1996.

TYPE: AFDC.

CURRENT STATUS: New.

CONTACT PERSON: Bill Biggs—(801) 538-4337.

PROJECT TITLE: Virginia—Virginia Independence Program (Amendments).

DESCRIPTION: Would amend the Virginia Independence Program to require AFDC applicants and recipients (including specified relatives other than a parent) to provide information sufficient to identify the non-custodial parent. Failure to provide the required information would result in sanctions. In any case where an applicant/recipient does not claim good cause or good cause does not exist, an affidavit from the custodial parent attesting to the lack of information about the non-custodial parent/putative father, in and of itself, would not meet the definition of cooperation. If the first two genetic tests exclude the named putative fathers, the State will impose a sanction until paternity is established. If a relative other than the parent maintains the he does not know the identity of the child's parent and has no way to help identify the parent, the sanction would not be imposed.

DATE RECEIVED: 5/24/96.

TYPE: AFDC.

CURRENT STATUS: Pending (amended provisions not previously published).

CONTACT PERSON: Barbara Cotter, (804) 692-1811.

PROJECT TITLE: West Virginia—West Virginia Works.

DESCRIPTION: Statewide, would extend transitional child care to 24 months for families who are employed and otherwise eligible. In selected counties, provide a one-time diversion payment in lieu of AFDC; require development of a personal responsibility contract for AFDC applicants and recipients, and non-public assistance cases eligible for Food Stamps, as a condition of eligibility which will outline the assessed needs of the participant; require at least 20 hours of work participation per week by non-exempt parents over age 20, and require parents under age 20 to remain in school until they graduate or obtain a GED, with limited exemptions; work requirements for parents over 20 without a high school diploma or GED would not have to be coupled with education; require child immunization, school attendance and satisfactory progress and community service

activities; time limit AFDC benefits based on a time frame for achieving goals not to exceed a 60 month lifetime limit on cash assistance for non-exempt families, with some extensions; impose fiscal sanctions if the adults fail to meet the terms of their personal responsibility contract without good cause or through fraud equal to a one third reduction in AFDC benefits for 3 months for the first sanction, a two thirds reduction in AFDC benefits for 3 months for the second sanction, and case closure until participation occurs for the third sanction; eliminate the JOBS conciliation requirement; increase by 10% the AFDC monthly cash benefit to families where both the husband and wife are living together and caring for her/his children; reduce to 75% the AFDC monthly cash benefit to families where there is another adult present in the household but not eligible for inclusion in the AFDC calculation; eliminate many JOBS exemptions, and make most remaining exemptions temporary, including allowing only a one-time exemption for children under 2 years of age (only 6 month exemptions will be provided for additional children); require minor parents to live at home or in an adult-supervised setting, attend and maintain satisfactory progress in an educational activity to complete high school, GED or vocational training; increase the allowable asset level to \$5,000 and exempt one vehicle regardless of value; expand eligibility for transitional child care; allow a family to be eligible for transitional child care for up to 30 days for job search purposes, if they lose a job with good cause; for AFDC/UP, eliminate the requirement that the unemployed parent have a recent attachment to the labor force, and not work more than 100 hours per month; count all income received by any member of the family which can be used at the discretion of the household, including the first \$50 of child support and SSI payments; increase earned income disregards to enable families to retain benefits up to 50% of the Federal poverty level; eliminate the 8 week limitation on job search activities; allow the State to extend transitional medical coverage to 24 months; and transfer the cash value of Food Stamp benefits for AFDC recipients to a wage pool for a voluntary subsidized employment activity.

DATE RECEIVED: 7/1/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: New.

CONTACT PERSON: Sue Buster, (304) 558-3186.

PROJECT TITLE: Wisconsin—Work Not Welfare and Pay for Performance Projects (Amendments).

DESCRIPTION: Statewide, would lower the JOBS exemption from a parent whose youngest child is one year old or younger to a parent whose youngest child is 12 weeks old or younger; require up to 40 hours a week in CWEP regardless of the amount of the family's AFDC grant and require participation in substance abuse and mental health treatment, as appropriate; include intentional failure or voluntary quit in a work component as a failure to cooperate with JOBS and apply JOBS program sanctions to the entire family; and limit AFDC receipt to 60 months in a lifetime, with exemptions and case-by-case extensions. The state would extend child care to families earning up to 165 percent of poverty with graduated co-payments based on the cost of care, and change IV-A cases headed by a non-needy non-legally responsible relative to IV-E cases and provide cases headed by an adult SSI recipient a special child-only grant supplement in lieu of the regular AFDC payment for the child. Both types of cases would be exempt from the time limit and work requirements. Further, the state would require minor parents to live with a parent or in an adult-supervised setting. Also the state would establish a competitive process for selection of contractors to administer county programs.

DATE RECEIVED: 5/8/96;

Amendments received 5/17/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Jean Sheil, (608) 266-0613.

PROJECT TITLE: Wisconsin—Wisconsin Works (W2).

DESCRIPTION: Statewide, would establish performance standards for the administration of Wisconsin Works (W2) along with a competitive process for selection of contractors to administer county programs. The State would provide—but not guarantee—work positions, child care and health care coverage to families, (as defined by the State,) whose gross income does not exceed 115 percent of the federal poverty level (FPL), whose resources do not exceed \$2,500 (excluding a homestead), and whose total auto equity assets do not exceed \$10,000, with a 60-day State residency requirement for eligibility. The State would count all earned and unearned income, including child support (which will be paid directly to the custodial parent), except for EITC when determining W2 eligibility. The State would require

participation in substance abuse and mental health treatment, as appropriate; exempt from a work requirement parents with a child less than 12 weeks old; and provide for an appeal process for W2 eligibility and benefit decisions. The State would review an individual W2 agency's financial eligibility decision only if the applicant petitions the State within 15 days of the decision and would not pay benefits pending a decision. Applicants would be required to search for unsubsidized employment during eligibility determination, and would be denied eligibility if they refused a bona fide offer of employment in the 180 days prior to application. The State would automatically refer all W2 participants to child support for services. The State would require minor parents to live with a parent or in an adult-supervised setting to receive W2 non-employment/non-cash benefits, e.g., financial planning assistance, case management; but minor parents would not be eligible for W2 employment/cash benefits. Teen children must attend school regularly. The state would provide children whose parents are SSI recipients a payment of \$77.

The W2 payment amount would be determined according to job placement: unsubsidized job, trial job (including up to \$300 per month wage subsidy to employer), community service job (benefit of \$555 per month), and transitional placement (benefit of \$518 per month). Community service Jobs would require 30 hours per week of work plus 10 hours per week of education and training; transitional placement jobs would require 28 hours per week of work plus 12 hours of education and training. In addition CWEP participation would be increased up to 40 hours per week. The State would sanction individuals \$4.25 per each hour of non-participation in work requirements. In addition sanctions would be imposed upon the entire family for refusal to participate, without good cause, in a W2 employment position. Three refusals to participate in any W2 employment category would result in permanent ineligibility for that category. To assist families with one-time expenses, the State would provide Job Access Loans for employment support needs, e.g., car repair, uniforms, etc; and would extend child care to families earning up to 165 percent of poverty with graduated co-payments based on family income and the category of care used. Child care would only be provided to children under 13.

The State would limit participation to 24 months in any one W2 employment position and would limit lifetime eligibility for benefits to 60 months,

with extensions on a case-by-case basis; the 60-month limit would apply to certain JOBS participants beginning July 1, 1996. The State would change AFDC cases headed by a non-legally responsible relative to a IV-E case; provide job search assistance and case management to non-custodial parents with a child support order; impose stricter sanctions for non-cooperation with child support; and permanently deny W2 employment after three Intentional Program Violations. Benefit overpayments will be recouped for intentional violations at a rate set by the State. Corrective payments would not be made for underpayments. Eligibility for Emergency Assistance for certain homeless persons would be limited to once in a 36-month period unless the homelessness was caused by domestic abuse, and the State would allow displacement of regular employees by W2 participants in certain cases: i.e., partial displacement (reduction in hours); impairment of existing contracts; infringement upon promotional opportunities; and filling of any established unfilled position.

The State would eliminate transitional Medicaid and expand Medicaid (i.e., the W2 Health Plan) to families with gross income up to 165 of FPL, who would then remain eligible until their income increases to 200 percent of FPL; and would incorporate a mandatory HMO enrollment or primary provider program for W2 participants. Participants would be required to pay a share of W2 Health Plan premiums according to a sliding scale, and the State would impose stricter Medicaid sanctions for non-cooperation with child support. The State would merge the Food Stamps E&T program with the W2 Work Program; modify the Food Stamps work program exemptions; eliminate the Food Stamps gross income test; require nutrition education for Food Stamps recipients; and cash out food stamps.

DATE RECEIVED: 5/29/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Jean Sheil, (608) 266-0613.

PROJECT TITLE: Wyoming—New Opportunities and New Responsibilities—Phase II (Amendments).

DESCRIPTION: Proposes expansion of demonstration provisions currently limited to a pilot site statewide and further amendments to the current demonstration to establish a 5-year lifetime limit on cash assistance for adults, beginning with time on AFDC from July 1, 1987 (with limited

exemptions and extensions); pursue child support from the absent minor parent's parents; freeze benefits based on household size 10 months after initial qualification; replace existing earnings disregards for recipients (except no disregard will apply for recipients disqualified due to fraud, education time limits, illegal alien) with a maximum earned income disregard of \$200 for recipients; expand pay-for-performance from AFDC-UP to the regular AFDC population, with limited exemptions, where failure to perform any item in the self-sufficiency plan would cause disqualification of the parent for AFDC, Food Stamps, and Medicaid; reduce the grant by \$40 when a nonexempt child fails to meet the performance requirements; require able-bodied applicants and recipients to do job search for up to 16 weeks unless otherwise exempted; terminate the case when there is loss of contact with the client for 1 month after nonpayment for failure to meet the performance requirements; exclude the earned income and resources of a dependent child who is a full-time high school student; allow payment of the supplied shelter grant for households with a SSI recipient, unmarried minor parents, or recipients disqualified for other reasons (fraud, education time limits, illegal aliens); exclude one licensed vehicle with a fair market value of less than \$12,000; increase the resource limit to \$2,500 for those in compliance with, or exempted from, the performance requirements; and exclude veteran's service connected disability compensation if the annual income is less than the poverty level.

DATE RECEIVED: 5/13/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Marianne Lee, (307) 777-6849.

III. Listing of Approved Proposals Since June 1, 1995

PROJECT TITLE: Florida—Family Responsibility Act.

CONTACT PERSON: Sallie P. Linton, (904) 921-5572.

PROJECT TITLE: Illinois—Six Month Paternity Establishment Demonstration.

CONTACT PERSON: Karan D. Maxson, (217) 785-3300.

PROJECT TITLE: Maine—Welfare to Work Program.

CONTACT PERSON: Susan Dustin, (207) 287-3104.

PROJECT TITLE: Michigan—To Strengthen Michigan Families Demonstration Project (Amendment).

CONTACT PERSON: Dan Cleary, (517) 335-0015.

PROJECT TITLE: New Hampshire—New Hampshire Employment Program.
CONTACT PERSON: Marianne Broshek, (603) 271-4442.

PROJECT TITLE: Wyoming—New Opportunities and New Responsibilities (Amendments—Minor Parent Provisions): approved in accordance with expedited 30-day process.

CONTACT PERSON: Marianne Lee, (307) 777-6849.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal. (Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research.)

Dated: July 2, 1996.

Karl Koerper,

Director, Division of Economic Independence Office of Planning, Research and Evaluation.

[FR Doc. 96-17282 Filed 7-5-96; 8:45 am]

BILLING CODE 4184-01-P

Administration for Children and Families Office of Family Assistance

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KH, The Office of Family Assistance (OFA) (60 FR 2766), as last amended, January 11, 1995. This Notice reflects the OFA'S new structure, which refocuses efforts to meet performance goals of economic independence for families and healthy development of children. Specifically, delete Chapter KH in its entirety, and replace it with the following:

KH.00 Mission. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to public assistance and economic self-sufficiency programs. The Office provides leadership, direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program (EA); and the Job Opportunities

and Basic Skills Training Program (JOBS). OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. It provides direction and guidance in the collection and dissemination of performance and other evaluative data for these programs. The Office provides technical assistance to States, territories, Indian Tribes and Native American organizations, and assesses their performance in administering these programs; reviews state planning for administrative and operational improvements; and recommends actions to improve effectiveness. Reviews, approves and monitors research and demonstration projects to achieve welfare reform; directs reviews; and provides consultations and conducts necessary negotiations to achieve effective public assistance programs.

KH.10 Organization. The Office of Family Assistance is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KHA)
Division of Self-Sufficiency Programs (KHB)
Division of Performance Measurement (KHC)

KH.20 Functions A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out the responsibilities of the Office. The Executive Officer assists the Director, Deputy Director and OFA Divisions in providing general oversight of management, administrative and personnel activities and in coordinating the formulation and execution of program and administrative budgets.

B. The Division of Self-Sufficiency Programs (DSS) provides direction and guidance in the nationwide administration of the Aid to Families with Dependent Children (AFDC), Aid to the Aged, Blind and Disabled, Emergency Assistance and Job Opportunities and Basic Skills Training (JOBS) Programs under the Social Security Act. The Division proposes legislation and implements national policy, develops regulations to implement new laws and prepares policy interpretations. The Division provides technical assistance to States, territories, Indian Tribes and Native American organizations; assesses their performance in administering these

programs; and recommends and promotes improvements in outcomes for clients. The Division develops and implements strategies to assist grantees in implementing and improving their self-sufficiency programs. DSS identifies effective practices and shares information through conferences, technology transfers, publications, the Internet and resource networks. The Division ensures compliance with Federal laws and regulations and promotes cross-program policy initiatives to support work, personal responsibility and family-focused services.

C. The Division of Performance Measurement (DPM) is responsible for the identification, development, collection, and dissemination of a core set of national performance data elements in support of AFDC/JOBS self-sufficiency and other program goals. The Division formulates, develops, and conducts special studies/projects in coordination with States, other grantees and other ACF components and provides evaluations of waivers of program rules as appropriate. Compiles, analyzes, and evaluates program and administrative data on the AFDC/JOBS program. DPM develops and maintains data collection protocols, specifications and procedures including issuing regulations, manuals, guidance, and providing training as necessary.

Dated: July 2, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 96-17283 Filed 7-5-96; 8:45 am]

BILLING CODE 4184-01-P

Food and Drug Administration

[Docket No. 96F-0223]

Henkel Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Henkel Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of α -sulfo- ω -(dodecyloxy)poly(oxyethylene), sodium salt as an emulsifier in the production of acrylic and vinyl acetate polymer coatings for paper and paperboard.

DATES: Written comments on the petitioner's environmental assessment by August 7, 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: Elke Jensen, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3109.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4506) has been filed by Henkel Corp., 300 Brookside Ave., Ambler, PA 19002. The petition proposes to amend the food additive regulations in part 176 Indirect Food Additives: Paper and Paperboard Components (21 CFR part 176) to provide for the safe use of α -sulfo- ω -(dodecyloxy)poly(oxyethylene), sodium salt as an emulsifier in the production of acrylic and vinyl acetate polymer coatings for paper and paperboard. The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before (insert date 30 days after date of publication in the Federal Register), submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 20, 1996.
George H. Pauli,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
[FR Doc. 96-17233 Filed 7-5-96; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 93F-0402]

Lonza, Inc.; Withdrawal of Food Additive 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 food additive petition (FAP 4B4405) proposing that the food additive regulations be amended to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3083.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 17, 1993 (58 FR 60665), FDA announced that a food additive petition (FAP 4B4405) had been filed by Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Bethesda, MD 20814 (currently c/o Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001). The petition proposed to amend the food additive regulations to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food. Lonza, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 25, 1996.
Alan M. Rulis,
Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
[FR Doc. 96-17234 Filed 7-5-96; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 96M-0218]

Adeza Biomedical Corp.; Premarket Approval of Fetal Fibronectin Enzyme Immunoassay Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Adeza Biomedical Corp., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Fetal Fibronectin Enzyme Immunoassay Kit. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 7, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-1243.

SUPPLEMENTARY INFORMATION: On October 31, 1994, Adeza Biomedical Corp., Sunnyvale, CA 94089, submitted to CDRH an application for premarket approval of Fetal Fibronectin Enzyme Immunoassay Kit. The device is to be used as an aid in assessing the risk of preterm delivery in ≤ 7 days or ≤ 14 days from the time of sample collection in pregnant women with signs and symptoms of early preterm labor, intact amniotic membranes, and minimal cervical dilatation (< 3 centimeters), sampled between 24 weeks, 0 days and 34 weeks, 6 days gestation.

The negative predictive values of 99.5 percent and 99.2 percent, for delivery in ≤ 7 and ≤ 14 days respectively, make it highly likely that delivery will not occur in these timeframes. In addition, although the positive predictive values were found to be 12.7 percent and 16.7 percent for delivery in ≤ 7 and ≤ 14 days, respectively, this represents an approximate 4-fold increase over the reliability of predicting delivery given no test information.

On April 6, 1995, the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On September 29, 1995, CDRH approved the application by a letter to

the applicant from the Director of the office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 7, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.
Joseph A. Levitt,
Deputy Director for Regulations Policy, Center for Devices and Radiological Health.
[FR Doc. 96-17235 Filed 7-5-96; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(9), Title 5, U.S.C. for discussion of future meetings and preparation of the annual report to the President. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20891-7405 (301-496-5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: July 29-30, 1996.

Place: Fred Hutchinson Cancer Center, Stuart Auditorium, First Hill, 1124 Columbia Street, Seattle, WA 98104.

Closed: July 29, 1996—7 p.m. to 10 p.m.

Agenda: Planning session to discuss future meetings and preparation of the mandatory annual report of the Chairman to the President.

Open: July 30, 1996—8:30 a.m. to 5:00 p.m.
Agenda: Managed Care's Role in the War on Cancer. Where are we today? Existing problems for cutting edge clinical research in today's environment.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 4B43, Bethesda, MD 20892, (301) 496-1148.

(Catalog of Federal Domestic Assistance Program Numbers: 93:393, Cancer Cause and Prevention Research; 93:394, Cancer Detection and Diagnosis Research; 93:395, Cancer Treatment Research; 93:396, Cancer

Biology Research; 93:397, Cancer Centers Support; 93:398, Cancer Research Manpower; 93:399, Cancer Control.)

Dated: July 1, 1996.

Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 96-17209 Filed 7-5-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited AIDS Related Career Award, Conference and Supplement Applications

Date: July 26, 1996

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville Room, 1750 Rockville Pike, Rockville, MD 20852, (301) 468-1100.

Contact Person: Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892-7610, (301) 402-0643.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93:855, Immunology, Allergic and Immunologic Diseases Research; 93:856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: July 1, 1996.

Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 96-17210 Filed 7-5-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: The Use of Transgenic Model Systems in Molecular Toxicology.

Date: July 23–24, 1996.

Time: 8:30 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Center 101–C, Research Triangle Park, NC.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17211 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 17, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: July 22, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 5142, Telephone Conference.

Contact Person: Dr. Camilla Day, Scientific Review Administrator, 6701 Rockledge Drive, Room 5142, Bethesda, Maryland 20892, (301) 435–1024.

Name of SEP: Biological and Physiological Sciences.

Date: July 22, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5196.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 453–1257.

Name of SEP: Multidisciplinary Sciences.

Date: July 29–29, 1996.

Time: 7:00 p.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: June 28, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17212 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 23, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Chemistry and Related Sciences.

Date: July 24, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4156, Telephone Conference.

Contact Person: Dr. Ron Dubois, Scientific Review Administrator, 6701 Rockledge Drive,

Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Name of SEP: Multidisciplinary Sciences.

Date: August 4–5, 1996.

Time: 7:30 p.m.

Place: Nittany Lion Inn, State College, PA.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 12, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Simi Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 13, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Simi Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Biological and Physiological Sciences.

Date: August 16, 1996.

Time: 10:00 a.m.

Place: Holiday Inn-National Airport, Arlington, VA.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: July 22, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Behavioral and Neurosciences.

Date: August 8, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5158, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Behavioral and Neurosciences.

Date: August 9, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5158, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-17213 Filed 7-5-96; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research: Notice of Intent To Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines) Regarding Enhanced Mechanisms for NIH Oversight of Recombinant DNA Activities

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notice of Intent to Propose Amendments.

SUMMARY: The NIH Director intends to propose amendments to the *NIH Guidelines* (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726, amended 61 FR 1482, amended 61 FR 10004) to enhance NIH mechanisms for scientific and ethical oversight of recombinant DNA activities. To accomplish this objective, the NIH Recombinant DNA Advisory Committee (RAC) will be discontinued and all *approval* responsibilities for recombinant DNA experiments involving human gene transfer will be relinquished to the Food and Drug Administration (FDA) which retains statutory authority for such approval. Enhancement of NIH oversight of human gene therapy will be accomplished through three distinct mechanisms: (1) Establishment of the Office of Recombinant DNA Activities (ORDA) Advisory Committee (OAC) to ensure public accountability for recombinant DNA research and relevant data, (2) implementation of Gene Therapy Policy Conferences (GTPC) to augment the quality and efficiency of public discussion of the scientific merit and the ethical issues relevant to gene therapy clinical trials, and (3) continuation of the publicly available, comprehensive NIH database of human gene transfer clinical trials, including adverse event reporting.

Specifically, the NIH Director proposes to realign and extend the current roles and responsibilities of NIH oversight of human gene transfer by establishing OAC. This chartered committee will be comprised of a standing membership of 6 to 10

individuals representing the scientific, legal, ethical, and public advocacy communities. The OAC will meet regularly to: (1) advise ORDA regarding relevant gene therapy issues, (2) identify and prioritize proposed conference topics and participants, and (3) periodically review and analyze data submitted to the NIH gene therapy database. Through ORDA, the OAC will administer, propose modifications, and promulgate amendments to the *NIH Guidelines*. These *NIH Guidelines*, which set forth accepted principles, practices, and procedures under which investigators and institutions may safely conduct recombinant DNA research under a variety of settings, will continue to be the responsibility of the NIH Director. Investigator compliance with the relevant physical and biological containment standards in the *NIH Guidelines* ensures acceptable protection for human health and the environment.

The NIH Director proposes to convene the Gene Therapy Policy Conferences at regular intervals (3-4 times per year). These conferences will offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to a specific recombinant DNA research issue. In order to enhance the depth and value of scientific and ethical/social discussion, each GTPC will be devoted to a single issue relevant to scientific merit and/or safety as it relates to human gene therapy clinical trials. These may include topics such as basic research on the use of novel gene delivery vehicles and applications to human gene therapy, novel applications of gene transfer, or relevant ethical/societal implications of a particular application of gene transfer technology. Although NIH will no longer be responsible for the approval of gene therapy protocols, these modifications *do not* preclude the use of a novel protocol as a focus for a conference discussion, i.e., a novel protocol captured by the NIH database could be added by OAC, in consultation with ORDA, to a list of potential policy conference topics.

The findings and recommendations of the GTPC will be submitted to the NIH Director and will be made available to multiple Department of Health and Human Services (DHHS) components, including the FDA and the Office for Protection from Research Risks (OPRR). The NIH Director anticipates that this expanded public policy forum will serve as a model for interagency communication and collaboration, concentrated expert discussion of novel

scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and the potential impact of such applications on human health and the environment.

Finally, the NIH Director proposes to maintain the administration of gene therapy clinical trial data management functions through ORDA and in consultation with the OAC. Using current definitions, NIH will continue to capture incoming protocol information, ongoing data (including adverse and significant clinical events), and long-term follow-up data. In compliance with the *NIH Guidelines*, investigators will continue to be required to register human gene transfer experiments with ORDA to ensure continued public access to the comprehensive human gene transfer clinical trial database.

DATES: Written comments must be received by August 7, 1996.

ADDRESSES: Written comments should be submitted to the Office of Recombinant DNA Activities, Office of Science Policy, National Institutes of Health, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland, 20892-7010. Fax transmissions may be sent to (301) 496-9839.

FOR FURTHER INFORMATION CONTACT: Debra Knorr, Office of Recombinant DNA Activities, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland, 20892-7010, (301) 496-9838.

SUPPLEMENTARY INFORMATION:

I. Background

In 1974, the National Academy of Sciences (NAS) established a Committee on Recombinant DNA Molecules which was charged with examining the risks associated with recombinant DNA research and recommending specific actions or guidelines. The NAS Committee report requested: (1) that certain experiments be voluntarily deferred; (2) that plans to construct recombinants with animal DNA should be carefully weighed; (3) that the NIH Director establish a committee to oversee a program to evaluate hypothetical risks, to develop procedures to minimize the spread of recombinant DNA molecules, and to recommend guidelines to be followed by investigators; and (4) that an international meeting be convened to review progress and discuss ways to deal with potential hazards.

In that same year, the Department of Health, Education, and Welfare (currently the Department of Health and Human Services (DHHS)) chartered a committee (later identified as the RAC) in response to the NAS report. In 1975,

RAC held its first meeting to establish appropriate biological and physical containment practices and procedures that were later developed into a set of guidelines for the safe conduct of recombinant DNA research (the *NIH Guidelines*). Subsequently, the NIH created ORDA to provide administrative support to the RAC.

In 1982, an in-depth examination of the broad ethical implications of human gene therapy research, *The Social and Ethical Issues of Genetic Engineering with Human Beings (Splicing Life)*, was published by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. *Splicing Life* proposed that, "... since laboratory biohazards related to recombinant DNA research were no longer regarded as urgent matters, the NIH should extend its purview over recombinant DNA research beyond environmental issues to human gene therapy."

They recommended that the membership of the RAC should be broadened to include a combination of Federal and non-Federal scientists, lay public participants, and ethicists. In response to *Splicing Life*, the NIH established the RAC Human Gene Therapy Subcommittee which was subsequently merged with the parent committee to become the current RAC.

II. Rationale for Change

In recognition of the committee's critical role in maintaining public accountability for recombinant DNA research, the NIH Director weighed a variety of factors prior to announcing NIH's intent to change and enhance its current oversight responsibilities for recombinant DNA research. In order to clarify the rationale for the proposed changes described herein, a series of questions and answers are provided below.

1. On what basis does the NIH conclude that this is the optimal time to eliminate the RAC and realign NIH's responsibilities to public discussion and data management of human gene therapy clinical trials?

Since its inception, the NIH has continuously relinquished oversight of various elements in the field of recombinant DNA research, as such elements reached maturity. From 1979–1983, several major revisions were made to the *NIH Guidelines* when putative risks to the public did not materialize and the initial restrictions were deemed unnecessary. In 1991, the NIH's oversight of environmental release of genetically modified organisms was relinquished and these responsibilities

were ceded to the U.S. Department of Agriculture and the Environmental Protection Agency. These changes were, in part, motivated by the recognition that NIH did not have the statutory authority or the "tools" to function as a regulatory agency.

In 1995, a similar devolution of NIH oversight of human gene therapy occurred. By this time, the RAC had reviewed and approved 113 gene therapy protocols and over 1,000 patients had been enrolled in world-wide trials. The RAC, the scientific community, and the public had a substantial base of information regarding the use and safety of many of the vectors employed in, and target diseases addressed by, human gene therapy. Subsequent analyses revealed that the human health and environmental safety concerns expressed at the inception of gene therapy clinical trials had not materialized. Absent evidence for substantial safety concerns for gene therapy protocols which have been previously tested, on March 6, 1995, the RAC voted to recommend approval of amendments to the *NIH Guidelines* that would eliminate RAC review and approval of human gene therapy experiments not considered to be novel. Under this mechanism, all protocols determined not to represent a novel gene therapy delivery strategy or target disease that could adversely affect human health were considered exempt from RAC review and approval and were forwarded directly to the FDA. This streamlined process, which became known as the NIH and FDA "Consolidated Review," eliminated unnecessary and time consuming duplication of effort by the NIH and the FDA. On April 17, 1995, the NIH Director approved these amendments to the *NIH Guidelines*. Once again, the NIH relinquished a portion of its oversight of recombinant DNA research to the agency (FDA) with statutory responsibility to approve such protocols.

Since the implementation of consolidated review in July 1995, only six of the 36 protocols submitted to ORDA required RAC review and approval; and five of those six protocols were already in the system before consolidated review. The consolidated review process proved to be so successful in eliminating the need for RAC review and approval, that NIH canceled both the March and June 1996 RAC meetings due to the lack of novel protocols requiring RAC attention.

The NIH Director has concluded that the current proposal to enhance NIH oversight of recombinant DNA activities

is timely and appropriate based on the current base of knowledge, the need for substantial discussion of gene therapy techniques which are not yet being tested in humans, and the duplication of review and approval by the NIH while the FDA holds the statutory authority. Thus, the NIH Director proposes the termination of the RAC, relinquishing of all protocol approval to the FDA and the creation of two new entities to enhance the depth and breadth of public discussion of gene therapy issues.

2. Why does the NIH propose to replace the RAC?

The proposed actions regarding the RAC should not be viewed narrowly as "eliminating" the RAC. Rather, these actions were developed in a timely and appropriate response to a series of publicly debated discussions over a period of several years. The NIH Director maintains that the establishment of the OAC and the convening of the GTPC are effective and innovative responses to this rapidly changing area of biomedical research based on the foundation of scientific knowledge that has been gained over the last six years and overlapping responsibilities of other Federal agencies. This proposal optimizes current Federal resources, maintains public access to information, and facilitates public discussion of novel issues relevant to human gene therapy research. NIH concludes that it is not the RAC per se that is critical for public accountability, but the system by which NIH continues to provide public discussion of the scientific, safety, and ethical/legal issues related to human gene therapy.

As proposed, the OAC will provide a smaller, but fully representational, standing committee with a range of advisory and administrative oversight responsibilities similar, but not identical to, the RAC. In contrast, participation in the proposed GTPC will be subject to recommendations by the OAC and ORDA and, as such, will provide the necessary flexibility to engender in-depth, expert discussion of scientific issues and societal implications that cannot be achieved under current mechanisms. The GTPC will continue to maintain favorable RAC attributes such as continued public access to conference discussions and recommendations, publication of scheduled meeting dates and proposed agendas in the Federal Register, and publication of official conference minutes. Eliminating RAC protocol approval reduces duplication of effort with the FDA while enhancing the time and effort devoted to both ongoing and

anticipated gene therapy policy issues deserving of substantial public discussion.

3. Why not continue RAC review and approval of gene therapy protocols?

In 1990, when the RAC first turned its attention to human gene therapy, the NIH was the sole source of the substantial expertise necessary to review the relatively new field of human gene therapy. Since that time, the FDA has created a new Division of Cellular and Gene Therapies and has committed substantial resources to the development of review capabilities in this arena. At its inception, it was critical for the RAC to conduct a case-by-case review of human gene transfer protocols, since each new protocol invariably set a new precedent. Six years later, the RAC has relinquished most of its review and approval activities under the "consolidated" review plan which forwards all but novel protocols directly to the FDA for consideration.

During the six years of RAC review and approval, there has been considerable discussion of the juxtaposition of the NIH mandate to oversee the most meritorious medical research and the RAC mission to approve or disapprove individual protocols based predominantly on issues of safety. By adopting a new model of public discussion that does not require approval, the NIH can, through the proposed policy conferences, engage in substantive critique of the scientific merit of a line of research without having to give an NIH stamp of approval on the basis of limited threat to human health or safety.

4. Did NIH accept the recommendations of the RAC Ad Hoc Advisory Committee (Verma Committee)?

The decision to retire the RAC does not foreclose on the recommendations of the Verma Committee. The NIH Director accepted most of the recommendations of the *RAC Ad Hoc Review Committee*. However, rather than implement the recommendations through the RAC, the Director proposes a new structure for NIH oversight of human gene therapy.

Specifically: (1) The first recommendation calls for continuation of consolidated review by the RAC. Under the proposal contained herein, the RAC is eliminated and consolidated review will not be maintained. (2) A second recommendation calls for an open public forum for discussion of protocols which contain a new technology or novel departures in human gene transfer research. The

proposed Gene Therapy Policy Conferences will not only preserve such a forum, but will provide for more in-depth discussion of both the science and the ethical issues related to a specific gene therapy issue. In this manner, it will enhance the type of public access that has been characteristic of the RAC. Although this proposal does not provide for review and approval of individual protocols, it does not preclude the use of a novel protocol as a focus for a conference discussion; a novel protocol captured by the NIH database could be raised by the OAC, in consultation with ORDA, to the list of policy conference topics. (3) The recommendation that RAC should develop criteria for consolidated review would not be applicable to the proposed new structure, since this proposal cedes review and approval to the FDA. However, as stated above, the OAC will have the authority to recommend a novel protocol captured by the NIH database for public discussion at a policy conference. (4) The fourth recommendation that the RAC should provide advice on policy matters revolving around gene therapy and other recombinant DNA issues would be fully met by the proposed Gene Therapy Policy Conferences. Because each of these conferences will focus on a single issue, it is the Director's contention that policy advice will be substantially augmented under this new mechanism. The NIH cannot, however, give the RAC, or any other NIH standing or *ad hoc* body, the authority to give policy advice or make recommendations to the FDA. The NIH has had and will continue to have open and frequent dialogue with the FDA about gene therapy policy matters related to safety, scientific and ethical issues and fully expects the FDA to recommend policy conference topics to OAC and ORDA. (5) The proposed maintenance of the NIH gene therapy database fully responds to the recommendation regarding the continued need for data monitoring and adverse event reporting. The Office of Recombinant DNA Activities (ORDA) has retained the services of a contractor to assist in the development of a computer software package that will have sufficient capacity to monitor and evaluate gene transfer protocols.

5. Will there be a mechanism for continuing to review gene therapy informed consent documents?

As needs dictate, both OAC and the GTPC will provide a forum for the oversight of human gene therapy informed consent. It is expected that an entire conference may be devoted to such informed consent issues in the

context of gene therapy. The NIH Director will continue, when appropriate, to make amendments to sections of the *NIH Guidelines, Points to Consider* relevant to informed consent procedures during gene therapy clinical trials. Investigators and IRBs engaged in, or reviewing, human gene therapy trials are expected to employ the *NIH Guidelines, Points to Consider* for this purpose. However, under the proposal contained herein, neither the OAC nor the GTPC will engage in protocol-by-protocol review of informed consent documents.

The sixteen Federal agencies that engage in human subjects research reference the Common Rule and, thus, abide by the principle of giving full authority of individual approval of informed consent documents to locally constituted Institutional Review Boards (IRBs). These responsibilities remain solely within the regulatory framework of OPRR through the local IRBs. OPRR oversees implementation of 45 CFR Part 46 in all domestic and foreign institutions or sites receiving DHHS funds. OPRR requires each institution that conducts or supports research involving human subjects to set forth the procedures it will use to protect human subjects in a policy statement called an Assurance of Compliance.

Finally, there is no other disease, disability, or methodology that, at present, requires a Federal review of individual informed consent documents. It is the proposal of the NIH Director that human gene therapy informed consent documents be subject to the same procedures as all other forms of human subject research.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the

NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: June 28, 1996.

Harold Varnus,

Director, National Institutes of Health.

[FR Doc. 96-17349 Filed 7-5-96; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR-4032-N-02]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Office of Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Room 9116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708-1694, or, TTY for hearing and speech impaired, (202) 708-4594 (these are not toll-free numbers) for copies of the proposed collection of information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and

affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance—Loss Mitigation Procedures

OMB Control Number, if applicable: [N/A—none yet assigned]

Description of the need for the information and proposed use: New section 24 CFR 203.605, "Loss Mitigation Evaluation," requires mortgagees to perform an evaluation of each defaulting mortgagor's circumstances to determine which if any of the available loss mitigation techniques are appropriate in order to assist the mortgagor to:

- (a) Reinstate the mortgage and retain ownership of the affected property, or
- (b) Avoid foreclosure, and mitigate the losses to the Department by encouraging the mortgagor to sell the property or, if the mortgagor has no equity in the property, to pursue a buyer under the pre-foreclosure ("short") sale procedure or to voluntarily convey the deed in lieu of what would otherwise be the imminent foreclosure of the mortgage.

This evaluation must be performed no later than when three monthly mortgage installments are due and unpaid, and must be performed monthly thereafter while the account is in default and such foreclosure avoidance and loss mitigation options remain under consideration.

This information is needed to ascertain whether adequate and prudent loan servicing was performed by the mortgagee. If a mortgagee submits a claim for FHA insurance benefits, this information will be subject to post-claim review under the Department's lender monitoring activities.

Agency form numbers, if applicable: Documentation simply added to lender's servicing files on HUD-27011 insurance claim form.

Members of affected public:

Mortgagees, loan servicing entities.

Estimation of the total numbers of hours needed to prepare the information collection, including:

(a) *Number of respondents:* Each FHA approved lender will be required to respond as part of standard procedures for servicing defaulted loans.

(b) *Frequency of response:* 625,000 (based on 250,000 90-day defaults; 50% self-cure; 125,000 90+ day defaults averaging 3-additional months).

(c) *Hours of response:* 625,000 @ 0.25 hrs = 156,250 hours.

Status of the proposed information collection: Pending approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96-17176 Filed 7-5-96; 8:45 am]

BILLING CODE 4210-27-M

[Docket Nos. FR-3903-N-04 and FR-3904-N-05]

Announcement of Funding Awards for Supportive Housing for the Elderly and Persons With Disabilities, FY 1995

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 award decisions made by the Department as a result of competitions for funding under the following two notices of funding availability: Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities. This announcement contains the names and addresses of the awardees and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Division Director, New Product Division, Office of Multifamily Housing Division, Department of Housing and Urban Development, Room 6142, 451 Seventh Street SW., Washington, DC 20410-0500; telephone (202) 708-2866. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Elderly

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102-550, approved October 28, 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103-327, approved September 28, 1994) (fiscal year 1995 appropriations act) provides \$1,279,000,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959 (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended.

The fiscal year 1995 appropriations act further provides that \$22,000,000 of the above total shall be for service coordinators pursuant to section 202(q) of the Housing Act of 1959, as amended, and subtitle E of title VI of the Housing and Community Development Act of 1992, other than section 676 of such act and section 8(d)(2)(F)(i) of the act. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the fiscal year 1995 appropriations act.

Disabilities

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102-550, approved October 28, 1992), authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the RTC, of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of

real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103-327, approved September 28, 1994) provides \$387,000,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA.

The purpose of the competitions was to (1) provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand supportive services to the elderly; and (2) provide assistance to nonprofit organizations to expand the supply or supportive housing for persons with disabilities. The 1995 awards announced in this Notice were selected for funding in competitions announced in the Federal Register Notices of Funding Availability published on May 24, 1995 (60 FR 27600 and 27612).

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and the amount of those awards, as set out at Appendixes A and B of this Notice.

Dated: June 28, 1996.
Stephanie A. Smith,
General Deputy Assistance Secretary for Housing—Federal Housing Commissioner.

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
BOSTON				
Connecticut				
Hartford	017-EE015/CT26-S951-002, New Samaritan Crop., 165 Clintonville Road, North Haven, CT 06473.	North Haven Town, CT	40	3,264,000
Hartford	017-EE018/CT26-S951-005, AHEPA National Housing, 7202 North Shadeland Ave., Indianapolis, IN 46250.	Norwich, CT	42	3,408,600
Subsubtotal .....	.....	.....	82	6,672,600
Massachusetts				
Boston	023-EE050/MA06-S951-002, Codman Sq. Neighbor, 628 Washington St., Dorchester, MA 02124.	Boston, MA	14	991,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Boston	023-EE051/MA06-S951-003, CASCAP, Inc., 678 Massachusetts Ave., Cambridge, MA 02139.	Cambridge, MA	22	1,785,400
Boston	023-EE056/MA06-S951-008, Jewish Community Housing, 20 Walling Ford Rd., Boston, MA 02135.	Newton, MA	46	3,733,200
Boston	023-EE057/MA06-S951-009, Cooperative Services, 25900 Greenfield Rd., Oak Park, MI 48327.	South Boston, MA	65	5,275,200
Boston	023-EE05B/MA06-S951-010, Mid Cape Church Housing, 61 John Nelson Way, Harwich, MA 02645.	Harwich Town, MA	65	4,621,800
Boston	023-EE059/MA06-S951-001, E. Boston Neighbor, 10 Grove Street, East Boston, MA 02128.	Boston, MA	48	3,595,200
Subsubtotal .....	.....	.....	260	20,002,000
Maine				
Manchester	024-EE020/ME36-S951-003, VOA, Inc., 3939 N. Causeway Blvd., Metairie, LA 70002.	Augusta, ME	45	2,920,400
Subsubtotal .....	.....	.....	45	2,920,400
New Hampshire				
Manchester	024-EE017/NH36-S951-001, CAP Belknap-Merrim, PO Box 1016 2 Industria, Concord, NH 03302.	Epsom, NH	50	3,086,600
Manchester	024-EE024/NH36-S951-003, SNHS, Inc., 40 Pine St., Manchester, NH 03108.	Manchester, NH	41	2,551,000
Manchester	024-EE025/NH36-S951-004, SNHS, Inc., 40 Pine St., Manchester, NH 03108.	Raymond, NH	24	1,427,200
Subsubtotal .....	.....	.....	115	7,064,800
Rhode Island				
Providence	016-EE019/RI43-S951-003, The Bristol Foundation, P.O. Box 449, Bristol, RI 02809.	Bristol, RI	49	3,923,800
Subsubtotal .....	.....	.....	49	3,923,800
Subtotal .....	.....	.....	551	40,583,600
NEW YORK				
New Jersey				
Newark	031-EE037/NJ39-S951-006, Catholic Community Services—Newark Archdiocese, 1160 Raymond Blvd., Newark, NJ 07102-4105.	Elizabeth, NJ	71	5,779,700
Newark	035-EE016/NJ39-S951-009, The Presbyterian Homes of NJ, 103 Carnegie Center Suite 102, Princeton Junction, NJ 08543-2184.	East Windsor Twp, NJ	85	6,368,400
Newark	035-EE020/NJ39-S951-013, Lutheran Social Ministries of NJ, 120 Route 156, Yardville, NJ 08620.	Pennsauken Twp, NJ	71	5,322,100
Subsubtotal .....	.....	.....	227	17,470,200
New York				
New York	012-EE147/NY36-S951-002, St. Simeon Foundation, Inc., 24 Beechwood Ave., Poughkeepsie, NY12601.	Poughkeepsie, NY	70	5,681,000
New York	012-EE149/NY36-S951-004, New York Foundation for Senior Citizens, 150 Nassau St., New York, NY 10038.	New York-Brooklyn, NY	105	8,539,100
New York	012-EE152/NY36-S951-007, Our Lady of Mercy Medical Center, 600 E. 233 St., Bronx, NY 10466.	New York-Bronx, NY	54	4,400,000
New York	012-EE156/NY36-S951-011, Marcus Garvey Nursing Home, 810 St. Marks Ave., Brooklyn, NY 11213.	New York-Brooklyn, NY	48	3,895,600
New York	012-EE157/NY36-S951-012, Hebrew Home for the Aged, 5901 Palisade Ave., Bronx, NY 10471.	New York-Bronx, NY	59	4,805,800
New York	012-EE162/NY36-S951-017, The Education Alliance, 197 E. Broadway, New York, NY 10002.	New York-Manhattan, NY	52	4,165,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
New York	012-EE165/NY36-S951-020, Metro NY Coordinating Council on Jewish Pov, 9 Murray Street, New York, NY 10007.	New York-Queens, NY	124	10,081,100
New York	012-EE166/NY36-S951-021, Aquinas Housing Corp., 975 E. Tremont Ave., Bronx, NY 10460.	New York-Bronx, NY	99	8,052,200
New York	012-EE167/NY36-S951-022, SFDS Development Corp., 135 E. 96th Street, New York, NY 10128.	New York-Manhattan, NY	61	4,968,100
New York	014-EE171/NY36-S951-026, Beth Abraham Hospital, 612 Allerton Avenue, Bronx, NY10467.	White Plains, NY	71	5,645,100
Buffalo	014-EE084/NY06-S951-005, YWCA of Western NY, 190 Franklin St., Buffalo, NY 14202.	Buffalo, NY	72	5,152,700
Buffalo	014-EE093/NY06-S951-014, Cath Char of Syracuse Inc., 1654 W. Onondaga St., Syracuse, NY 13204.	Onondaga, NY	56	3,840,000
Buffalo	014-EE099/NY06-S951-020, The Reformed Ch of Germantown, P.O. Box 115, Germantown, NY 12526.	Germantown, NY	38	2,570,000
Buffalo	014-EE106/NY06-S951-027, Los Tainos Senior Citiz. Ctr. Inc., 104 Maryland Ave., Buffalo, NY 14201.	Buffalo, NY	50	3,583,000
Buffalo	014-EE111/NY06-S951-032, 1490 Enterprises I, 1490 Jefferson Ave., Buffalo, NY 14208.	Buffalo, NY	60	4,281,100
Subsubtotal .....	.....	.....	1019	79,660,000
Subtotal .....	.....	.....	1246	97,130,200

PHILADELPHIA

District of Columbia				
Washington	000-EE033/DC39-S951-003, Allegheny East Con Assc SDA, Pine Forge Road, Pine Forge, PA 19548.	Washington, DC	45	3,104,300
Subsubtotal .....	.....	.....	45	3,104,300
Delaware				
Philadelphia	032-EE003/DE26-S951-001, Martin Luther Foundation of Dover, 430 Kings Highway, Dover, DE 19901.	Dover, DE	44	2,886,500
Philadelphia	032-EE006/EE26-S952-001, Better Homes of Seaford, P.O. Box 782, Seaford, DE 19973.	Seaford, DE	28	1,768,600
Subsubtotal .....	.....	.....	72	4,655,100
Maryland				
Baltimore	052-EE015/MD06-S951-003, CHAI, 5721 Park Heights Avenue, Baltimore, MD 21215.	Pikesville, MD	87	5,839,500
Subsubtotal .....	.....	.....	87	5,839,500
Pennsylvania				
Pittsburgh	033-EE055/PA28-S951-001, NCSC, 1331 F Street, N.W., Washington, DC 20004.	Center Twp, PA	48	3,065,200
Pittsburgh	033-EE058/PA28-S951-004, Alpha HSS and Health Care Inc., 12 Sylvan Heights Drive, New Castle, PA 16101.	Wampum, PA	23	1,475,900
Pittsburgh	033-EE064/PA28-S951-010, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Millcreek TWP, PA	50	3,192,400
Philadelphia	034-EE038/PA26-S952-002, Lutheran Social Services of S. Central PA., 1050 Pennsylvania Avenue, York, PA.	Green Twp, PA	28	1,751,600
Philadelphia	034-EE045/PA26-S951-004, Evangelical Manor, 8401 Roosevelt Boulevard, Philadelphia, PA 19152.	Philadelphia, PA	50	3,635,200
Philadelphia	034-EE046/PA26-S951-005, The Salvation Army, 440 West Nyack Road PO Box C635, West Nyack, NY 10994.	Philadelphia, PA	75	5,468,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Philadelphia	034-EE052/PA26-S951-011, Convent of Sisters of St. Joseph, 9701 Germantown Avenue, Philadelphia, PA 19118.	Mc Sherrystown, PA	40	2,502,400
Philadelphia	034-EE055/PA26-S951-014, Phila Presbyterian Homes—Phila. Sr. Center, P.O. Box 607, Villanova, PA 19085.	Philadelphia, PA	42	3,053,500
Subsubtotal .....	.....	.....	356	24,144,700
Virginia				
Richmond	051-EE038/VA36-S951-091, United Order of Tents, Southern District #1, 1620 Church Street, Norfolk, VA 23540.	Danville, VA	41	2,186,400
Richmond	051-EE039/VA36-S951-003, John H. Wellons Foundation, P.O. Box 1254, Dunn, NC 28335.	Isle of Wight County, VA	40	2,133,100
Richmond	051-EE044/VA36-S951-008, Northern Neck-Middle Peninsula AAA, Inc., P.O. Box 610, Urbanna, VA 23175.	Colonial Beach, VA	33	1,770,800
Subsubtotal .....	.....	.....	114	6,090,300
West Virginia				
Charleston	045-EE007/WV15-S951-002, Southwestern, Commu, 540 57th Avenue, Huntington, WV 25701.	Huntington, WV	17	1,006,000
Charleston	045-EE008/WV15-S951-002, Human Resource Dev, 1644 Mileground, Morgantown, WV 26505.	Parkersburg, WV	20	1,182,600
Subsubtotal .....	.....	.....	37	2,188,600
Subtotal .....	.....	.....	711	46,022,500

ATLANTA

Alabama				
Birmingham	062-EE021/AL09-S951-001, AHEPA National Housing Corporation, 7202 North Shadeland Avenue, Suite 100, Indianapolis, IN 46250.	Mobile, AL	65	3,626,700
Subsubtotal .....	.....	.....	65	3,626,700
Florida				
Jacksonville	063-EE008/FL29-S951-003, Presbyterian Retir, 50 West Lucerne Circle, Orlando, FL.	Pensacola, FL	52	2,672,800
Jacksonville	066-EE041/FL29-S951-001, Allapattah Comm Action, 2257 NW North River Drive, Miami, FL 33125.	Miami, FL	64	4,149,500
Jacksonville	066-EE044/FL29-S951-007, CODEC, Inc., 300 SW 12th Ave., Suite A, Miami, FL 33130.	Miami, FL	80	5,398,000
Jacksonville	066-EE045/FL29-S951-008, CODEC, Inc, 300 SW 12th Ave, Suite A, Miami, FL 33130.	Miami, FL	100	6,743,900
Jacksonville	066-EE046/FL29-S951-011, S. Palm Bch Co Jew Fed, 9901 Donna Klein Blvd., Boca Raton, FL 33428-1788.	West Boca Raton, FL	105	7,115,900
Jacksonville	066-EE047/FL29-S951-012, Diocese of Palm Beach, 9995 N. Military Trail, Palm Beach Gardens, FL 33410.	West Palm Beach, FL	99	6,710,100
Jacksonville	067-EE052/FL29-S951-006, Gulf Coast Community, 14041 Icot Blvd., Clearwater, FL 34260.	Tampa, FL	100	5,693,300
Jacksonville	067-EE054/FL29-S951-013, The Salvation Army, 1424 NE Expressway, Atlanta, GA 30329.	Orlando, FL	125	7,143,600
Subsubtotal .....	.....	.....	725	45,627,100
Georgia				
Atlanta	061-EE038/GA06-S951-005, Buckingham Place Church of God, 103 Buckingham Place, Brunswick, GA 31525.	Glynn County, GA	20	1,021,300
Atlanta	061EE043/GA06-S951-010, United Church Homes, Inc., 170 East Center Street, P.O. Box 1806, Marion, OH 43301.	Cedartown, GA	54	2,895,900
Atlanta	061-EE044/GA06-S951-011, United Church Homes, Inc., 170 East Center Street, P.O. Box 1806, Marion, OH 43301.	Marietta, GA	51	2,736,400

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Atlanta	061-EE045/GAO6-S951-012, National Baptist Convention Housing Board, 383 Washington Street, Newark, OH 43055.	Augusta, GA	30	1,614,400
Subsubtotal .....	.....	.....	155	8,268,000
Kentucky				
Louisville	083-EE044/KY36-S951-003, Volunteers of Amer., 3939 No. Causeway Blvd., Metairie, LA 70002-1784.	Louisville, KY	51	2,996,200
Louisville	083-EE046/KY36-S951-005, Nell Strickland, 3109 Maple Drive NE, Atlanta, GA 30305.	Radcliff, KY	40	2,248,100
Subsubtotal .....	.....	.....	91	5,244,300
Mississippi				
Jackson	065-EE014/MS26-S951-001, United Church Homes, 170 East Center Street, Marion, OH 43301.	Tupelo, MS	44	2,157,300
Jackson	065-EE015/MS26-S951-002, Catholic Diocese of Bioloxi, 120 Reynoir St., Biloxi, MS 39530.	Biloxi, MS	20	1,034,200
Subsubtotal .....	.....	.....	64	3,191,500
North Carolina				
Greensboro	053-EE046/NC19-S951-001, St. Joseph of the Pines, 95 Avimore Drive, Pinehurst, NC 28374.	Aberdeen, NC	24	1,597,900
Greensboro	053-EE047/NC19-S951-002, AHEPA National Housing, 7202 N. Shadeland Ave., Indianapolis, IN 46250.	Wilmington, NC	50	3,652,100
Greensboro	053-EE049/NC19-S951-004, Volunteers of America, 3939 N. Causeway Blvd., Metairie, LA 70002.	New Bern, NC	47	3,219,300
Greensboro	053-EE051/NC19-S951-006, New Covenant Christian Church, PO Box 17266, Chapel Hill, NC 27514.	Chapel Hill, NC	40	2,883,000
Subsubtotal .....	.....	.....	161	11,352,300
Puerto Rico				
Caribbean	056-EE024/RQ46-S951-003, Ryder Memorial Hospital, Call Box 859, Humacao, PR 00661.	Humacao Municipio, PR	35	2,390,700
Caribbean	056-EE026/RQ46-S951-005, Sociedad Servicios Presby Inc., PO Box 264, Lajas, PR 00667.	Lajas Municipio, PR	17	1,161,200
Subsubtotal .....	.....	.....	52	3,551,900
South Carolina				
Columbia	054-EE019/SC16-S951-001, The Protestant Episcopal Diocese of SC, PO Box 20127, Charleston, SC 29413.	Charleston, SC	46	2,551,000
Columbia	054-EE022/SC16-S951-004, Anderson-Oconee Council on Aging, PO Box 103, Anderson, SC 29622.	Seneca, SC	16	915,300
Subsubtotal .....	.....	.....	62	3,466,300
Tennessee				
Nashville	086-EE013/TN43-S951-002, Douglas-Cherokee Economic Authority, Inc., PO Box 1218, Morristown, TN 37816.	Cookeville, TN	25	1,270,800
Nashville	086-EE014/TN43-S951-003, Manor Management, Inc., 100 Trident Place, Hendersonville, TN 37075.	Hendersonville, TN	57	3,018,200
Knoxville	087-EE018/TN37-S951-001, Wood Presbyterian, 322 Old Madisonville Rd., Sweetwater, TN 37874.	Sweetwater, TN	12	605,000
Knoxville	087-EE022/TN37-S951-005, Doug Cherokee Econ, PO Box 1218, Morristown, TN 37816.	White Pine, TN	12	605,000
Knoxville	087-EE023/TN37-S951-006, Doug Cherokee Econ, PO Box 1218, Morristown, TN 37816.	Johnson City, TN	30	1,503,400
Subsubtotal .....	.....	.....	136	7,002,400
Subtotal .....	.....	.....	1,511	91,330,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
CHICAGO				
Illinois				
Chicago	071-EE087/IL06-S951-001, St Edmund Redevelopment Corporation, 6105 South Michigan, Chicago, IL 60637.	Chicago, IL	61	4,636,900
Chicago	071-EE092/IL06-S951-006, National Baptist Housing Board, 383 Washington St., Newark, OH 43055.	Chicago, IL	60	4,544,800
Chicago	071-EE098/IL06-S951-012, Catholic Charities, 1571 West Ogden Avenue, LaGrange, IL 60525.	Chicago, IL	100	7,591,100
Chicago	071-EE101/IL06-S951-015, First Assembly of God Church, 5950 Springcreek Rd, Rockford, IL 61114.	Rockford, IL	60	3,915,900
Chicago	072-EE099/IL06-S951-013, Congregation of Immanuel Lutheran Church, 1930 N. Bowman, Danville, IL 61832.	Danville, IL	50	3,229,400
Subsubtotal .....	.....	.....	331	23,918,100
Indiana				
Indianapolis	073-EE046/IN36-S951-001, Friendship House, 1010 Cumberland Avenue, West Lafayette, IN 47906.	West Lafayette, IN	50	3,060,300
Indianapolis	073-EE049/IN36-S951-004, Holy Cross Care, 105 East Jefferson, South Bend, IN 46601.	South Bend, IN	50	3,078,600
Indianapolis	073-EE053/IN36-S951-008, National Church Re, 2335 North Bank Drive, Columbus, OH 43220.	Richmond, IN	33	1,954,400
Indianapolis	073-EE054/IN36-S951-009, Ahepa National Hou, 10333 N. Meridian St., Indianapolis, IN 46290.	Merrillville, IN	50	3,516,800
Indianapolis	073-EE055/IN36-S951-010, Ancilla Systems In, 1000 Lake Park Avenue, Hobart, IN 46342.	Mishawaka, IN	50	3,464,000
Subsubtotal .....	.....	.....	233	15,074,100
Michigan				
Detroit	044-EE031/M128-S951-001, Cooperative Serv, 25900 Greenfield Road, Oak Park, MI 48237.	Detroit, MI	75	5,021,600
Detroit	044-EE035/M128-S951-006, Presbyterian Villa, 25300 W. Six Mile, Redford, MI 48240.	Holly, MI	51	3,429,100
Grand Rapids	047-EE015/M133-S951-001, Lutheran Social Services, 4143 South Thirteenth St, Milwaukee, WI 53221.	Marquette, MI	9	499,800
Grand Rapids	047-EE016/M133-S951-002, Harbor Area Housing, 129 E Bliff, Harbor Springs, MI 49740.	Harbor Springs, MI	16	881,900
Grand Rapids	047-EE017/M133-S951-003, Porter Hills Presbyterian Village, 3600 E Fulton, Grand Rapids, MI 49546.	Walker, MI	42	2,387,900
Subsubtotal .....	.....	.....	193	12,220,300
Minnesota				
Minn/St Paul	092-EE024/MN46-S951-002, Board of Social Ministry, 3881 Highland Avenue, St. Paul, MN 55110.	White Bear Lake, MN	46	3,219,400
Minn/St Paul	092-EE025/MN46-S951-003, Commonbond Communities, 328 West Kellogg Bouleva, St. Paul, MN 55102.	Minnetonka, MN	46	3,219,400
Minn/St Paul	092-EE033/MN46-S951-011, St. Francis Home, 501 Oak Street, Breckenridge, MN 56520.	Breckenridge, MN	20	1,221,700
Minn/St Paul	092-EE034/MN46-S951-012, Three Links Care Center, 815 Forest Avenue, Northfield, MN 55057.	Northfield, MN	21	1,355,900
Subsubtotal .....	.....	.....	133	9,016,400
Ohio				
Cleveland	042-EE066/OH12-S951-006, NCR of Massillon, 2335 North Bank Drive, Columbus, OH 43220.	Massillon, OH	55	3,547,600
Cleveland	042-EE068/OH12-S951-008, Deaconess Health Systems, 4269 Pearl Road, Cleveland, OH 44109.	North Royalton, OH	64	4,108,900
Cleveland	042-EE069/OH12-S951-009, Famicos Foundation, 7049 Superior Ave, Cleveland, OH 44103.	Cuyahoga County, OH	52	3,481,600

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Cleveland	042-EE071/OH12-S951-011, Cleveland Chinese Senior Citizens Assoc, 2999 Payne Ave, Cleveland, OH 44114.	Cuyahoga County, OH	43	2,879,000
Columbus	043-EE043/OH16-S951-002, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Groveport, OH	48	2,889,200
Columbus	043-EE044/OH16-S951-003, MRM-Toap, 452 Annadale Avenue, Mansfield, OH 44905.	Mount Gilead, OH	22	1,244,300
Cincinnati	046-EE027/OH10-S951-003, Clermont Senior Services, 2985-A Front Wheel Drive, Batavia, OH 45103.	Goshen, OH	36	2,166,900
Cincinnati	046-EE030/OH10-S951-006, Warren County Community Services, Inc., 570 North State Route 741, Lebanon, OH 45036.	Lebanon, OH	36	2,166,900
Cincinnati	046-EE033/OH10-S951-009, Adams-Brown Counties Economic Opportunities, 200 South Green Street, Georgetown, OH 45121.	West Union, OH	5	287,600
Subsubtotal .....	.....	.....	361	22,772,000
Wisconsin				
Milwaukee	075-EE033/WI39-S951-004, Arlington Poynette Area Clergy Assoc, Inc, 514 E Grant St, Poynette, WI 53955.	De Forest, WI	20	1,260,500
Milwaukee	075-EE036/WI39-S951-007, Housing of Limited Income Elderly, Inc, 4195 W College Ave, Milwaukee, WI 53221.	Waukesha, WI	18	1,165,100
Milwaukee	075-EE037/WI39-S951-008, Milwaukee Jewish Federation, Inc, 1360 N Prospect Ave, Milwaukee, WI 53202.	Milwaukee, WI	22	1,421,000
Milwaukee	075-EE038/WI39-S951-009, Council for the Spanish Speaking, Inc., 614 W. National Ave., Milwaukee, WI 53204.	Milwaukee, WI	16	1,037,100
Milwaukee	075-EE039/WI39-S951-010, Eternal Life Church of God In Christ, 200 W. Concordia Ave., Milwaukee, WI 53212.	Milwaukee, WI	20	1,293,000
Milwaukee	075-EE041/WI39-S951-012, Impact Seven Inc., 651 Garfield St., Alma, WI.	Alma, WI 54805	9	499,000
Milwaukee	075-EE042/WI39-S951-013, Impact Seven Inc., 651 Garfield St., Alma, WI 54805.	Tomahawk, WI	32	2,006,900
Subsubtotal .....	.....	.....	137	8,682,600
Subtotal .....	.....	.....	1388	91,683,500

FORT WORTH

Arkansas				
Little Rock	082-EE061/AR37-S951-004, Independent Living Cntr. of Southeast Ark., 714 West Grove, Eldorado, AR 71730.	El Dorado, AR	20	937,300
Little Rock	082-EE072/AR37-S951-015, Area Agency on Aging of Northwest Arkansas, P.O. Box 1795, Harrison, AR 72601.	Siloam Springs, AR	28	1,312,000
Subsubtotal .....	.....	.....	48	2,249,500
Louisiana				
New Orleans	064-EE045/LA48-S951-005, Rapides Council on Aging & NCSC, 415 Elliott St., Alexandria, LA 71301.	Pineville, LA	78	3,680,700
New Orleans	064-EE046/LA48-S951-006, Mamou Health Resources, Inc., P.O. Box 457, Mamou, LA 70554.	Mamou, LA	20	1,001,900
New Orleans	064-EE050/LA48-S951-010, Ouachita Council on Aging, Inc., 1209 Oliver Rd., Monroe, LA 71201.	Monroe, LA	39	1,878,100
New Orleans	064-EE056/LA48-S951-016, National Bapt. Convention HSG Board, Inc., 383 Washington Street, Newark, OH 43055.	New Orleans, LA	40	20,030,500
Subsubtotal .....	.....	.....	177	8,591,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
New Mexico				
Fort Worth	116-EE010/NM16-S951-001, Evang. Lutheran Good Samaritan Soc., 4500 West 57th St., Sioux Falls, SD 57117.	Grants, NM	24	1,314,300
Fort Worth	116-EE011/NM16-S951-002, AHEPA, 7202 N. Shadeland Ave., Ste. 100, Indianapolis, IN 46250.	Albuquerque, NM	48	2,559,800
Fort Worth	116-EE012/-S951-003, Eastern Plains Hsg. Dev. Corp., 200 Main St., Clovis, NM.	Clovis, NM	47	2,273,300
Subsubtotal .....	.....	.....	119	6,147,400
Oklahoma				
Oklahoma City	117-EE017/OK56-S951-002, Church of Christ of Spencer, 8512 N.E. 36th, Spencer, OK 73084.	Spencer, OK	41	2,057,900
Oklahoma City	118-EE016/OK56-S951-003, Senior Citizens Committee, Inc., 201 N. Rowe, Pryor, OK 74361.	Pryor, OK	30	1,512,600
Texas				
Subsubtotal .....	.....	.....	71	3,566,500
Fort Worth	112-EE016/TX16-S951-001, Plano Community Home Sponsor, 1608-1612 Avenue L, Plano, TX 75074.	Plano, TX	61	3,353,500
Fort Worth	112-EE017/TX16-S951-002, Cliff View Church of Christ, 2424 Simpson Stuart Road, Dallas, TX 75241.	Dallas, TX	28	1,476,800
Houston	114-EE038/TX24-S951-006, AHEPA National Corporation, 7202 North Shadeland Ave, Indianapolis, IN 46250.	Houston, TX	47	2,638,300
San Antonio	115-EE031/TX59-S951-002, American GI Forum, 206 San Pedro, San Antonio, TX 78205-1100.	San Antonio, TX	61	3,197,200
Subsubtotal .....	.....	.....	197	10,665,800
Subtotal .....	.....	.....	612	31,220,400
KANSAS CITY				
Iowa				
Des Moines	074-EE020/IA05-S951-001, Sunrise Retirement Community, 5501 Gordon Drive, Sioux City, IA 51106.	Sioux City, IA	20	1,092,400
Subsubtotal .....	.....	.....	20	1,092,400
Kansas				
Kansas City	084-EE023/KS16-S951-002, Lakeview Village I, 9100 Park, Lenexa, KS 66215.	Olathe, KS	42	2,402,700
Kansas City	102-EE013/KS16-S951-003, Mental Health Assn, 555 N Woodlawn, Wichita, KS 67208.	Wichita, KS	24	1,186,800
Kansas City	102-EE014/KS16-S951-004, Mennonite HSG Reha, 3033 West 2nd Street, Wichita, KS 67203.	Derby, KS	40	2,069,500
Subsubtotal .....	.....	.....	106	5,659,000
Missouri				
St. Louis	085-EE028/MO36-S951-004, Lutheran Altenheim, 1265 McLaran Ave, St Louis, MO 63147.	Kirkwood, MO	67	4,389,400
Subsubtotal .....	.....	.....	67	4,389,400
Nebraska				
Omaha	103-EE012/NE26-S951-001, Notre Dame Sisters, 3501 State Street, Omaha, NE 68112.	Omaha, NE	20	1,034,200
Omaha	103-EE013/NE26-S951-002, NAF Multicultural Human Development Corp., 416 East 4th Street, North Platte, NE 69103.	Lexington, NE	18	913,300
Subsubtotal .....	.....	.....	38	1,947,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Subtotal .....	.....	.....	231	13,088,300
DENVER				
Denver	101-EE021/C099-S951-002, Carbondale Senior, 1250 Hendrick Dr., Carbondale, CO 81623.	Carbondale, CO	16	1,023,900
Denver	101-EE025/C099-S951-006, Franciscan Ministr, 2626 Osceola Street, Denver, CO 80212.	Westminster, CO	40	2,556,400
Denver	101-EE026/C099-S951-007, SRDA (Pueblo), 230 No. Union Ave, Pueblo, CO 81003.	Pueblo, CO	51	3,259,500
Subsubtotal .....	.....	.....	107	6,839,800
Montana				
Denver	093-EE004/MT99-S951-001, Montana Pioneer MA, 605 North Sheridan Plentywood, MT 59254.	Plentywood, MT	8	457,000
Denver	093-EE005/MT99-S951-002, Human Resources CN, 700 Casey, Butte, MT 59701.	Butte, MT	60	3,366,400
Subsubtotal .....	.....	.....	68	3,823,400
South Dakota				
Denver	091-EE002/SD99-S951-001, Evangelical Luther, 4800 West 57th Street, Sioux Falls, SD 57117.	Sioux Falls, SD	40	2,042,600
Subsubtotal .....	.....	.....	40	2,042,600
Utah				
Denver	105-EE005/UT99-S951-001, Comm Hsg Ser, 1059 East 100 South, Salt Lake City, UT 84105.	Moab, UT	35	1,950,000
Subsubtotal .....	.....	.....	35	1,950,000
Wyoming				
Denver	109-EE003/WY99-S951-001, Senior Citizens Fn, P.O. Box 192, Douglas, WY 82633.	Douglas, WY	24	1,423,500
Subsubtotal .....	.....	.....	24	1,423,500
Subtotal .....	.....	.....	274	16,079,300
SAN FRANCISCO				
Arizona				
Phoenix	123-EE040/AZ20-S951-004, Mercy Housing Inc., 550 West Thomas Road, Phoenix, AZ 85013.	Tolleson, AZ	41	2,144,100
Phoenix	123-EE043/AZ20-S951-007, Arizona Baptist Re, P.O. Box 33339, Phoenix, AZ 85067.	Phoenix, AZ	10	520,300
Phoenix	123-EE044/AZ20-S951-008, Christian Care Man, 2002 W. Sunnyside Drive, Phoenix, AZ 85029.	Cottonwood, AZ	9	485,700
Phoenix	123-EE047/AZ20-S951-011, Arizona Baptist Re, P.O. Box 33339, Phoenix, AZ 85067.	Phoenix, AZ	14	728,500
Subsubtotal .....	.....	.....	74	3,878,600
California				
San Francisco	121-EE067/CA39-S951-001, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103.	San Francisco, CA	93	6,943,700
San Francisco	121-EE069/CA39-S951-003, Bridge Housing Corporation, 1 Hawthorne Street, San Francisco, CA 94105.	San Francisco, CA	54	4,400,000
San Francisco	121-EE075/CA39-S951-009, Burbank Housing Development Corporation, 3432-A, Mendocino Avenue, Santa Rosa, CA 95403.	Windsor, CA	60	3,989,100
San Francisco	121-EE077/CA39-S951-011, Interfaith Housing, Inc., 550 Hillcrest Avenue, Livermore, CA 94550.	Livermore, CA	80	6,091,900
San Francisco	121-EE080/CA39-S951-014, Allen Temple Housing Development Corp., 8135 E. 14th Street, Oakland, CA 94621.	Oakland, CA	50	3,990,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Los Angeles	122-EE082/CA16-S951-001, Peoples Self Help, 1411 Marsh St., San Luis Obispo, CA 93401.	Santa Maria, CA	18	1,373,000
Los Angeles	122-EE084/CA16-S951-003, Telacu, 5400 E Olympic Blvd., Los Angeles, CA 90022.	Pacoima, CA	75	5,985,400
Los Angeles	122-EE085/CA16-S591-004, Telacu, 5400 Olympic Blvd., Los Angeles, CA 90022.	Monterey Park, CA	67	5,364,200
Los Angeles	122-EE086/CA16-S951-005, Coop SVCS Inc., 25900 Greenfield Rd., Oak Park, MI 48237.	Gardena, CA	80	6,401,700
Los Angeles	122-EE090/CA16-S951-009, The Sal Army, 30840 Hawthorne BL, Rancho Palos Verde, CA 90274.	Glendale, CA	75	6,002,600
Los Angeles	122-EE096/CA16-S951-015, Comm. Resource tale, 333 W. Florence, Inglewood, CA 90301.	Los Angeles, CA	38	3,049,800
Los Angeles	129-EE007/CA33-S951-002, Rotary Club of Brawley, PO Box 1442, Brawley, CA 92227.	Brawley, CA	5	379,700
Los Angeles	129-EE008/CA33-S951-003, Sal Army, 30840 Hawthorne Bl, Rancho Palos Verde, CA 90274.	Escondido, CA	75	5,977,200
Sacramento	136-EE014/CA30-S951-001, Rogue Valley Manor, 1200 Mira Mar Ave., Medford, Or 97504.	Yreka, CA	10	754,000
Sacramento	136-EE020/CA30-S951-007, Mercy Charities HO, 1028A Howard St., San Francisco, CA 94103.	Sacramento, CA	66	5,105,200
Los Angeles	143-EE014/CA43-S951-005, COOP Svcs Inc., 25900 Greenfield Rd., Oak park, MI 48237.	Beaumont, CA	50	4,007,500
Los Angeles	143-EE018/CA43-S951-009, Southern California, 1111 N. Brand Bl., Glendale, CA 91202.	Norco, CA	40	3,051,100
Subsubtotal .....	.....	.....	936	72,866,600
Hawaii				
Honolulu	140-EE012/HI10-S951-002, Hale Mahaolu, 200 Hina Avenue, Kahului, HI 96732.	Kaunakakai, HI	5	581,700
Subsubtotal .....	.....	.....	5	581,700
Subtotal .....	.....	.....	1015	77,326,900

SEATTLE

Alaska				
Anchorage	176-EE007/AK06-S951-002, Union Labor Retirement Association, 1625 SE Lafayette Street, Portland, OR 97202.	Anchorage, AK	20	2,434,700
Anchorage	176-EE008/AK06-S951-003, Saint Vincent De Paul Society Diocesan, 8617 Teal Street, Juneau, AK 99801.	Juneau, AK	5	605,700
Subsubtotal .....	.....	.....	25	3,040,400
Oregon				
Portland	126-EE018/OR16-S951-005, Evangelical Luther, 4800 West 57th Street, Sioux Falls, SD 57117.	Brookings, OR	24	1,435,000
Portland	126-EE020/OR16-S951-007, Rogue Valley Manor, 1200 Mira Mar Avenue, Medford, OR 97504.	Eugene, OR	68	4,300,000
Subsubtotal .....	.....	.....	92	5,735,000
Washington				
Seattle	127-EE013/WA19-S951-002, Senior Services, 8225 44th Avenue W., Mukilteo, WA 98275.	Everett, WA	39	2,661,000
Seattle	127-EE014/WA19-S951-003, Sisters of Providence, 520 Pike Street, Seattle, WA 98111.	Olympia, WA	60	4,047,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Seattle	127-EE016/WA19-S951-005, Korean Women's Assn., 125 East 96th Street, Tacoma, WA 98445.	Tacoma, WA	25	1,710,800
Subsubtotal .....	.....	.....	124	8,419,300
Subtotal .....	.....	.....	241	17,194,700
Total .....	.....	.....	7780	521,659,900

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Boston					
Connecticut					
Hartford	017-HD014/CT26-Q595-102 Marra-kech 566 Whalley Ave New Haven, CT 06511.	New Haven, CT	3	CMI	280,600
Subsubtotal .....	.....	.....	3	.....	280,600
Massachusetts					
Boston	023-HD072/MA06-Q951-001 Charles River Asso E. Militia Hts, P.O. Box 169 Needham, MA 02192.	Needham, MA	4	WDD	330,500
Boston	023-HD076/MA06-Q951-005 Mental Health Asso 146 Chestnut St. Springfield, MA 01103.	Springfield, MA	3	WDD	288,300
Boston	023-HD077/MA06-Q951-006 Mental Health Asso 146 Chestnut St. Springfield MA 01103.	Holyoke, MA	7	CMI	551,500
Boston	023-HD079/MA06-Q951-007 Community Mental H 45 Summer St. Leominster, MA 01453.	Fitchburg, MA	4	CMI	289,500
Boston	023-HD079/MA06-Q951-008 Newton-Wellesley-W P.O. Box 242 Auburndale, MA 09999.	Newton, MA	4	WDD	330,500
Boston	023-HD080/MA06-Q951-009 Newton-Wellsley-W P.O. Box 242 Auburndale, MA 09999.	Newton, MA	6	WDD	373,800
Boston	023-HD084/MA06-Q851-013 The Arc of Frankli 111 Summer Street Greenfield, MA 01301.	Greenfield Town, MA	4	WDD	308,500
Boston	023-HD094/MA06-Q951-023 The May Institute, 940 Main Street S. Harwich, MA 02661.	Willbraham Town, MA	8	WDD	617,000
Boston	023-HD095/MA06-Q951-024 The May Institute, 940 Main Street S. Harwich, MA 02661.	Boston, MA	8	WDD	661,100
Subsubtotal .....	.....	.....	48	.....	375,0700
Maine					
Manchester	024-HD017.ME36-Q951-001 Tri-County Mental P.O. Box 2008 1155 Lisbon Lewiston, ME 04220.	Farmington, ME	5	CMI	308,600
Manchester	024-HD030/ME36-Q951-004 Motivational Servi 114 State St., Augusta, ME 04330.	Augusta, ME	3	CMI	189,700
Subsubtotal .....	.....	.....	8	.....	489,300
Rhode Island					
Providence	016-HD011/R143-Q951-002 Mntl Hlth Svc Cran/Jhnstr/NWRI, 1516 Atwood Avenue Johnston, RI 02919.	Cranston, RI	15	CMI	1,157,500

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Subsubtotal .....	.....	.....	15	.....	1,157,000
Vermont					
Manchester	24-HD021/VT36-Q951-001, Howard Center for 300 Flynn Avenue Burlington, VT 05401.	Burlington, VT	6	CMI	277,600
Subsubtotal .....	.....	.....	6	.....	277,600
Subtotal .....	.....	.....	80	.....	5,964,700
NEW YORK					
New Jersey					
Newark	031-HD049/NJ39-Q951-005, United Jewish Federation of Metrowest, 901 Route 10, Whippany, NJ 07981.	West Caldwell, NJ	6	WDD	373,800
Newark	031-HD050/NJ39-Q951-006, Spectrum For Living Group Homes, Inc., 210 Rivervale Rd Suite 3, River Vale, NJ 07675.	Ringwood, NJ	9	WDD	875,900
Newark	031-HD053/NJ39-Q951-009, ARC of Essex Co., Inc., 7 Regent Street, Livingston, NJ 07039.	West Caldwell, NJ	5	WDD	352,200
Newark	031-HD054/NJ39-Q951-010, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Maplewood TWP, NJ	3	CMI	298,100
Newark	031-HD056/NJ39-Q951-012, Alternatives Inc., PO Box 338, Somerville, NJ 08876.	Somerville, NJ,	3	CMI	298,100
Newark	031-HD057/NJ39-Q951-013, Community Centers for Mental Health, 2 Park Avenue, Dumont, NJ 07628.	Palisades Park, NJ	5	CMI	335,300
Newark	031-HD058/NJ39-Q951-014, Project Live Inc., 402 Mt Prospect Ave, Newark, NJ 07104.	South Orange Village, NJ	3	DCMI	298,100
Newark	031-HD059/NJ39-Q951-015, Concerned Citizens for Chronic Psychiatric, 139 Metlars Lane, Piscataway, NJ 08854.	Dunellen, NJ	3	DCMI	298,100
Newark	031-HD060/NJ39-Q951-016, Alternatives Inc., PO Box 338, Somerville, NJ 08876.	South Bound Brook, NJ	3	CMI	298,100
Newark	031-HD061/NJ39-Q951-017, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	South Orange Villa, NJ	3	CMI	298,100
Newark	035-HD020/NJ39-Q951-021, Disabilities Resource Center, 206 Route 50, Corbin City, NJ 08270.	Woodbine, NJ	10	WDD	743,700
Newark	035-HD025/NJ39-Q951-026, ARC of Atlantic Co., Inc., 101 Shore Rd, Somers Point, NJ 08244.	Hamilton TWP, NJ	4	WDD	344,500
Newark	035-HD026/NJ39-Q951-027, Center for Innovative Family Achievements, 2482 Pennington Road, Trenton, NJ 08638.	Lawrence TWP, NJ	4	WDD	304,300
Newark	035-HD028/NJ39-Q951-29, Cordamore Inc., 7512 N Crescent Blvd, Pennsauken, NJ 08110.	Delran TWP, NJ	6	WDD	344,200
Newark	035-HD031/NJ39-Q951-032, Mercer Alliance for the Mentally Ill, Inc., 404 Market Street, Trenton, NJ 08648.	Princeton, NJ	3	CMI	274,500
Newark	035-HD032/NJ39-Q951-033, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Trenton, NJ	3	CMI	274,500
Subsubtotal .....	.....	.....	73	.....	5,961,500
New York					
New York	012-HD035/NY36-Q951-001, Options for Community Living, 202 E Main St, Smithtown, NY 11787.	Port Jefferson Sta, NY	0	CMI	1,490,900

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
 [Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
New York	012-HD038/NJ36-Q951-004, Mercy Haven Inc., 859 Connetquot Ave, Islip Terrace, NY 11751.	Central Islip, NY	0	CMI	1,490,900
New York	012-HD039/NY36-Q951-005, Concern for Mental Health, Inc., P.O. Box 358, Medford, NY 11763.	Coram, NY	0	CMI	1,490,900
New York	012-HD042/NY36-Q951-008, New York Society for the Deaf, 817 Broadway, New York, NY 10003.	New York-Manhattan, NY	21	WPD	1,747,300
New York	012-HD045/NY36-Q951-011, Weston United Community Renewal, 203 W 113 St., New York, NY 10026.	New York-Manhattan, NY	25	CMI	1,904,600
New York	012-HD046/NY36-Q951-012, Post-graduate Center for Mental Health, 124 E 28 St., New York, NY 10016.	New York-Manhattan, NY	51	CMI	3,880,100
Buffalo	014-HD026/NY06-Q951-001, Belmont Shelter Corp., 1195 Main St., Buffalo, NY 14029.	Niagara, NY	24	WPD	1,886,600
Buffalo	014-HD029/NY06-Q951-004, UCPA of WNY, 7 Community Drive, Buffalo, NY 14225.	Lancaster, NY	15	WDD	928,900
Buffalo	014-HD030/NY06-Q951-005, People Svcs to the Devl Dis, 1219 N Forest Rd., Williamsville, NY 14221.	Grand Island, NY	11	WDD	638,200
Buffalo	014-HD031/NY06-Q951-006, Lifetime Assistance Inc., 425 Paul Road, Rochester, NY 14624.	Hamlin, NY	6	WDD	319,300
Buffalo	014-HD032/NY06-Q951-007, Lifetime Assistance Inc., 425 Paul Road, Rochester, NY 14624.	Albion, NY	6	WDD	423,200
Buffalo	014-HD033/NY06-Q951-008, Autistic Svcs Inc., 169 Sheridan-Parkside Dr., Tonawanda, NY 14150.	Amherst Town, NY	7	WDD	562,100
Buffalo	014-HD037/NY06-Q951-012, Utica Comm Action Inc., 214 Rutger St., Utica, NY 13501.	Utica, NY	15	WPD	1,024,600
Subsubtotal .....	.....	.....	181	.....	17,787,600
Subtotal .....	.....	.....	254	.....	23,749,100

PHILADELPHIA

Delaware					
Philadelphia	032-HD012/DE26-Q951-001, The Salvation Army, 440 West Nyack Road, P.O. Box C635, West Nyack, NY 10994.	Milton, DE	3	WDD	249,600
Philadelphia	032-HD013/DE26-Q951-002, Alliance for the Mentally Ill in Delaware, 2500 W. 4th Street, Suite 12, Wilmington, DE 19805.	New Castle County, DE	20	CMI	1,506,600
Philadelphia	032-HD014/DE26-Q951-003, The Arc of Delaware, 240 N. James Street, Wilmington, DE 19804.	Newark, DE	17	WDD	1,108,600
Subsubtotal .....	.....	.....	40	.....	2,864,800
Maryland					
Washington	000-HD029/MD39-Q951-001, Vesta, Inc., 2340 University Blvd-E, Adelphi, MD 20783.	Suitland, MD	18	CMI	1,431,300
Baltimore	052-HD015/MD06-Q951-001, People Encouraging People, 4201 Primrose Avenue, Baltimore, MD 21215.	Baltimore, MD	11	CMI	848,900
Baltimore	052-HD16/MD06-Q951-002, Orthodox Church of St. Matthew, 10771 Bridlerein Terrace, Columbia, MD 21044.	Columbia, MD	16	WPH	1,071,200

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Baltimore	052-HD017/MD06-Q951-003, Way Station Inc., P.O. Box 3826, Frederick, MD 21701.	Frederick, MD	8	CMI	581,500
Baltimore	052-HD018/MD006-Q951-004, Community Living Inc., 431 Carrollton Drive, Frederick, MD 21701.	Frederick, MD	12	WDD	1,019,300
Baltimore	052-HD019/MD06-Q951-005, Revisions Inc., 20 Winters Lane, Catonsville, MD 21228.	Catonsville, MD	15	CMI	959,900
Subsubtotal .....	.....	.....	80	.....	5,912,100
Pennsylvania					
Pittsburgh	033-HD026/PA28-Q951-001, UCIP, 405 Finley Ave., Meadville, PA 16335.	Clarion County, PA	10	CMI	607,600
Pittsburgh	033-HD027/PA28-Q951-002, Skills of Central Pennsylvania, Inc., 805 Chestnut Street, Altoona, PA 16601.	Logan Twp, PA	4	WDD	258,900
Pittsburgh	033-HD028/PA28-Q951-003, Skills of Central Pennsylvania, Inc., 805 Chestnut Street, Altoona, PA 16601.	Patton, PA	4	WDD	258,900
Pittsburgh	033-HD029/PA28-Q951-004, Erie Independence Housing, Inc., 2222 Filmore Avenue, Erie, PA 16506.	Erie, PA	11	WPD	705,900
Philadelphia	034-HD036/PA26-Q951-002, The Salvation Army, 440 West Nayack Road, P.O. Box C 635, West Nayack, NY 10994.	Bensalem Twp, PA	3	WDD	276,700
Philadelphia	034-HD038/PA26-Q951-004, Co-Man's Inc., P.O. Box 7151 Penn del, PA 19047.	Penn del, PA	8	CMI	339,100
Philadelphia	034-HD039/PA26-Q951-005, New Hope Church of Philadelphia, 2640-46 North 15th St., Philadelphia, PA 19132.	Philadelphia, PA	12	WPH	723,200
Philadelphia	034-HD040/PA26-Q951-006, Mercy-Douglas Human Services Corp., 4508-38 Chestnut Street, Philadelphia, PA 19139.	Philadelphia, PA	4	WPH	429,000
Subsubtotal .....	.....	.....	56	.....	2,599,300
Virginia					
Richmond	051-HD027/VA36-Q951-001, Community Alternative Mgmt. Group, Inc., 3133 Magic Hollow Blvd., Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051-HD028/VA36-Q951-002, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd., Suite 120, Virginia Beach, VA 23456.	Virginia Beach Cit, VA	2	CMI	192,300
Richmond	051-HD030/VA36-Q951-004, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd, Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051-HD032/VA36-Q951-006, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd, Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051-HD036/VA36-Q951-010, Accessible Space, Inc., 2550 University Ave., Suite 330N, St. Paul, MN 55114.	Norfolk, VA	25	WPH	1,467,200
Richmond	051-HD038/VA36-Q951-012, Fauquier Citizens for Handicapped Persons, P.O. Box 611, Warrenton, VA 22186.	Remington, VA	0	WDD	257,000
Subsubtotal .....	.....	.....	33	.....	2,493,400
West Virginia					
Charleston	045-HD015/WV15-Q951-002, Hancock Co., Shelte, 1100 Pennsylvania Ave., Weirton, WV 26062.	Weirton, WV	9	WDD	307,600

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
 [Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Charleston	045-HD018/WV15-Q951-005, Autism Services CE, 605 Ninth Street, Huntington, WV 25710.	Huntington, WV	6	WDD	258,000
Subsubtotal .....	.....	.....	15	.....	565,600
Subtotal .....	.....	.....	224	.....	15,435,200

ATLANTA

Alabama					
Birmingham	062-HD026/AL09-Q951-001, VOA of South Alabama, Inc., 600 Azalea Road, Mobile, AL 36609.	Mobile, AL	15	WPD	843,800
Birmingham	062-HD027/AL09-Q951-002, VOA of South Alabama, Inc., 600 Azalea Road, Mobile, AL 36609.	Mobile, AL	21	WDD	1,130,900
Birmingham	062-HD029/AL09-Q951-004, Glenwood Mental Health, 150 Glenwood Lane, Birmingham, AL 35242.	Birmingham, AL	4	WDD	208,500
Birmingham	062-HD030/AL09-Q951-005, Cullman Area Mental Health Authority, Inc., 1909 Commerce Avenue, N.W., Cullman, AL 35055.	Cullman, AL	10	CMI	604,300
Subsubtotal .....	.....	.....	50	.....	2,787,500
Florida					
Jacksonville	063-HD010/FL29-Q951-018, Mental Health Service, 4300 SW 13th St., Gainesville, FL 32608.	Gainesville, FL	16	CMI	937,300
Jacksonville	066-HD022/FL29-Q951-007, Goodwill Ind. of SW Fla., 4949 Bayline Dr., N. Fort Myers, FL 33917.	N. Ft. Myers, FL	16	WPD	1,044,900
Jacksonville	066-HD023/FL29-Q951-008, David Lawrence Mental Health, 6075 Golden Gate Parkway, Naples, FL 33999.	East Naples, FL	10	CMI	767,800
Jacksonville	066-HD027/FL29-Q951-013, Ann Storck Center, Inc., 1790 SW 43 Way, Ft. Lauderdale, FL 33317.	Plantation, FL	6	WDD	311,500
Jacksonville	066-HD028/FL29-Q951-014, AIDS Help, Inc., PO Box 4374, Key West, FL 33041.	Key West, FL	7	WPD	503,000
Jacksonville	067-HD034/FL29-Q951-003, Professional Therapy Center, P.O. Box 6239, Springhill, FL 34606.	Brooksville, FL	15	CMI	814,400
Jacksonville	067-HD035/FL29-Q951-005, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	Clearwater, FL	6	WPD	366,100
Jacksonville	067-HD036/FL29-Q951-006, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	St. Petersburg, FL	10	WPD	591,700
Jacksonville	067-HD037/FL29-Q951-010, Seminole Comm. Mental Health, 417 Whooping Lane, Suite 1721, Altamonte Springs, FL 32701.	Longwood, FL	13	CMI	732,500
Jacksonville	067-HD039/FL29-Q951-016, Mental Health Care, Inc., 5707 N. 22nd St., Tampa, FL 33610.	Tampa, FL	24	CMI	1,363,400
Subsubtotal .....	.....	.....	123	.....	7,432,600
Georgia					
Atlanta	06-HD039/GAO6-Q951-006, Goodwill Ind.,—Big Bend, Inc., 300 Mabry Street, Tallahassee, FL 32304.	Thomasville, GA	20	WPD	1,126,500
Atlanta	061-HD040/GAO6-Q951-007, Lynndale, Inc., 1490 Eisenhower Drive, Augusta, GA 30904.	Augusta, GA	11	WDD	561,700

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Atlanta	061-HD041/GAO6-Q951-008, VOA of South AL., Inc./ VOA of GA., Inc., 600 Azalea Road, Mobile, AL 36609.	Thomaston, GA	13	CMI	663,800
Atlanta	061-HD043/GAO6-Q951-010, UCP of Greater Atlanta, Inc., 1776 Peachtree St., Suite 552S, Atlanta, GA 30309.	Marietta, GA	10	WDD	435,200
Atlanta	061-HD044/GAO6-Q951-011, VOA of South AL., Inc./ VOA of GA., Inc., 600 Azalea Rd., Mobile, AL 36609.	Douglasville, GA	13	CMI	663,800
Subsubtotal .....	.....	.....	67	.....	3,451,000
Kentucky					
Louisville	083-HD032/KY36-Q951-001, The Cain Center, 735 East Chestnut Street, Louisville, KY 40202-1605.	Valley Station, KY	10	WPD	559,100
Louisville	083-HD033/KY36-Q951-002, The Cain Center, 735 East Chestnut Street, Louisville, KY 40202-1605.	Buechel, KY	10	WPD	616,700
Louisville	083-HD034/KY36-Q951-003, Lake Cumberland Co, PO Box 968, Somerset, KY 42502-0968.	Columbia, KY	9	CMI	497,400
Louisville	083-HD032/KY36-Q951-004, Communicare Inc., 1311 North Dixie, Elizabethtown, KY 42701.	Bardstown, KY	10	CMI	559,100
Subsubtotal .....	.....	.....	39	.....	2,232,300
Mississippi					
Jackson	065-HD006/MS26-Q951-001, Singing River MH/Retardation Services, 4507 McArthur St, Pascagoula, MS 39567.	Gautier, MS	9	WDD	269,000
Jackson	065-HD008/MS26-Q951-003, Delta Community Mental Health Services, P.O. Box 5365, Greenville, MS 38704.	Rolling Fork, MS	15	CMI	746,600
Jackson	065-HD009/MS26-Q951-004, Delta Community Mental Health Services, P.O. Box 5365, Greenville, MS 38704.	Boyle, MS	15	CMI	732,000
Jackson	065-HD010/MS26-Q951-005, Reg. Foundation for MH/Retardaton, P.O. Box 1188, Starkville, MS 39759.	Louisville, MS	17	CMI	829,600
Subsubtotal .....	.....	.....	56	.....	2,577,200
North Carolina					
Greensboro	053-HD102/NC19-Q951-001, The Arc of Mecklenburg, 4801 E. Independence Blvd, Charlotte, NC 28212.	Charlotte, NC	4	WDD	321,100
Greensboro	053-HD103/NC19-Q951-002, The Arc of North Carolina, Inc., PO Box 29594, Greensboro, NC 27429.	Lexington, NC	6	WDD	317,700
Greensboro	053-HD104/NC19-Q951-003, The Arc of North Carolina, Inc., PO Box 29594, Greensboro, NC 27429.	Jefferson, NC	4	WDD	263,700
Greensboro	053-HD105/NC19-Q951-004, The Arc of North Carolina, Inc., PO Box 29594.	Burlington, NC	4	WDD	263,700
Greensboro	053-HD106/NC19-Q951-005, Autism Society of North Carolina, 3300 Womens Club Drive, Raleigh, NC 27612.	Raleigh, NC	6	WDD	347,300
Greensboro	053-HD107/NC19-Q951-006, Autism Society of North Carolina, 3300 Womens Club Drive, Raleigh, NC.	Albemarle, NC	4	WDD	266,300
Greensboro	053-HD110/NC19-Q951-009, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Mount Airy, NC	10	CMI	659,300
Greensboro	053-HD111/NC19-Q951-010, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Warrenton, NC 27609	6	CMI	347,300
Greensboro	053-HD112/NC19-Q951-011, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Charlotte, NC	10	CMI	665,800

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
 [Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Greensboro	053-HD113/NC19-Q951-012, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Rockingham, NC	10	CMI	665,800
Greensboro	053-HD114/NC19-Q951-013, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Newton, NC	10	CMI	665,800
Greensboro	053-HD115/NC19-Q951-014, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Chadbourn, NC	10	CMI	698,100
Greensboro	053-HD118/NC19-Q951-017, Western NC Community Health Services, PO Box 338, Asheville, NC 28802.	Asheville, NC	6	WPD	325,500
Subsubtotal .....	.....	.....	90	.....	5,807,400
Puerto Rico					
Caribbean	056-HD007/RQ46-Q951-002, Ryder Memorial Hospital, Call Box 859, Humacao, PR 00791.	Humacao Municipio, PR	41	WPD	2,800,600
Subsubtotal .....	.....	.....	41	.....	2,800,600
South Carolina					
Columbia	054-HD069/SC16-Q951-001, Sumter County Disabilities & Spec Needs BD., PO Box 2847, Sumter, SC 29151-2847.	Sumter, SC	16	WDD	931,500
Columbia	054-HD070/SC16-Q951-002, Sumter County Disabilities & Spec Needs BD., PO Box 2847, Sumter, SC 29151-2847.	Sumter, SC	12	WDD	636,000
Columbia	054-HD071/SC16-Q951-003, The Charles Lea Center for Rehab. & Spec. Ed. 195 Burdette Street, Spartanburg, SC 29307.	Spartanburg, County, SC ...	12	WDD	752,300
Columbia	054-HD072/SC16-Q951-004, Laurens County Assoc. for Retarded Citizens, PO Box 735, Laurens, SC 29360.	Joanna, SC	12	WDD	723,400
Columbia	054-HD073/CC16-Q951-005, Tri Development Center of Aiken County, Inc., PO Box 698, Aiken, SC 29802.	Aiken, SC	8	WDD	482,200
Subsubtotal .....	.....	.....	60	.....	3,525,400
Tennessee					
Nashville	081-HD013/TN40-Q951-001, Accessible Space/Mid-South Head Injury, 550 University Ave., St. Paul, MN 55114.	Memphis, TN	25	WPD	1,404,900
Knoxville	087-HD023/TN37-Q951-004, Hamilton CY MH ASS, PO Box 4755, Chattanooga, TN 37405.	Cleveland, TN	9	CMI	246,000
Knoxville	087-HD024/TN37-Q951-005, Hamilton CY MH ASS, PO Box 4755, Chattanooga, TN 37405.	.....	.....	.....	.....
Knoxville	087-HD026/TN37-Q951-007, Emory Valley Ctr I, 715 Emory Valley Rd, Oak Ridge, TN 37830.	Oak Ridge, TN	7	WDD	242,900
Knoxville	087-HD28/TN37-Q951-009, Ridgeview Psych HD, 240 W Tyrone Rd, Oak Ridge, TN 37830.	Oak Ridge, TN	9	CMI	400,200
Subsubtotal .....	.....	.....	59	.....	2,540,000
Subtotal .....	.....	.....	585	.....	33,154,000
CHICAGO					
Illinois					
Chicago	071-HD071/IL06-Q951-010, Habilitative Systems, Inc. 415 South Kilpatrick Street, Chicago, IL 60644.	Chicago, IL	5	WDD	1,883,000

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Chicago	071-HD080/IL06-Q951-019, Ada S. McKinley, 100 East 34th St., Chicago, IL 60616.	Chicago IL	24	WDD	1,129,800
Chicago	072-HD074/IL06-Q951-013, Bridgeway, Inc., 2323 Windish, Galesburg, IL 61401.	Kewanee, IL	15	CMI	925,900
Chicago	072-HD075/IL06-Q951-014, Bridgeway, Inc., 2323 Windish Drive, Galesburg, IL 61401.	Galesburg, IL	15	CMI	925,900
Chicago	072-HD077/IL06-Q951-016, Peoria Association for Retarded Citizens, 2006 W. Altorfer Drive, Peoria, IL 61612.	East Peoria, IL	16	WDD	1,052,200
Chicago	072-HD079/IL06-Q951-01B, Horizon House of Illinois, 2000 Plank Rd. Peru, IL 61354.	Peru, IL	16	WDD	1,052,200
Subsubtotal .....	.....	.....	91	.....	6,969,000
INDIANA					
Indianapolis	073-HD035/IN36-Q951-001, So Hills Counselin, 480 Eversman Drive, Jasper, IN 47546.	Jasper, IN	10	CMI	298,900
Indianapolis	073-HD039/IN36-Q951-005, Park Center, Inc., 909 East State Blvd., Fort Wayne, IN 46805.	Fort Wayne, IN	25	CMI	1,486,700
Indianapolis	073-HD040/IN36-Q951-006, Grant-Blackford Mental Health, Inc., 505 Wabash Avenue, Marion, IN 46952.	Marion, IN	10	CMI	298,900
Subsubtotal .....	.....	.....	45	.....	2,084,500
Michigan					
Detroit	044-HD014/MI28-Q951-005, Rhoades, McKee, Boer, 600 Waters Building, Grand Rapids, MI 49503.	Pontiac, MI	24	CMI	1,529,000
Detroit	044-HD016/MI28-Q951-007, Innovative Housing, 2051 Commerce Drive, Fort Gratiot, MI 48059.	Port Huron, MI	6	WDD	383,900
Detroit	044-HD017/MI28-Q951-009, Innovative Housing, 2051 Commerce Drive, Fort Gratiot, MI 48059.	Port Huron, MI	12	CMI	767,900
Detroit	044-HD018/MI28-Q951-011, Care Group & Assoc, Clair Circle, Ann Arbor, MI 48103.	Ann Arbor, MI	6	WDD	308,400
Grand Rapids	047-HD016/MI33-Q951-003, Hope Network, Box 0141, Grand Rapids, MI 49501.	Big Rapids, MI	19	WDD	1,116,500
Detroit	048-HD005/MI28-Q951-008, Innovative Housing, 3051 Commerce Drive, Fort Gratiot, MI 48059.	Sandusky, MI	16	WDD	962,400
Subsubtotal .....	.....	.....	83	.....	5,068,100
Minnesota					
Minn/St Paul	092-HD027/MN46-Q951-001, Renville County Co., 831 Grove Avenue, Bird Island, MN 55310.	Bird Island, Olivia, MN	8	WDD	520,600
Minn/St Paul	092-HD028/MN46-Q951-002, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55415.	Falcon Heights, MN	8	WPD	567,400
Minn/St Paul	092-HD029/MN46-Q951-003, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	Blaine, MN	12	WPD	851,100
Minn/St Paul	092-HD030/MN46-Q951-004, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	St. Anthony, MN	4	WPD	283,700
Minn/St Paul	092-HD032/MN46-Q951-006, Fraser Community Services, 400 West 64th Street, Minneapolis, MN 55423.	Minnetonka, MN	24	WDD	1,611,600
Subsubtotal .....	.....	.....	56	.....	3,834,400

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
 [Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Ohio					
Cleveland	042-HD041/OH12-Q951-001, Lutheran Metropolitan Ministry, 1468 West 25 Street, Cleveland, OH 44113.	Avon Lake, OH	24	WPD	1,556,500
Cleveland	042-HD044/OH12-Q951-004, Wood County Mental Health Clinic Inc, 1010 Prospect, Bowling Green, OH 43402.	Bowling Green, OH	12	CMI	767,900
Cleveland	042-HD045/OH12-Q951-005, Ruth Ide Mental Health Center, 544 East Woodruff, Toledo, OH 43624.	Toledo, OH	18	CMI	1,151,900
Cleveland	042-HD046/OH12-Q951-006, Mansfield-Richland-Morrow City Policy Comm, 452 Annandale Avenue, Mansfield, OH 44905.	Mansfield, OH	24	WPD	1,141,700
Cleveland	042-HD049/OH12-Q951-009, AIDS HSG Council of Greater Cleveland, 1413 West 80th Street, Cleveland, OH 44102.	Cleveland, OH	15	WPD	1,481,800
Cleveland	042-HD052/OH12-Q951-012, Hill House, 11101 Magnolia Drive, Cleveland, OH 44106.	Cleveland, OH	10	CMI	342,600
Columbus	043-HD022/OH16-Q951-001, Tri-Star Community Counseling, Inc., 635 West Spring Street, Lima, OH 45801.	Lima, OH	12	CMI	678,700
Columbus	043-HD025/OH16-Q951-004, Jireh Services, Inc., 1587 Kent Street, Columbus, OH 43205.	Columbus, OH	5	WDD	245,100
Columbus	043-HD026/OH16-Q951-005, Goodwin & Goodwin, Inc., P.O. Box 6986, Columbus, OH 43205.	Columbus, OH	6	WDD	261,200
Cincinnati	046-HD015/OH10-Q951-001, Eastway Corporation, 600 Wayne Avenue, Dayton, OH 45410-1199.	Eaton, OH	7	CMI	402,700
Cincinnati	046-HD016/OH10-Q951-002, First Mental Retardation Corporation, 615 Randolph Street, Dayton, OH 45408.	Dayton, OH	4	WDD	245,100
Cincinnati	046-HD017/OH10-Q951-003, First Mental Retardation Corporation, 615 Randolph Street, Dayton, OH 45408.	Dayton, OH	5	WDD	261,200
Subsubtotal			142		8,536,400
Wisconsin					
Milwaukee	075-HD037/WI39-Q951-003, Catholic Charities Bureau, Inc., 1416 Cumming Ave., Superior, WI 54880.	Washburn, WI	8	CMI	499,000
Milwaukee	075-HD038/WI39-Q951-004, Housing Allowance OFC of Brown County, 1150 Main Street, Green Bay, WI 54301.	Green Bay, WI	4	CMI	241,700
Milwaukee	075-HD040/WI39-Q951-006, Goodwill Industries of South Central WI, Inc., 1302 Mendota St., Madison, WI 53714.	Madison, WI	6	CMI	378,100
Milwaukee	075-HD041/WI39-Q951-007, ARC Housing in Milwaukee, Inc., 1126 S. 70 St., West Allis, WI 53214.	Milwaukee, WI	8	WDD	564,600
Milwaukee	075-HD044/WI39-Q951-010, Goodwill Industries of Southeastern WI, Inc., 6055 N. 91 St., Milwaukee, WI 53225.	Racine, WI	8	CMI	530,400
Subsubtotal			34		2,213,800
Subtotal			451		28,706,200

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
FORT WORTH					
Arkansas					
Little Rock	082-HD037/AR37-Q951-005, Little Rock Community Mental Health Center, 4400 Shuffield Drive, Little Rock, AR 72205.	Little Rock, AR	24	CMI	1,124,700
Subsubtotal .....	.....	.....	24	.....	1,124,700
Louisiana					
New Orleans	064-HD032/LA48-Q951-003, Seventh District Baptist Association, P.O. Drawer 540, Crowley, LA 70527.	Opelousas, LA	24	WPD	775,700
New Orleans	064-HD034/LA48-Q951-005, Diocese of Lafayette, 1408 Carmel Ave., Lafayette, LA 70501.	Eunice, LA	24	WPD	775,700
Subsubtotal .....	.....	.....	48	.....	1,551,400
New Mexico					
Fort Worth	116-HD004/NM16-Q951-001, The Life Link, P.O. Box 6094, Santa Fe, NM 87502.	Santa Fe, NM	12	CMI	495,400
Fort Worth	116-HD005/NM16-Q951-002, Tohatchi Special Education & Training, P.O. Box 49, Tohatchi, NM 87325.	Tohatchi, NM	8	WDD	434,300
Fort Worth	116-HD006/NM16-Q951-003, SW New Mexico Services to Handicapped, 907 Pope St., Silver City, NM 88061.	Deming, NM	8	WPD	464,600
Fort Worth	116-HD007/NM16-Q951-004, People Care, Inc., 800 N. Richardson Ave., Roswell, NM 88201.	Roswell, NM	15	CMI	771,900
Subsubtotal .....	.....	.....	43	.....	2,166,200
Oklahoma					
Oklahoma City	118-HD008/OK56-Q951-001, Home of Hope, Inc., 900 Hope Avenue, Vinita, OK 74301.	Miami, OK	24	WDD	971,900
Subsubtotal .....	.....	.....	24	.....	971,900
Texas					
Fort Worth	113-HD010/TX21-Q951-002, VOA Northern Texas, PO Box 200276, Arlington, TX 76006-0276.	Fort Worth, TX	8	WDD	502,000
Fort Worth	113-HD011/TX21-Q951-003, VOA Northern Texas, PO Box 200276, Arlington, TX 76006-0276.	Fort Worth, TX	6	WPD	376,500
Fort Worth	113-HD012/TX21-Q951-004, MHMR Concho Valley, 1501 West Beau regard, San Angelo, TX 76901.	San Angelo, TX	12	CMI	593,400
Houston	114-HD006/TX24-Q951-002, MHMR of Harris County, 2850 Fannin, Houston, TX 77002.	Tomball, TX	22	CMI	1,156,500
Houston	114-HD007/TX24-Q951-003, Multifamily Mission, 777 South R, La Porte, TX 77571.	Houston, TX	44	WPD	2,300,400
Houston	114-HD010/TX24-Q951-006, Accessible Space and Bay Area Rehab, 2550 University Ave., St. Paul, MN 55114.	Baytown, TX	25	WPD	1,476,100
San Antonio	115-HD017/TX59-Q951-002, Accessible Space, 2550 University Avenue, St. Paul, MN 55114-1052.	San Antonio, TX	25	WPD	1,378,300
Subsubtotal .....	.....	.....	142	.....	7,783,200
Subtotal .....	.....	.....	281	.....	13,597,400

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
 [Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
KANSAS CITY					
Iowa					
Des Moines	074-HD015/IA05-Q951-001, Mental Health Center of North Iowa, Inc., 235 South Eisenhower, Mason City, IA 50401.	Hampton, IA	12	CMI	674,800
Subsubtotal .....	.....	.....	12	.....	674,800
Kansas					
Kansas City	102-HD025/KS16-Q951-005, Wichita Comm Clinical AIDS Program, 317 West 11th, Wichita, KS 67203.	Wichita, KS	9	WPD	465,400
Kansas City	102-HD026/KS16-Q951-006, Bert Nash Comm Mental Health, 336 Missouri, Suite 202, Lawrence, KS 66044.	Baldwin City, KS	6	CMI	310,200
Subsubtotal .....	.....	.....	15	.....	775,600
Missouri					
Kansas City	084-HD017/MO16-Q951-001, Cntr Developmental Disabled, 1010 West 39th Street, Kansas City, MO 64111.	Kansas City, MO	18	WDD	1,029,700
St. Louis	085-HD010/MO36-Q951-002, Cape Girardeau Community Sheltered Workshop, 1330 Southern Expressway, PO Box 831, Cape Girardeau, MO 63702-0831.	Jackson, MO	9	WDD	559,500
St. Louis	085-HD011/MO36-Q951-003, Mid-MO Barrier Fre, 107 North Williams, Columbia, MO 65201.	Columbia, MO	12	WPD	745,900
Subsubtotal .....	.....	.....	39	.....	2,355,100
Nebraska					
Omaha	103-HD012/NE26-Q951-001 Accessible Space, Inc. 2550 University Avenue, Suite 330N, St. Paul, MN 55114.	Omaha, NE	15	WPD	779,100
Subsubtotal .....	.....	.....	15	.....	779,100
Subtotal .....	.....	.....	81	.....	4,564,600
DENVER					
Colorado					
Denver	101-HD014/C099-Q951-003 Arkansas Valley Co 1500 San Juan, La Junta, CO 81050.	La Junta, CO	4	WDD	260,300
Denver	101-HD016/C099-Q951-005 Mercy Housing, Inc 1601 Milwaukee Street, Denver, CO 80211.	Denver, CO	12	CMI	833,700
Subsubtotal .....	.....	.....	16	.....	1,094,000
Montana					
Denver	093-HD009/MT99-Q951-001 Accessible Space, 2550 University Ave., St. Paul, MN 55114.	Helena, MT	25	WPD	1,538,300
Subsubtotal .....	.....	.....	25	.....	1,538,300
Utah					
Denver	105-HD004/UT99-Q951-001 Utah Non-profit Hsg 455 South 300 East, Salt Lake City, UT 84111.	Magna, UT	12	WPD	799,800
Subsubtotal .....	.....	.....	12	.....	799,800
Subtotal .....	.....	.....	53	.....	3,432,100

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
SAN FRANCISCO					
Arizona					
Phoenix	123-HD014/AZ20-Q951-003 Valley of the Sun 1142 West Hatcher Road, Phoenix, AZ 85021.	Glendale, AZ	20	WDD	945,000
Subsubtotal .....	.....	.....	20	.....	945,000
California					
San Francisco	121-HD033/CA39-Q951-002 Mid-Peninsula Hsng Inc/Adult Indep Devel Ctr 658 Bair Island Road, Redwood City, CA 94063.	Palo Alto, CA	24	WDD	1,944,600
San Francisco	121-HD034/CA39-Q951-003 Self-Help for the Elderly 407 Sansome Street, San Francisco, CA 94111.	San Francisco, CA	15	CMI	474,700
San Francisco	121-HD035/CA39-Q951-004 Face-to-Face/Sonoma County AIDS Network 873 Second Street, Santa Rosa, CA 95404.	Santa Rosa, CA	6	WPD	319,300
San Francisco	121-HD036/CA39-Q951-005 Resources for Community Development 2131 University Avenue, Berkeley, CA 94704.	Contra Costa Count, CA	12	WPD	900,800
San Francisco	121-HD038/CA39-Q951-007 Interim, Inc. Post Office Box 3222, Monterey, CA 93942.	Monterey, CA	14	CMI	950,200
San Francisco	121-HD040/CA39-Q951-009 Ecumenical Assn for Hsg/Ind Living Resource 2169 E. Francisco Blvd, San Rafael, CA 94901.	Oakley, CA	24	WPD	1,779,300
Los Angeles	122-HD063/CA16-Q951-001, Partners in HSG Inc, 99 S Glenn Dr, Camarillo, CA 93010.	Camarillo, CA	24	CMI	1,915,300
Los Angeles	122-HD064/CA16-Q951-002, GRTR LA Council on, 2222 Laverna Av, Los Angeles, CA 90041.	Los Angeles, CA	14	WPH	974,600
Los Angeles	122-HD066/CA16-Q951-004, UCP, 7630 Gloria Av, Van Nuys, CA 91406.	Santa Monica, CA	13	WDD	1,106,400
Los Angeles	122-HD067/CA16-Q951-005, UCP, 7630 Gloria Avenue, Van Nuys, CA 91406.	North Hollywood, CA	13	WDD	1,106,400
Los Angeles	122-HD069/CA16-Q951-007, UCP, 7630 Gloria Av, Van Nuys, CA 91406.	Palmdale, CA	13	WDD	1,106,400
Los Angeles	122-HD070/CA16-Q951-008, UCP, 7630 Gloria Avenue, Van Nuys, CA 91406.	Monrovia, CA	13	WDD	1,106,400
Los Angeles	122-HD071/CA16-Q951-009, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Inglewood, CA	4	WDD	367,900
Los Angeles	122-HD073/CA16-Q951-011, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Hawthorne, CA	4	WDD	367,900
Los Angeles	122-HD074/CA16-Q951-012, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Culver City, CA	4	WDD	367,900
Los Angeles	122-HD075/CA16-Q951-013, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Los Angeles, CA	4	WDD	367,900
Los Angeles	122-HD078/CA16-Q951-016, Crippled Children, 7120 Franklin Av, Los Angeles, CA 90046.	Pasadena, CA	6	WDD	372,500
Los Angeles	122-HD080/CA16-Q951-018, Hope Harbor Regional, PO Box 2930, Torrance, CA 90509.	Redondo Beach, CA	4	WDD	78,400
Los Angeles	122-HD082/CA16-Q951-020, Homes For Life FDN, 8929 S Sepulveda BL, Los Angeles, CA 90045.	Los Angeles, CA	25	CMI	1,995,100

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Los Angeles	129-HD010/CA33-Q951-005, Big Sister League, 115 Redwood St, San Diego, CA 92103.	San Diego, CA	15	CMI	469,900
Sacramento	136-HD07/CA30-Q951-001, Catholic Char of S, 1733 Oregon St, Redding, CA 96001.	Redding, CA	21	CMI	1,466,700
Subsubtotal .....	.....	.....	272	.....	20,247,600
Hawaii					
Honolulu	140-HD014/HI10-Q951-003, Rehab Hospital of the Pacific, 226 North Kuakini Street, Honolulu, HI 96817.	Waipahu, HI	15	WPD	1,752,700
Subsubtotal .....	.....	.....	15	.....	1,752,700
Subtotal .....	.....	.....	307	.....	229,945,300

SEATTLE

Alaska					
Anchorage	176-HD009/AK06-Q951-003, Juneau Alliance for the Mentally Ill, 310 2nd Ave St, Juneau, AK 99802.	Juneau, AK	15	CMI	1,752,700
Subsubtotal .....	.....	.....	15	.....	1,752,700
Oregon					
Portland	126-HD015/OR16-Q951-005, Accessible Space I, 2550 University Avenue, St Paul, MN 55114.	Hillsboro, OR	25	CMI	1,619,600
Portland	126-HD016/OR16-Q951-006, MT Hood Community, 400 NE 7th, Gresham, OR 97030.	Gresham, OR	10	CMI	630,000
Subsubtotal .....	.....	.....	35	.....	2,249,600
Washington					
Seattle	127-HD016/WA19-Q951-001, Aberdeen Neighborhood, PO Box 407, Aberdeen, WA 98520.	Elma, WA	8	WDD	572,900
Seattle	171-HD08/WA19-Q951-0007, Our Lady of Lourdes, 520 North Fourth Avenue, Pasco, WA 99302.	Pasco, WA	10	CMI	623,200
Subsubtotal .....	.....	.....	18	.....	1,196,100
Subtotal .....	.....	.....	68	.....	5,198,400
Total .....	.....	.....	2,384	.....	156,747,000

[FR Doc. 96-17178 Filed 7-5-96; 8:45 am]
BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR-4104-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Public Housing (PH) programs, as provided to the PH Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area. Offices of Native American Programs are not covered by this redelegation.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Teninga, Field Operations Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4124, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708-4016 (voice), (202) 708-1455 (TTY). These are not toll-free numbers

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegate to Public Housing Directors in the Field Offices, and with the authority to further redelegated to

State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Public and Indian Housing is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Public Housing programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning Public Housing programs as reside with the Public Housing Directors for the Field Offices in the geographic area. The PH Director and the Secretary's Representative must jointly concur in all requests for

waivers, whether the request is granted or denied. If the Secretary's Representative and the PH Director do not agree, the matter will be referred to the Assistant Secretary for PIH for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the PH Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Public and Indian Housing redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning Public Housing programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive Public Housing directives as is redelegated to Public Housing Directors in the geographic area. The extent of this waiver authority is currently described within the redelegations at 59 FR 51200 (October 7, 1994) and 60 FR 50635 (September 29, 1994). Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for PIH. The Assistant Secretary for PIH will publish any changes or amendments to these redelegations.

Section B. Authority To Further Redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for PIH.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 28, 1996.
Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.
[FR Doc. 96-17172 Filed 7-5-96; 8:45 am]
BILLING CODE 4210-33-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR-4107-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Housing programs, as provided to the Housing Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, Office of Management, Department of Housing and Urban Development, Room 9116, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708-0826. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to Housing Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or

official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Housing is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Housing programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning Housing programs as reside with the Housing Program Directors for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for Housing for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Housing redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning Housing programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive Housing directives as is redelegated to Housing Program Directors in the geographs area. The extent of this waiver authority is currently described in the Housing field reorganization redelegation at 59 FR 62739 (December 6, 1994.) Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for Housing. The Assistant Secretary for Housing will publish any changes or amendments to this redelegation.

Section B. Authority To Further Redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for Housing.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d).

Dated: June 28, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96-17173 Filed 7-5-96; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR-4096-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Community Planning and Development redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Community Planning and Development (CPD) programs, as provided to the CPD Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Office of Executive Services, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7208, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708-1283 (voice), (202) 708-1455 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purposes of this redelegation is to provide the Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to CPD Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim

notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Community Planning and Development is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for CPD program for the geographic area for which the Secretary's Representatives is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning CPD programs as reside with the Directors of CPD for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for CPD for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority redelegated

The Assistant Secretary for Community Planning and Development concurrently redelegates to each Secretary's Representative the following authority to waive Department directors, including handbook provisions, concerning CPD programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive CPD directives as is redelegated to Field Office Program Directors in the geographic area. The extent of this waiver authority is currently described in the CPD field reorganization redelegation at 59 FR 18280 (April 15, 1994), as amended by

the redelegation at 60 FR 30312 (June 8, 1995.) Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for CPD. The Assistant Secretary for CPD will publish any changes or further amendments to these redelegations.

Section B. Authority to further redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for CPD.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 28, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96-17174 Filed 7-5-96; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. FR-4102-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to fair housing and equal opportunity in Department programs, as provided to the FHEO Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Forward, Deputy Assistant Secretary for Enforcement and

Investigations, Office of FHEO, Department of Housing and Urban Development, Room 5106, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708-4211 (voice), (202) 708-1455 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to FHEO Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Fair Housing and Equal Opportunity is redelegating in this document additional authority to the Secretary's

Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, concerning fair housing and equal opportunity in Department programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning fair housing and equal opportunity in Department programs as resides with the Directors of FHEO for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for FHEO for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates as follows:

Section A. Authority redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning fair housing and equal opportunity in Department programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive directives pertaining to fair housing and equal opportunity in Department programs as is redelegated to Directors of FHEO in the geographic area. Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for FHEO. The Assistant Secretary for FHEO will publish any changes or amendments to its redelegations of authority to Directors of FHEO in the field.

Section B. Authority to further redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the

Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for FHEO.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 18, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96-17175 Filed 7-5-96; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Revised Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Port Authority of New York and New Jersey (PA) has applied for a permit to take migratory birds, including several species of gulls at John F. Kennedy International Airport (JFKIA). The Lead Agency for this Final Environmental Impact Statement (FEIS) was Animal Damage Control (ADC). The U.S. Fish and Wildlife Service (Service) was a cooperating agency with jurisdiction by law and actively participated in the scoping, drafting and reviewing of the Draft Environmental Impact Statement (DEIS) and the FEIS. Pursuant to the Council on Environmental Quality Regulations (Part 1506.3, Title 40 CFR) for Implementing Provisions of the National Environmental Policy Act (NEPA), and the Department of the Interior, Department Manual at 516 DM 1.1-6.6, the Service adopted the above FEIS as prepared by the U.S. Department of Agriculture in 1994. The Service used the information and analyses in the DEIS and FEIS to make its own independent Record of Decision (ROD) for this project, which was published on June 3, 1994 in the Federal Register. Based on its independent evaluation and review, the Service selected an alternative similar to the Integrated Management Program, Department of the Interior Policy (IMP/DOI) as its preferred alternative (FEIS, pp. 6-7 to 6-9). The conditions contained in the

IMP/DOI were designed to minimize environmental harms and constitute a viable monitoring and enforcement program.

The PA has not to date fully implemented all of the actions identified in the original ROD, and as a result the Service has been unable to issue the PA a Special Purpose Permit to support the bird hazard reduction program at JFKIA. However, the Service did issue limited permits in 1994, 1995, and 1996 to address emergency conditions associated with gulls during the summer months. These emergency conditions were documented by the Federal Aviation Administration (FAA) and by data collected by ADC biologists in those years. The current environmental situation at JFKIA remains essentially the same as was addressed in the 1994 FEIS. The data collected by ADC biologists since 1994 complements, but does not materially change the analysis of impacts of alternatives bearing on the revised decision. These data are available by contacting the person listed in this notice. Since issuing the original ROD, the Service has been involved in lengthy negotiations with the PA, but has been unable to find the PA in full compliance with the ROD, as published on June 3, 1994. The Service believes that significant bird hazards do occur at JFKIA, as are documented in the FEIS, and that a Special Purpose Permit is needed to address emergencies and to facilitate migratory bird management programs on JFKIA. In addition, the Service recognizes that the PA has implemented many of the actions identified in this ROD, and the Service hereby amends its original ROD to support a limited Special Purpose Permit action for the bird hazard program at JFKIA.

ADDRESSES: Copies of the referenced ADC data, the 1994 ROD and the 1994 FEIS may be obtained from George Haas, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (413/253-8576).

Background

JFKIA is one of three major airports in the New York Metropolitan Region, servicing approximately 28 million passengers per year. It is located at the eastern end of Jamaica Bay, immediately adjacent to the Jamaica Bay National Wildlife Refuge, which is part of Gateway National Recreation Area (GNRA) [administered by the National Park Service (NPS)]. The interaction of birds and aircraft at JFKIA is a serious problem, creating significant hazards to human safety, as well as causing financial losses due to aircraft

destruction, equipment damage, runway closures, and associated personnel costs. The airport is constructed on a filled-wetland within a major estuary on the Atlantic Coast and within a major migratory bird corridor in the Atlantic Flyway. This location has contributed to an unusually high incidence of bird strikes at JFKIA. As early as 1975 a Service study concluded that gulls (herring, ring-billed and great black-backed) constituted the principal bird hazard at JFKIA. This problem was severely exacerbated by the establishment and rapid growth of a breeding colony of laughing gulls on the salt marsh islands in Jamaica Bay located at the southeast end of Runway 22R/4L. As the colony grew from 15 pairs in 1979 to more than 7,000 pairs in 1990, the number of laughing gulls involved in bird strikes increased from 2 to as many as 187 per year, and the percentage of bird strikes involving laughing gulls increased from less than 2 percent to approximately 50 percent. Other gulls accounted for approximately 25 percent of JFKIA's bird strikes. Fifty-eight other bird species have accounted for approximately 23 percent of the air strikes and 25 percent of the damage delays (1979-93).

Throughout the 1960's, 1970's, and 1980's, the PA and Federal, New York State and New York City natural resource management agencies have conducted activities to evaluate, control, and monitor JFKIA's bird strike hazard. These activities have included, but were not limited to the following: experimental laughing gull egg-oiling project; international panel review; ecological studies; non-lethal harassment programs; and interim shooting programs. Despite implementation by the PA of a multi-faceted bird hazard reduction program and closure of nearby landfills, strikes by laughing gulls continued to increase. In response to the increase, a temporary, on-airport gull hazard reduction program was conducted by the ADC unit of the U.S. Department of Agriculture from 1991 through 1993. Between May and August of each year gulls entering JFKIA airspace were shot. ADC biologists killed 14,191 laughing gulls in 1991, 11,847 in 1992, and about 6,500 in 1993. By the third year, this program reduced the number of bird strikes involving laughing gulls by more than 90 percent.

In 1992, the concern for potential cumulative impacts associated with the shooting program demonstrated the need to explore issues involved in reduction of the hazards of gull/aircraft interaction at JFKIA. Consequently, the preparation of an Environmental Impact

Statement (EIS) was initiated to explore all reasonable alternatives which might be implemented to reduce the number of gull/aircraft collisions at JFKIA in an effective, safe, environmentally sound manner in compliance with all applicable laws and regulations.

The EIS process, including early public participation, began when a Notice of Intent to prepare the DEIS was published in the December 4, 1992 Federal Register. At that time, the Service became a cooperating agency. One scoping meeting and one public meeting were held at JFKIA. The Notice of Availability of the DEIS was published in the February 11, 1994 Federal Register. Prior to the release of the DEIS for public review, the Service reviewed several preliminary drafts. The comment period of the DEIS ended April 25, 1994, however, comments were accepted through April 28, 1994. The Service reviewed and commented on a preliminary FEIS, and all substantive comments were incorporated into the FEIS released to the public. The Notice of Availability of the FEIS appeared in the May 6, 1994 Federal Register. The Service published its "Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport" in the June 3, 1994 Federal Register.

The 1994 Record of Decision

The Service's 1994 ROD closely resembles the IMP/DOI policy, which is set forth in pages 6.6 through 6.9 of the FEIS. The 1994 ROD contains more specific actions and time frames than are found in the FEIS discussion of the IMP, which appears on page 6.11. Specific measures identified in the June 3, 1994 Federal Register (taken verbatim from the 1994 ROD and enclosed in quotes) and the Service's evaluation of each measure are as follows:

The 1994 ROD identifies the following specific action:

"The PA will hire a person trained in ornithology, or wildlife biology, or in a related field as the supervisor for the Bird Control Unit (BCU) by August 1, 1994. This supervisor will be trained to the Master of Science level in either ornithology or wildlife biology and will be capable of developing and evaluating the bird hazard management program at JFKIA and developing monitoring programs for birds in the JFKIA area."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure was met, but not according to schedule. This biologist does not directly supervise the BCU. The BCU and biologist report to the Manager, Aeronautical Services Division for

JFKIA. The biologist influences BCU activities through his supervisor.

The 1994 ROD identifies the following specific action:

"The PA must apply to the Service for the October 1994 BCU permit by September 15, 1994, and should indicate in its application how it has complied with hiring the BCU supervisory biologist (#1 above) and the reorganization of the Bird Hazard Task Force (BHTF). With this application the PA may include its assessment of the BCU's personnel capabilities and expertise. This assessment, if provided, should address needs for increases in staff size, changes in professional capabilities of staff, and training. It should also identify BCU equipment and support requirements, as well as document how the BCU will conduct the collection of biological field data, surveys and monitoring program described in the IMP/DOI and this document."

The Service's evaluation of this specific action is as follows:

This measure was not accomplished in 1994, and no longer applies to this issue.

The 1994 ROD identifies the following specific action:

"The PA will reorganize the BHTF to serve as an advisory committee to the Port Authority for the evaluation of the BCU program and the gull shooting program by August 1, 1994. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The agencies currently composing the BHTF would remain. The chairmanship would be rotated on an annual basis; however, the Service would chair the task force during this reorganization period."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure has been met, but not within the schedule.

The 1994 ROD identifies the following specific action:

"The PA will increase staff size for the BCU to 10 permanent, full-time members by November 1, 1994. All BCU employees will be qualified to consistently and accurately collect biological field data and to conduct surveys and monitoring programs with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. The BCU will include at least one person trained in entomology and pesticides."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure has not been met. There are not 10 permanent, full-time members of the BCU and all members of the BCU do not possess the minimum professional training of a Bachelors of Science degree or equivalent. However, the PA has

provided some training to members of the BCU over the past year relating to bird control, which may improve the ability of the BCU to do its job. The PA has one staff person trained in entomology and pesticides within a separate section and this one staff person is available to the BCU. The Service recognizes that the PA has improved the profession capability of the BCU and that BCU employees currently conduct bird surveys at JFKIA. However, the staff size of the BCU has only been increased by the addition of the biologist, and with the exception of the biologist the Service believes that the other members of the BCU lack the equivalent of a Bachelor of Science training in data collection or population monitoring programs.

The 1994 ROD identifies the following specific action:

"The PA will provide sufficient equipment and vehicles to support the improved BCU by November 15, 1994. This includes equipment to disperse water following rain storms, pyrotechnics, speaker systems in all vehicles, firearms, and safety equipment."

The Service's evaluation of this specific action is as follows:

The PA has assured the Service that this equipment is available to the BCU.

The 1994 ROD identifies the following specific action:

"The PA will train and authorize all BCU employees to conduct all harassment methods, including the firing of firearms for lethal and non-lethal harassment by November 15, 1994. This includes the development of a training plan for all employees."

The Service's evaluation of this specific action is as follows:

The PA provided training to all employees associated with the BCU, but this training was not provided within the above stated schedule. However, the PA does not permit all members of the BCU to conduct all harassment methods. Specifically the use of firearms is restricted to shift supervisors.

The 1994 ROD identifies the following specific action:

"The BCU staff requires 7 people to perform its bird harassment responsibilities (1 supervisor, 2 employees per shift, 2 shifts per day, 7 days a week). In order to increase the capability of the BCU, the Service has determined that three additional people are required, as well as improving the professional training and capabilities of the BCU and assuring that the BCU is adequately equipped to do its job."

The Service's evaluation of this specific action is as follows:

The Service does not believe that the increase in staff size and capability has been accomplished.

The 1994 ROD identifies the following specific action:

"On or before January 31, 1995, the PA will develop and implement monitoring programs to assess the following: (1) Evaluation of the effectiveness of the gull shooting program and JFKIA's bird hazard management program; (2) identification of criteria that could be used to determine when a gull shooting program should begin or end; (3) identification of criteria, with the involvement of the BHTF, that could be used to determine when Category 1 elements have become ineffective; (4) evaluation of off-airport attractants that encourage gulls to fly through JFKIA airspace; and (5) continuing evaluation of potential on-airport attractants."

The Service's evaluation of this specific action is as follows:

The PA provided the Service with a document addressing these issues in February 1995 and provided the Service with information addressing these five issues in a report entitled "Wildlife Management Plan" in 1996. In addition, ADC annually; reviews the effectiveness of the gull shooting program (action 1); the last interagency review of JFKIA's bird hazard management program was in 1994 (action 1); ADC and the Service cooperated in the development of criteria for determining when a gull shooting program should begin in 1994 and 1995 (action 2); NPS has been working on the identification of criteria which could be used to determine when Category 1 elements have become ineffective since 1994 (action 3); the PA collected data on off-airport attractants for gulls in 1995 (action 4); and the PA presented information concerning on-airport attractants in their "Wildlife Management Plan" (action 5).

The 1994 ROD identifies the following specific action:

"3. Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

The PA will produce written management plans for vegetation, insect, water, and solid waste management on JFKIA by December 29, 1994. These plans will document the existing programs and the overall management strategies for these programs."

The Service's evaluation of this specific action is as follows:

The PA has provided the Service with a series of drafts for these management plans, but not within the above stated schedule. The most recent version is dated April 1996 and entitled "Wildlife Management Plan". The Service merely stipulated that these plans be prepared in its ROD and did not stipulate any criteria about plan quality. However, the Service is concerned about the quality of this draft and previous drafts. These concerns are shared by BHTF member

agencies. The plan continues to be under development.

The 1994 ROD identifies the following specific action:

"4. As a part of the effort to develop data on bird species contributing to hazards at JFKIA and to a determination of when Category 2 measures may be appropriate, the NPS is committee to participating in seasonal surveys in 1994 to monitor gull populations and distribution in the Jamaica Bay area and will provide these data to the BCU and BHTF."

The Service's evaluation of this specific action is as follows:

The NPS participated in these surveys in 1994, 1995, and 1996.

The Service received assurance that "... the Port Authority wishes to reaffirm our commitment and demonstrate the extent of our effort to satisfy the elements of the ROD's scope," in a letter dated August 31, 1994 and signed by Mr. Robert J. Kelly, Chief Operations Officer, Aviation Department, for the PA. The PA did not meet the deadlines identified in the ROD, but has made progress with reaching all but one action. The PA has not met the action entitled "1. Additional enhancement of the profession capability of the BCU". Specifically, the PA has not increased the staff size for the BCU to 10 permanent, full-time members with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. In addition, the BCU is not directly supervised by the wildlife biologist.

Service Actions Following the 1994 ROD

1994 Actions

The Service issued Special Purpose Permits to ADC to allow the 1994 shooting program and to PA to allow the 1994 BCU program. ADC's permit expired on August 20, 1994, and the PA's permit expired on October 1, 1994. The Service took this action on the ADC permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA (letter dated May 24, 1994) and the information presented in the FEIS concerning the hazards presented by gulls at JFKIA. This action was identified in the Service's ROD. The Service authorized ADC personnel to kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed and 200 ring-billed gulls, when found flying into JFKIA airspace and creating a hazard to aircraft. This permit was issued when data collected by ADC personnel demonstrated this emergency existed at JFKIA. In 1994, 3,688

laughing gulls, 184 herring gulls, 73 great black-backed gulls, and 36 ring-billed gulls were taken under these permits. Following release of the ROD, the Service met with the PA on August 22 and November 29 in 1994; attended three related meetings with our governmental agencies; and sent letters to the PA dated June 6, June 14, June 27, August 19 and November 10, 1994, concerning the additional organizational measures identified in the Service's ROD. However, the PA did not fully accomplish these ROD actions in 1994.

1995 Actions

The Service issued a Special Purpose Permit to the PA to allow the 1995 shooting program. The PA was not in full compliance with the Service's ROD at that time. The Service took this action on the PA permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA (letter dated May 12, 1995) and actions taken by the PA to meet the Service's ROD. The Service authorized the PA to kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed, 200 ring-billed gulls and 20 Canada geese, when found flying into JFKIA airspace and creating a hazard to aircraft. This permit was issued when data collected by ADC personnel demonstrated this emergency existed at JFKIA. In 1995, 6,302 laughing gulls, 430 herring gulls, 97 great black-backed gulls, 65 ring-billed gulls and 20 Canada geese were taken under this permit. The Service met with the Port Authority on February 7, February 10, March 15, March 16, May 2, October 5, and November 30 in 1995, attended five related meetings with other governmental agencies; and sent letters to the PA dated February 23, April 24, June 6, and June 7, 1995, concerning the organizational improvements identified in the Service's ROD. However, the PA did not fully accomplish these actions in 1995.

1996 Actions

The Service met with the PA on February 12 and March 19 in 1996; attended one related meeting with other governmental agencies; and sent letters to the PA dated March 19, April 26, May 16, May 17 and June 5, 1996, concerning the actions identified in the Service's ROD. However, the PA did not fully accomplish these actions in 1996. The Service has concluded that the PA will not completely accomplish the actions identified in its 1994 ROD in the foreseeable future. The Service believes that a serious human safety risk exists at JFKIA, given its location in the middle of a major estuary within a major migratory bird corridor, and that

a program which includes gull shooting will always be needed. The Service believes that authority to shoot gulls and certain other species of migratory birds is necessary to the overall IMP/DOI.

Given the Service's experiences working with the PA since June 1994, the Service believes that the PA will not fully implement the management measures contained in the ROD, which the Service believes would improve the ability of all interested parties to understand the behavior of gulls entering JFKIA airspace. When it crafted its 1994 ROD, the Service determined that an expanded, full-time, professionally-trained BCU was needed to monitor year-round bird movements and behavior in the JFKIA area, which would allow improved airport safety decisions and reduce the take resulting from the gull shooting program. The Service acknowledges that while some members of the BCU do possess practical experience with gulls gained from their years at JFKIA, the Service does not believe the present staff, both in terms of numbers and training, has the capability to conduct the necessary monitoring programs and studies.

During the preparation of the EIS, the Service and NPS urged the PA and EIS preparers to also analyze the other migratory bird species that frequent JFKIA and the threats that these species pose to aircraft and human safety. JFKIA is located in a major estuary within the Atlantic Flyway and a wide variety of migratory birds breed, winter and/or migrate through this area. Given the unpredictable nature of these species using JFKIA airspace, the Service has vigorously urged the PA to implement these personnel changes needed to properly identify, monitor and respond to new patterns of bird behavior or changing conditions.

The Service has expended over one person-year of staff time working with the PA to implement this program since issuance of its original ROD. Given the Service's limited staff and wide breadth of responsibilities for trust resources, it is an impractical and inefficient expenditures of resources given that no further progress is occurring.

On June 13, 1996 the PA notified the Service that an American Airlines Airbus-300 accident earlier that day had been caused by one laughing gull, and had resulted in damage to the turbo blades in one engine. On June 14 and June 17 the FAA notified the Service by two separate letters concerning the existence of a serious hazard to aircraft at JFKIA. On June 14 the Service requested any relevant data on bird activity from ADC and PA, as had been

done in 1994 and 1995 to support an emergency permit action. Data received by June 17 did not suggest increased flights by laughing gulls into JFKIA airspace. Data provided by NPS identified a complete loss of laughing gull nests on the colony near JFKIA due to flooding. Increased flights by laughing gulls into JFKIA airspace and increased risks to aircraft have previously been associated with the care of nestling gulls prior to fledging on the nearby rookery. This was not the case in 1996, where re-nesting caused by flooding has delayed egg-hatching. The 1996 incident confirms the Service's concern that an expanded, full-time, professionally-trained BCU would improve JFKIA airport safety decisions. However, (1) since the Service intends to issue the PA a Special Purpose Permit as soon as this Revised ROD is published in the Federal Register, (2) in normal years increased flights of laughing gulls into JFKIA airspace would occur at this time associated with nestling care, and (3) the American Airlines accident has occurred; the Service has issued the PA an emergency permit covering the June 17-30 period, which allows shooting up to 1,000 laughing gulls and up to 100 other gulls (herring, great blackbacked and ring-billed gulls in any combination). The Service took this emergency action to address a human safety hazard at JFKIA, but notes that improvements to the BCU identified in the 1994 ROD, but not implemented, might have improved the ability of the PA to address this hazard.

Service Authority

Statutory authority for the Service's actions is as follows:

Migratory birds listed in treaties with Great Britain (Canada), Mexico, Japan, and the former Soviet Union are protected and activities involving them are regulated in the United States by the Migratory Bird Treaty Act. The Secretary of the Interior under 16 United States Code (USC) Sections 703-712 has responsibility for management of those migratory birds, including the issuance of permits to take those birds. Criteria for issuance of Special Purpose permits is further defined by regulations found in Title 50 CFR Part 21.

Specifically, 16 U.S.C. 704 provides:

"Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary * * * is authorized and directed from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine, when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow, * * * taking * * * of any such bird * * *"

Generally, all species of gulls are listed in the treaties and further identified in 50 CFR 10.13, List of Migratory Birds. Prohibited activities involving these listed migratory birds are more clearly identified in 50 CFR 21.11 which provides: "No person shall take * * * any migratory bird * * * except as permitted under the terms of a valid permit * * *."

The regulations then provide for issuance of permits for general standardized activities (import/export, banding and marking, scientific collecting, taxidermy, waterfowl sale and disposal, and falconry activities) utilizing standard form permits. They also provide for issuance of Special Purpose permits which authorize otherwise prohibited activities involving migratory birds, not otherwise covered by the standard form permits, when: "* * * an applicant * * * submits a written application containing the general information and certification required by part 13 [50 CFR 13] and makes a sufficient showing of * * * compelling justification." (50 CFR 21.27)

These Special Purpose Permit regulations give the Service broad authorities to address human safety issues at JFKIA. The Preferred Alternative is compatible with all conventions and treaties and the Service Actions identified within this Preferred Alternative are compatible with the intent of these conventions, treaties, and associated regulations. The compelling justification for these Service Actions is the issue of human safety at JFKIA.

Revised Service Decision

The Service amends its original ROD to allow issuance of a Special Purpose Permit to the PA authorizing the take of no more than 100 herring gulls, 100 great black-backed gulls, 100 ring-billed gulls, 100 laughing gulls, and 50 Canada geese or Canada goose nests each year. This permit will also authorize during the period of June 12th through August of each year the additional shooting of up to 8,000 laughing gulls, 1,400 herring gulls, 200 great black-backed gulls, and 200 ring-billed gulls when posing a threat to airplanes on JFKIA. The Service will issue this permit for a three year period beginning in 1996.

The laughing gull nesting colony near JFKIA has not declined significantly during the course of the shooting program. ADC concluded in its evaluation of the 1991-95 shooting programs that the annual kill of laughing gulls "* * * represented about 1-6% of the estimated adult population in nesting colonies on the Atlantic coast from Virginia to Maine * * *". Takes of other species under this permit represent approximately 1% of the regional adult herring gull population and less than 1% of the regional adult populations for great black-backed gulls, ring-billed gulls, and Canada geese. The

program, which is supported by this Revised ROD, will likely result in takes of migratory birds of the following magnitudes: 3,688-8,100 laughing gulls, 184-1,600 herring gulls, 73-300 great black-backed gulls, 36-300 ring-billed gulls, and up to 50 Canada geese or their nests. Given the high productivity of the gull species and the number of gulls taken during the 1991-95 period, the Service believes that the environmental impact of this Revised ROD will be the same as, or less than the impacts discussed in the FEIS.

In April 1996 the PA presented the Service with a proposal to use falconry to reduce the numbers of migratory birds flying through JFKIA airspace by both killing and harassment. Unfortunately, this proposal contains no meaningful evaluation plan, and it will be impossible to judge whether the use of raptors to harass birds at JFKIA will reduce the number of strikes in 1996 without such a plan. However, the Service will incorporate conditions in the 1996 permit that would allow the experimental use of falconry at JFKIA, provided this activity is restricted to only PA property and monitored appropriately. Also, the Service intends to consider future modifications of the PA permit for the JFKIA bird hazard management program to accommodate other experimental approaches that might result in a reduced kill of migratory birds, while maintaining at a minimum the current level of risk at JFKIA to bird strikes.

Having reviewed and considered the FEIS and the 1994 ROD for the gull hazard management program at JFKIA, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and
2. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternatives thereto, the Revised ROD is one which minimizes or avoids adverse environmental effects to the maximum extent, practicable, including the effects discussed in the FEIS; and,
3. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Preferred Alternative in the FEIS and its supporting appendices; and,
4. The limitations on the numbers of gulls and other migratory bird species which may be taken under this permit are compatible with the terms of the

Migratory Bird Conventions and are made with due regard to their distribution, abundance, breeding habits, and migratory patterns; and

5. The compelling necessity for public safety at JFKIA, which is documented in the FEIS, is addressed by the proposed actions; and

6. The PA have made a sufficient showing of compelling justification for these permits; and

7. All improvements to the BCU, BHTF, and JFKIA management programs, as specified in the June 3, 1994 Federal Register with the amendments identified above in the Service Actions section are hereby adopted as part of this finding and will be used to guide future migratory bird permit decisions.

Having made the above findings, the Service has decided to proceed with implementation of the Revised Record of Decision as indicated above.

This Revised Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Revised Record of Decision was approved by the Regional Director of the Service on June 24, 1996.

Dated: June 24, 1996.

Jaime Geiger,

Acting Regional Director.

[FR Doc. 96-17128 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-55-M

Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to develop action plans to meet three new objectives of the Ruffe Control Program. These are: bait fish management; fish community management; and, Chicago Ship and Sanitary Canal. The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

DATES: The Ruffe Control Committee will meet from 1:00 to 5:00 p.m. on Tuesday, July 30, 1996, and 8:00 a.m. to 12:00 p.m. on Wednesday, July 31, 1996.

ADDRESSES: The meeting will be held at the Holiday Inn, 1000 U.S. 23 North, Alpena, Michigan 49707.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Ruffe Control Committee Chairperson, U.S. Fish and Wildlife Service, at (715) 682-6185.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Chairperson, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 21, 1996.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 96-17225 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Fiscal Year (FY) 1996 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Off-Reservation Indian Organizations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of grant funds.

SUMMARY: Title II of the Indian Child Welfare Act of 1978, Public Law 95-608, makes grant funds available to off-reservation Indian organizations from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of establishing and operating off-reservation Indian child and family service programs.

DATES: The closing date for the receipt of applications for all applicants is August 2, 1996.

ADDRESSES: Applications must be mailed or hand-delivered to the appropriate Area Office of the Bureau of Indian Affairs listed in Part IV of this announcement.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or Betty Tippeconnie, BIA Office of Tribal Services, Mail Stop 4603-MIB, 1849 C Street, N.W., Washington, D.C. 20240. Telephone (202) 208-2721.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR Part 23, the Assistant Secretary hereby announces procedures necessary for eligible off-reservation Indian organizations to compete for a national allocation of \$866,000 in FY 1996 Title II ICWA grant funds.

ICWA applications for one year grants will be accepted under this notice. Applications must comply with all applicable requirements and criteria specified in Subpart D, 25 CFR Part 23. Copies of 25 CFR Part 23 ICWA grant regulations may be obtained from the Area Social Workers listed in Part IV of this notice. It is important that applicants carefully review all requirements detailed in this notice relative to application contents, deadlines, and other special instructions. Applications not received by Close of Business on August 2, 1996 will not be considered in the competition.

In accordance with 25 CFR Part 23.42, it is incumbent upon prospective grant applicants to request technical assistance from the appropriate Area Director. The deadline for the receipt of requests for technical assistance is 10 days prior to the close of the application deadline.

Part I. General Information

A. Background

It is the policy of the BIA to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, and local programs which strengthen and preserve Indian families and Indian tribes. Thus, applicants are encouraged to design their ICWA programs/activities to integrate with or complement existing child and family service programs or those administered by the applicant.

Section 202 of the Indian Child Welfare Act of 1978 (Public Law 95-608, 25 U.S.C. 1932) authorizes the Secretary to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing and preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be an action of last resort. These programs are intended

to promote the Indian Child Welfare Act of 1978 (25 U.S.C. chapter 21).

This notice provides information on the FY 1996 ICWA grant application process for eligible off-reservation Indian organizations to compete for FY 1996 ICWA grant funds.

B. Eligible Applicants

The Board of Directors of any nonprofit off-reservation Indian organization may apply for a grant under this announcement. A new application for projects of one year's duration may be submitted in response to this announcement. An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices.

C. Purpose of Off-Reservation Grants

The purpose of every Indian child and family services program shall be to prevent the breakup of Indian families, and ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be a last resort. Off-reservation Indian child and family service programs may include, but are not limited to:

(1) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support maintenance and medical needs;

(2) The operation and maintenance of facilities and services for the counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(3) Family assistance (including homemaker services and home counselors), protective day care and after school care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(4) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

Part II

A. Available Funds

In FY 1996, off-reservation Indian organizations will compete for a national allocation of \$866,000, which will be evenly distributed to the BIA's twelve area offices in the amount of \$72,166.66 per area. Pursuant to 25 CFR 23.34, Area Directors will determine

and award the appropriate grant amounts to approved off-reservation Indian organizations within their respective jurisdictions. The grant amounts awarded shall be based on an applicant's service area population and shall not exceed the funding levels identified in the table below:

Applicant's service area population	Maximum ICWA grant amount
500-1,500	\$10,000
1,501-3,000	15,000
3,001-5,000	20,000
5,001-8,000	25,000
8,001-20,000	30,000
20,001-40,000	35,000
40,001-60,000	40,000
60,001-90,000	45,000
90,001-150,000	55,000
150,001-200,000	65,000
over 200,001	72,166.66

Under no circumstances may any off-reservation Indian organization receive Indian Child Welfare Act grant funds greater than the maximum grant amount of \$72,166.66 either through a direct grant or through subgranting procedures with approved applicants.

No ICWA grant funds will be withheld at the Central Office for appeals related to off-reservation funding levels; therefore, approved applications will be funded strictly on the basis of funds available to each area office and in accordance with the funding amounts published in this grant notice. The decisions of Area Directors on funding levels are final and are not subject to appeal.

B. Service Eligibility

The service area population is the total number of Indians eligible for services under 25 CFR 23.50(b) in the geographical area to which an off-reservation Indian organization can realistically provide the services proposed in the application. The service area population is used only to determine the maximum grant amount for which an applicant may be eligible.

For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in 25 CFR Section 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for ICWA services.

The applicant's service area population figures must be based upon substantiated, identifiable statistical sources. Applicants must submit copies of recent statistical data from sources which support their service area figures,

such as off-reservation State/county population figures, U.S. Census data, or off-reservation service area population data maintained by the Indian Health Service for urban Indian populations.

Part III. Application Selection Criteria

A. Statutory Authority

The BIA's Indian Child Welfare Act grants program is authorized by Title II of Public Law 95-608, the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*; 25 CFR Part 23). All grant applications submitted under this notice shall be scored individually and recommended for grant awards in compliance with the application procedures, mandatory application requirements, and the application selection criteria specified in Subpart D, 25 CFR Part 23.

B. Closing Date for Receipt of Applications for All Applications

The closing date for receipt of applications under this grant notice is Close of Business on August 2, 1996, for all applicants. All applications for off-reservation Indian Child Welfare Act grants must be received by the appropriate BIA Area Director, as specified in 25 CFR 23.31 and 25 CFR 23.11, on or before 5:00 p.m. or the official Close of Business for that office on the closing date of the application period. The names and addresses of all BIA area offices are listed in Part IV of this notice. Hand-delivered applications will be accepted during normal work hours, Monday through Friday. Postmarks *will not* be considered as meeting the deadline. Applications that do not meet the deadline for the receipt of applications will not be considered in the competitive review.

C. Mandatory Application Requirements for All Applicants

Pursuant to 25 CFR 23.33(a), an application for a one-year competitive grant under Subpart D, 25 CFR Part 23, shall be submitted to the appropriate Area Director. All mandatory application requirements for Indian organization applicants specified at 25 CFR 23.33(b) must be met. An application missing any of the mandatory requirements will not be reviewed further.

In addition to the foregoing requirements, existing ICWA grantees must submit a copy of a satisfactory program evaluation for the previous year of operation from the appropriate area office in order to be considered for funding in FY 1996 (25 CFR 23.33(e)).

The grant application shall be no longer than 40 double-spaced pages,

excluding the appendix. The table of contents and appendices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. If an application is longer than the established page limitation, only the first 40 double-spaced or first 20 single-spaced pages will be reviewed. All applicants must submit one original application and three copies of the complete application to the respective Area Director.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to the following: resolutions, support letters, position descriptions, current or recent fiscal, management, or accounting certification, operational internal monitoring systems, and non-profit status documentation.

In accordance with 25 CFR 23.41, grantees must adhere to and comply with all the general and uniform grant administration provisions and requirements specified at 25 CFR Part 276 and those identified in Subpart E, 25 CFR 23. Failure to meet and comply with these regulatory requirements may result in suspension, cancellation and/or termination of program funds.

D. Competitive Application Selection Criteria

The Area Director or his/her designated representative shall select those proposals which will in his/her judgment best promote the purposes of the Indian Child Welfare Act. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the competitive application selection criteria specified at 25 CFR 23.33.

E. Scoring and Grant Application Selection Criteria

Upon receipt of an application for an off-reservation grant under Subpart D, 25 CFR 23, the appropriate Area Director shall comply with the application review and decision making procedures specified at 25 CFR 23.33 and 23.34.

An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(1) Contains all the information required in 25 CFR 23.33(b) and which must have been received by the close of the application period. Modifications of the grant application received after the

close of the application period shall not be considered in the competitive review process; and

(2) Receives at least a minimum score of 85 points in an area competitive review, using the competitive application selection criteria and scoring process set out in 25 CFR 23.33 and 23.34.

If two or more applications receive the same competitive score, the applicant with the largest service area population will receive priority funding consideration. At least one approved applicant per area will be funded, provided, that the applicants fully meet the competitive selection criteria cited above.

The actual funding amounts awarded for the FY 1996 grant year shall be subject to appropriations available nationwide and the amount of funds available within the respective area office. Final funding decisions for all approved grant applications under Subpart D, 25 CFR 23, rest with respective Area Director and are not subject to appeal.

F. Grant Review and Award Process

The Area Director shall review each application through a competitive process and take the appropriate course of action on all off-reservation ICWA grant applications received in response to this notice in accordance with the established requirements and time frames in 25 CFR Parts 23.33(a) and 23.34, respectively. Grant award documents shall be executed and actual grant amounts awarded as expeditiously as possible by the respective Area Director.

No ICWA grant funds will be withheld at the Central Office for purposes of appeals related to funding levels.

G. Appeals

A grantee or applicant may appeal any decision made or action taken by the Area Director under Subpart D, 25 CFR 23, that is alleged to be in violation of the U.S. Constitution, Federal statutes, or regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4(e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. An applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

A notice of appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed. The date of filing is the date

the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office (25 CFR 2.9(a); 25 CFR 2.13(a)). The burden of proof of timely filing is on the appellant. No extension of time will be granted for filing a notice of appeal (25 CFR 2.9(a) and 2.16).

Within 30 days of the filing of the notice of appeal, a statement of reasons must be filed in the office of the official whose decision is being appealed. The statement of reasons may, however, be included in or filed with the notice of appeal (25 CFR 2.10). Appeals will be handled in accordance with the provisions set forth at 25 CFR 2.20.

Part IV. BIA Area Offices—Area Social Workers

All application materials must be submitted in person or mailed to the appropriate Bureau of Indian Affairs' Area Director. The following is a listing of the 12 BIA Area Social Workers designated by the Area Directors to receive ICWA grant applications from off-reservation Indian organizations.

Aberdeen Area Office: Gerald Gallegos; 115 4th Avenue, S.E.; Aberdeeen, SD 57401; 605/226-7351.

Albuquerque Area Office: Joseph Naranjo; 615 1st Street N.W.; P.O. Box 26567; Albuquerque, NM 87125-6567; 505/766-3321.

Anadarko Area Office: Retha Murdock; 1½ mile North Highway 281; WCD Office Complex; P.O. Box 368; Anadarko, OK 73005; 405/247-6673 ext. 257.

Billings Area Office: Louise Zokan-Delos Reyes; 316 North 26th Street; Billings, MT 59101; 406/247-7988.

Eastern Area Office: James Sanders; 3701 N. Fairfax Drive; Suite 260; Arlington, VA 22203; 703/235-2353.

Juneau Area Office: Jimmie Clemmons; 709 West 9th Street; Federal Building, Room 301A; Juneau, AK 99801; 907/586-7628.

Minneapolis Area Office: Rosalie Clark; 331 South Second Avenue; 7th floor; MN 55401; 612/373-1182.

Muskogee Area Office: Lafonda Mathews; Federal Courthouse Building; 101 North 5th Street; Muskogee, OK 74401-6206, 918/687-2507.

Navajo Area Office: Vivian Hailstorm; 301 West Hill St.; P.O. Box 1060; MC-440, Gallup, NM 87301; 505/863-8215.

Phoenix Area Office; Evelyn S. Roanhorse; 1 North First Street; P.O. Box 10; Phoenix, AZ 85001; 602/379-6785.

Portland Area Office: Robert C. Carr; 911 N.E. 11th Avenue; Portland, OR 97232-4169; 503/231-6783.

Sacramento Area Office: Kevin Sanders; Federal Office Building; 2800

Cottage Way; Sacramento, CA 95825; 916/978-2545.

Dated: June 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-17171 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[MT-960-1990-00]

Butte District Resource Advisory Council Meeting

AGENCY: Butte District Office, Bureau of Land Management.

ACTION: Notice of Butte District Resource Advisory Council meeting, Butte, Montana.

SUMMARY: The Council will convene at 8 a.m. on July 31, 1996, and will continue through August 1, 1996, if all business is not completed on the 31st. This is a regularly scheduled meeting; topics to be discussed will include Westslope Cutthroat Trout, current cooperative weed management efforts, and a presentation by Montana Fish, Wildlife and Parks personnel on Bighorn Sheep pneumonia and its implications. The meeting will be held at the Copper King Inn, 4655 Harrison Avenue in Butte.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (PO Box 3388), Butte Montana 59702; telephone 406-494-5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: June 24, 1996.

James R. Owings,

District Manager.

[FR Doc. 96-17185 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-DN-M

[CO-050-1020-00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix, notice is hereby given that the next two meetings of the Front Range Resource Advisory Council (Colorado) will be held on July 16, and September 3, 1996 in Canon City, Colorado. Both meetings are scheduled to begin at 9 a.m. at BLM's Canon City District Office, 3170 East Main Street, Canon City, Colorado. The agenda on July 16 will include a discussion of Rangeland Standard and Guidelines implementation and a briefing and discussion of major recreation issues in the Canon City District primarily in the Royal Gorge Resource area. The meeting September 3 will be a continuation of the topics of the previous meeting which are unfinished.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:15 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meetings are scheduled for Tuesday, July 16 and Tuesday, September 3 from 9 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269-8500; TDD (719) 269-8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269-8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Donnie R. Sparks,
District Manager.

[FR Doc. 96-17186 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-JB-P

[OR-958-0777-54; GP-0193; OR-51517 (WA)]

Order Providing for Opening of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 5,441.22 acres of lands to such forms of disposition as may by law be made of National Forest system lands for mining, mineral leasing, and geothermal leasing.

The Forest Service exchange proposal has been withdrawn in its entirety.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-952-6170.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, the following described Federal lands identified in a proposed exchange between the Snoqualmie National Forest and the State of Washington, Department of Natural Resources, has been withdrawn in its entirety:

Willamette Meridian

- T. 29 N., R. 8"E.,
Sec. 22, lot 4 and S1/2SE1/4;
Sec. 23, lot 9;
Sec. 25, lot 3, and SW1/4NW1/4, N1/2SW1/4, and NW1/4SE1/4;
Sec. 26, lot 2 and 3, SW1/4NE1/4, N1/2NW1/4, SE1/4NW1/4, and NW1/4SE1/4;
Sec. 27, lots 1 to 6, inclusive;
Sec. 28, NE1/4, S1/2NW1/4 and SW1/4.
- T. 28 N., R. 9 E.,
Sec. 12, S1/2SE1/4;
Sec. 13, NW1/4NE1/4, S1/2NE1/4, NW1/4, N1/2SW1/4, and NW1/4SE1/4.
- T. 29 N., R. 9 E.,
Sec. 12, S1/2SE1/4;
Sec. 13, NW1/4NE1/4, S1/2NE1/4, NW1/4, N1/2SW1/4, and NW1/4SE1/4.
- T. 29 N., R. 9 E.,
Sec. 30, lots 2, 3, and 4, and S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4;
Sec. 31, SE1/4NE1/4, NE1/4SE1/4, and S1/2SE1/4;
Sec. 32, W1/2NW1/4 and NW1/4SW1/4.
- T. 28 N., R. 10 E.,
Sec. 4, lots 1 and 2, and SW1/4NE1/4.
- T. 29 N., R. 10E.,
Sec. 4, lot 6 an SW1/4SW1/4;
Sec. 5, lots 1, 2, 10, and 11, and SW1/4, W1/2SE1/4, and SE1/4SE1/4;
Sec. 9, N1/2, N1/2S1/2, and SE1/4SE1/4;
Sec. 10, SE1/4SW1/4SW1/4, NE1/4SE1/4SW1/4, S1/2SE1/4SW1/4, and W1/2SW1/4SE1/4;
Sec. 15, NW1/4NE1/4 and N1/2NW1/4;
Sec. 26, NW1/4SW1/4;
Sec. 27, All;
Sec. 34, N1/2N1/2, SW1/4NE1/4, SE1/4NW1/4, NE1/4SW1/4, and N1/2SE1/4;
Sec. 35, lots 1 to 7, inclusive, and NE1/4, S1/2SW1/4, N1/2SE1/4, and SW1/4SE1/2.

The areas described aggregate 5,441.22 acres in Snohomish County, Washington.

At 8:30 a.m., on August 8, 1996, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of records, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 8, 1996 will be considered as simultaneously filed at

that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on August 8, 1996, the lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on August 8, 1996, the lands will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: June 24, 1996.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.
[FR Doc. 96-17062 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-33-M

[CO-956-96-1420-00]

Colorado: Filing of Plats of Survey

June 28, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., June 28, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and subdivision of section 30, and the metes-and-bounds survey of an irregular lot, T. 9 N., R. 74 W, Sixth Principal Meridian, Groups 939 and 1130, Colorado was accepted June 24, 1996.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines and the subdivision of section 6, T. 10 N., R. 73 W., Sixth Principal Meridian, Group 1054, Colorado, was accepted June 4, 1996.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of section 35, T. 11 N., R. 74 W., Sixth Principal Meridian, Group 1054, Colorado, was accepted June 4, 1996.

The plat representing the dependent resurvey of portions of the south

boundary of the Ute Ceded Lands (north boundary), east boundary, the subdivisional lines, and the subdivisional lines of certain sections, and the subdivision of sections 13U and 24, T. 34 N., R. 5 W., South of the Ute Line, New Mexico Principal Meridian, Group 1063, Colorado, was accepted June 14, 1996.

The plat representing the dependent resurvey of a portion of the south boundary (Second Standard Parallel South), a portion of the subdivisional lines, and the dependent resurvey of M.S. No 13566, Ernest G. Lode, and the subdivision of section 32, T. 10 S., R. 72 W., Sixth Principal Meridian, Group 1070, Colorado, was accepted June 10, 1996.

The plat representing the dependent resurvey of portions of certain mineral claims in section 12, T. 4 S., R. 73 W., Sixth Principal Meridian, Group 1075, Colorado was accepted June 5, 1996.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines and the subdivision of Section 32, T. 4 S., R. 73 W., Sixth Principal Meridian, Group 1103, Colorado, was approved June 6, 1996.

The plat representing the dependent resurvey of a portion of the east boundary and portions of tracts 37, 42, 44, 46, and 47, T. 9 N., R. 76 W., Sixth Principal Meridian, Group 1104, Colorado, was approved June 13, 1996.

The plat (in 2 sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and the survey of lots 18 and 19, T. 9 N., R. 84 W., Sixth Principal Meridian, Group 1116, Colorado was approved June 12, 1996.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines in T. 50 N., R. 15 W., New Mexico Principal Meridian, Group 1020, Colorado was accepted May 30, 1996.

The plat representing the dependent resurvey of a portion of the south boundary, the east boundary, portions of the north boundary and subdivisional lines in T. 50 N., R. 16 W., New Mexico Principal Meridian, Group 1020, Colorado was accepted May 30, 1996.

These surveys were made to satisfy certain administrative needs of the USDA, Forest Service.

The plat representing the dependent resurvey of a portion of the west and north boundaries and a portion of the line between sections 5 and 6, and the subdivision of section 6., T. 3 S., R. 86 W., Sixth Principal Meridian, Group 1114, Colorado, was approved May 28, 1996.

The plat (in 3 sheets) representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and either all or portions of certain mineral claims, and the subdivision of sections 17 and 18, T. 14 S., R. 69 W., Sixth Principal Meridian, Group 1053, Colorado, was accepted May 9, 1996.

The plat representing the dependent resurvey of a portion of the subdivision of section 11, T. 20 S., R. 73 W., Sixth Principal Meridian, Group 1073, Colorado, was accepted May 15, 1996.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 35, T. 14 S., R 78 W., Sixth Principal Meridian, Group 1077, Colorado, was accepted June 5, 1996.

The plat (in 2 sheets) representing the dependent resurvey of a portion of Tract 39, and a metes and bounds survey to segregate two parcels of public land located in Lots 19 and 20, Section 5, T. 2 S., R. 83 W., Sixth Principal Meridian, Group 1108, Colorado, was approved May 30, 1996.

The plat (in 3 sheets) representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of certain sections, with a metes-and-bounds survey of certain parcels and public land lots, T 47, N. R. 3 W., New Mexico Principal Meridian, Group 1110, Colorado, was approved May 23, 1996.

This supplemental plat creating new lots 16 and 17 from previous lot 15 in section 27 and creating new lots 27 and 28 from previous lot 15 in section 34, T. 44 N., R 4 W., New Mexico Principal Meridian, Colorado was accepted June 20, 1996.

These surveys were made to satisfy certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines and the subdivision of certain sections, T. 33 N., R. 13 W., New Mexico Principal Meridian, Group 1062, Colorado, was accepted May 9, 1996.

This survey was requested by the Bureau of Indian Affairs to define the boundaries of the Southern Ute Indian Reservation.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), and the subdivision of certain sections, T. 15 S., R. 66 W., Sixth Principal Meridian, Group 1092, Colorado, was accepted May 2, 1996.

This survey was requested by the Department of Defense, U.S. Army, Directorate of Public Works, Fort

Carson, Colorado, to identify boundaries on the Fort Carson Military Reservation.

The plat representing the dependent resurvey of a portion of the Twelfth Standard Parallel North (south boundary), and a portion of the subdivisional lines and the subdivision of section 34, T. 49 N., R 2 W., New Mexico Principal Meridian, Group 1097, Colorado was approved May 23, 1996.

This survey was requested by the Superintendent, Curecanti National Recreation Area, for the purpose of defining National Park and Bureau of Land Management boundaries.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 96-17187 Filed 7-5-96; 8:45 am]

BILLING CODE 4310-JB-P

National Park Service

Gettysburg National Military Park Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the nineteenth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The Public meeting will be held on July 18, 1996, from 7:00 p.m.—9:00 p.m.

Location: The meeting will be held at Gettysburg Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Facilities Development Planning Process, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT:

John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: June 26, 1996.
 Warren D. Beach,
Acting Field Director, Northeast Field Area.
 [FR Doc. 96-17181 Filed 7-5-96; 8:45 am]
 BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-732 and 733
 (Final)]

Circular Welded Nonalloy Steel Pipe From Romania and South Africa

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that the industry in the United States producing standard pipe and multiple-stenciled pipe is neither materially injured nor threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Romania and South Africa of circular welded nonalloy steel pipe,³ provided

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Newquist dissenting.

³ For purposes of these investigations, the subject product includes circular welded nonalloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, bevelled end, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), used in standard or structural pipe applications.

The scope specifically includes, but is not limited to, all pipe produced to the ASTM A-53, ASTM A-120, ASTM A-135, ASTM A-795, and BS 1387 specifications, regardless of use. It also includes any pipe multiple-stenciled or multiple-certified to one of the above-listed specifications and to any other specification, if used in a standard or structural pipe application. Pipe which meets the above physical parameters and which is produced to proprietary specifications, the API 5L, the API 5L X-42, or to any other non-listed specification, is included within this scope if used in a standard or structural pipe application, regardless of the HTS category into which it is classified. If the pipe does not meet any of the above-identified ASTM or BS specifications, (i.e., ASTM A-53, ASTM A-120, ASTM A-135, ASTM A-795, and BS 1387) or is multiple-stenciled or multiple-certified to one of these specifications and to any other specification, although it is within the identified physical parameters described above, it will be presumed that such pipe is not used in a standard pipe application.

Standard pipe uses include the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. Standard pipe uses also include load-bearing

for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule (HTS) of the United States, that are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 28, 1995, following preliminary determinations by the Department of Commerce that imports of circular welded nonalloy steel pipe from Romania and South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 19, 1996 (61 F.R. 1402). The hearing was held in Washington, DC, on May 14, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 27, 1996. The views of the Commission are contained in USITC Publication 2973 (July 1996), entitled *Circular Welded Nonalloy Steel Pipe from Romania and South Africa: Investigations Nos. 731-TA-732 and 733 (Final)*.

Issued: June 28, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-17189 Filed 7-5-96; 8:45 am]

BILLING CODE 7020-02-P

applications in construction and residential and industrial fence systems. Standard pipe uses also include shells for the production of finished conduit and pipe used for the production of scaffolding.

This scope does not cover mechanical tubing, tube and pipe hollows for redrawing, and finished electrical conduit if such products are not certified to ASTM A-53, ASTM A-120, ASTM A-135, ASTM A-795, or BS 1387 specifications and are not used in standard pipe applications. Additionally, pipe meeting the specifications for oil country tubular goods is not included in these investigations, unless also certified to a listed standard pipe specification or used in a standard pipe application.

[Investigation 332-362]

Second Annual Report on U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

AGENCY: United States International
 Trade Commission.

ACTION: Notice of opportunity to submit
 comments in connection with the
 second annual report.

EFFECTIVE DATE: June 28, 1996.

SUMMARY: Following receipt on March 31, 1995, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-362, U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy (60 FR 24884). The USTR letter requested that the Commission prepare its first annual report under this investigation not later than November 15, 1995, and provide an update of the report annually thereafter for a period of 4 years. A report was submitted on November 15, 1995 (USITC publication 2938 issued in January 1996). The USTR, in a letter received June 11, 1996, set out instructions for the second annual report and requested that it be submitted by October 4, 1996.

FURTHER INFORMATION CONTACT: Cathy Jabara, Office of Industries (202-205-3309) or Jean Harman, Office of Industries (202-205-3313), or William Gearhart, Office of the General Counsel (202-205-3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

BACKGROUND: Section 134 of the Uruguay Round Agreements Act (URAA), P.L. 103-465, directs the President to develop a comprehensive trade and development policy for the countries of Africa. The President is also to report to the Congress annually over the next 5 years on the steps taken to carry out that mandate. The Statement of Administrative Action that was approved by the Congress with the URAA states that the President will direct the International Trade Commission to submit within 12 months following enactment of the URAA into law, and annually for the 4 years thereafter, a report providing (1) an analysis of U.S.-Africa trade flows, and (2) an assessment of any effects of the Uruguay Round Agreements, and of

U.S. trade and development policy for Africa, on such trade flows.

The USTR requested that the second annual report on U.S.-Africa trade flows and effects of U.S. trade and development policy contain the following information:

1. An update of U.S.-Africa trade and investment flows for the latest year available including both overall trade and in the following major sectors: agriculture, forest products, textiles and apparel, footwear, energy, chemicals, minerals and metals, machinery, transportation equipment, electronics technology, miscellaneous manufacturers, and services. It is also requested that basic trade flow information be provided for U.S. trade with the following regional trade groups:

- The Southern African Customs Union (SACU)
- The Southern African Development Community (SADC)
- Western African Economic and Monetary Union (WAEMU)
- Common Market for Eastern and Southern Africa (COMESA)

2. An identification of major developments in the World Trade Organization and in U.S. trade/economic activities which significantly affect U.S.-Africa trade and investment flows by sector during the latest year. Similarly, to the extent possible, changing trade and economic activities within African countries that have a significant impact should be highlighted.

3. Progress in regional integration in Africa. As requested by the USTR, the Commission will limit its study to the 48 countries in Sub-Saharan Africa.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the second annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating

to the Commission's report should be submitted at the earliest practical date and should be received no later than August 1, 1996. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-17188 Filed 7-5-96; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Appellate Rules Committee public hearing scheduled to be held in Washington, D.C. on July 8, 1996, has been canceled. [Original notice of hearing appeared in the Federal Register of May 24, 1996 (61 FR 26207).]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273-1820.

Dated: July 1, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96-17216 Filed 7-5-96; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Criminal Alien Assistance Program (SCAAP).

In accordance with the Code of Federal Regulations (5 CFR Part 1320.13) the Department of Justice is requesting emergency approval by July

5, 1996, from the Office of Management and Budget for this collection of information. Emergency approval is needed to ensure that the Department is able to fully comply with program changes that are in Public Law 104-134, lapse of appropriations for FY 1996, etc.

During the emergency approval period the Department will apply for three year approval under the normal processing procedures contained in 5 CFR 1320.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Linda McKay (202) 514-6638, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Revised collection of information.

(2) Title of the Form/Collection: State Criminal Alien Assistance Program Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. This program is administered under the authority of 8 U.S.C. 1252(j) to reimburse States and localities for costs expended in the incarceration of undocumented criminal aliens. The Application Form will be completed by each eligible State and local applicant and will provide information regarding eligible inmate population and incarceration costs for verification and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3500 responses at 60 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96-17195 Filed 7-5-96; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 95-40]

Rita M. Coleman, M.D. Revocation of Registration

On May 26, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rita M. Coleman, M.D., (Respondent), of Baldwin, Maryland, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AC9351026, under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of her registration as a practitioner under 21 U.S.C. 823(f), for the reason that, on or about August 24, 1994, the Maryland Board of Physician Quality Assurance (Medical Board) ordered the revocation of her state license to practice medicine. Further, the Show Cause Order noted that, in response to having her medical license revoked, the Maryland State Department of Health and Mental Hygiene revoked the Respondent's state

controlled substances registration. Therefore, the Respondent was not authorized to handle controlled substances in the State of Maryland.

On June 14, 1995, the Respondent filed a response to the Order to Show Cause, presenting matters in rebuttal to the show cause allegations, but failing to either request or to waive her hearing right. On June 19, 1995, a letter was sent from the Office of the Administrative Law Judges, informing the Respondent that she had until July 17, 1995, to elect a hearing. By letter dated July 3, 1995, the Respondent wrote that she did not wish to waive her rights to an administrative hearing, but she also noted that she was not in a position to attend such a hearing. The Respondent also asked that her June letter be considered a written statement of her position in the matter. In response to the Respondent's July letter, Administrative Law Judge Mary Ellen Bittner issued an order dated August 18, 1995, in which she (1) noted the Respondent's conflicting positions, and (2) determined that the Respondent effectively had provided notice that she would not appear at an administrative hearing. Judge Bittner, citing 21 C.F.R. 1301.54(c) and (d), wrote that "a person who waives a hearing may file a statement of position[,] and that a person who requests a hearing but fails to appear may be deemed to have waived the opportunity for a hearing. Consequently, although [the] Respondent asserts that she does not wish to waive her right to a hearing, I deem her statement that she will not appear, in conjunction with her request that her June 11 letter be considered her statement of position, such a waiver."

Accordingly, Judge Bittner ordered that (1) all proceedings before her in the Respondent's case be terminated, and (2) the matter be submitted to the Deputy Administrator for issuance of a final order. On January 23, 1996, the case was transmitted to the Deputy Administrator for his action.

Therefore, the Deputy Administrator, after reviewing the procedural matters in this case, agrees with Judge Bittner and concludes that the Respondent is deemed to have waived her hearing right. Accordingly, after considering the materials submitted, the Deputy Administrator now enters his final order in this matter without a hearing, pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that, on August 24, 1994, after holding an administrative hearing, the Medical Board revoked the Respondent's license

to practice medicine in the State of Maryland. Subsequently, the Division of Drug Control, Maryland State Department of Health and Mental Hygiene, voided the Respondent's State of Maryland Controlled Dangerous Substance Registration Certificate. Thus, the Respondent is not authorized to practice medicine or to prescribe, administer, or dispense controlled substances in the State of Maryland. Further, in her letter filed June 14, 1995, the Respondent has not challenged the authenticity of the Medical Board's revocation order or the order revoking her registration to handle controlled substances. The Respondent has not submitted any evidence contesting the act that her medical license and controlled substances certificate have been revoked.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts her business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *James H. Nickens, M.D.*, 57 FR 59,847 (1992); *Roy E. Hardman, M.D.*, 57 FR 49,195 (1992); *Myong S. Yi, M.D.*, 54 FR 30,618 (1989); *Bobby Watts, M.D.*, 53 FR 11,919 (1988). Here, it is clear that the Respondent is neither currently authorized to practice medicine nor to dispense controlled substances in the State of Maryland. Therefore, the Respondent currently is not entitled to a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AC9351026 previously issued to Rita M. Coleman, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective August 7, 1996.

Dated: July 1, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96-17255 Filed 7-5-96; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review;
Comment Request**

July 1, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202 219-5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395-7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: JTPA Section 401 General Waiver Regulation.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1205-0366.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 75.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 225.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Employment and Training Administration requires information on the provisions of the amended Job Training Partnership Act (JTPA), section 401 regulations at 20 CFR 632.70. These provisions allow Indian and Native American JTPA grantees to seek a waiver of the nonstatutory provisions of the current regulations at 20 CFR Parts 632 and 636. This general waiver request capability is already available to the Governors at 20 CFR 627.201, and to those section 401 grantees participating in the demonstration under Public Law 102-477 (Indian Employment, Training and Related Services Demonstration Act of 1992). The information to be collected is in support of any such waiver request(s) submitted by section 401 grantees pursuant to 20 CFR 632.70, and is necessary to allow DOL officials to make intelligent and informed decisions on the waiver requests received. Without such supplementary information, it would be impossible for the Department to grant any waivers to existing regulations. There are no continuing information requirements associated with this collection. Such collection is only mandated when a waiver request is submitted by a grantee, and serves no purpose other than to evaluate the merits of the waiver request.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96-17275 Filed 7-5-96; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION**Committee Management; Notice of Establishment**

The Deputy Director of the National Science Foundation has determined that the establishment of a United States Antarctic Program Blue Ribbon Panel, is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Office of Management and Budget and with the

Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: United States Antarctic Program (USAP) Blue Ribbon Panel.

PURPOSE & OBJECTIVE: The objective of the United States Antarctic Program (USAP) Blue Ribbon Panel is to recommend to the National Science Foundation (NSF) promising approaches that NSF can take to realize significant savings in the USAP. The Panel's charge is to:

- examine full range of infrastructure, management, and scientific options of operations, including the eventual replacement of South Pole Station; develop several budget scenarios, including one to correspond to a five to seven year freeze in total USAP funding;
- examine the efficiency and appropriateness of the management of infrastructure, management, and scientific options of operations; and
- evaluate how the science programs are implemented.

BALANCE MEMBERSHIP PLANS: Approximately twelve persons from the external community will serve on the Panel. These members will be experts in a broad range of areas, including infrastructure management in hostile environments, difficult logistics, communications, international collaboration, and research that involves remote operations of facilities or instruments. The members of the Panel will reflect a broad, senior-level perspective on these areas and will be individuals who have made overarching decisions on complex and challenging programs. The Panel will begin its work in late Summer and complete its report by next Spring.

RESPONSIBLE NSF OFFICIALS: Mr. Erick Chiang, Acting Deputy Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703 306-1030).

Dated: July 2, 1996.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 96-17254 Filed 7-5-96; 8:45 am]

BILLING CODE 7555-01-M

**OFFICE OF PERSONNEL
MANAGEMENT****Proposed Collection; Comment
Request for Review of a Currently
Approved Information Collection:
Standard Form 3112**

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for extension of a currently approved information collection. Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms: 3112B, 3112D, and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Approximately 12,100 Standard Form 3112, SF 3112A and SF 3112C will be completed annually. The SF 3112A requires approximately 30 minutes to complete and the SF 3112C requires approximately 60 minutes to complete. The annual burden is 12,775 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3209, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received on or before September 6, 1996.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606-0623.

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

[FR Doc. 96-17238 Filed 7-5-96; 8:45 am]

BILLING CODE 6325-01-M

**The National Partnership Council;
Notice of Meeting**

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 9:15 a.m., July 10, 1996.

PLACE: Thornton Auditorium, Graduate School of Business, University of St. Thomas, 1000 LaSalle Avenue, Minneapolis, Minnesota 55403. Thornton Auditorium is located on the second floor of the Graduate School of Business.

STATUS: This meeting will be open to the public. Seating will be available on a

first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive presentations on cooperative relationships in health care from the Metropolitan Healthcare Council, a labor-management partnership group; and the Veterans Affairs Medical Center in Des Moines, Iowa and the unions representing hospital employees (the American Federation of Government Employees and the Iowa Nurses Association).

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5554, Washington, DC 20415-0001, (202) 606-0010

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. Written comments should be received by July 5 in order to be considered at the July 10 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 96-17237 Filed 7-5-96; 8:45 am]

BILLING CODE 6325-01-M

Privacy Act of 1974; Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.

ACTION: Publication of notice of computer matching to comply with Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting and publication requirements of Pub. L. 100-503. The purpose of the computer match is for OPM to verify earnings information provided directly by civil service annuitants based on tax return information disclosed by SSA to OPM.

DATES: The matching program will begin in May 1996, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, or 30 days after notice of the match is published in the Federal

Register, whichever is later. The data exchange will begin at a date mutually agreeable between OPM and SSA, unless comments are received which will result in a contrary determination. Subsequent matches will take place annually on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comment to Kathleen M. McGettigan, Assistant Director for Financial Control and Management, 1900 E Street, NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606-2115.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program, as described below. The purposes of this agreement is to establish the conditions under which SSA agrees to the disclosure of tax return information to OPM. The SSA records will be used in a matching program with OPM's records on disability retirees and retirees under the Federal Employees Retirement System who receive annuity supplements. These annuitants have limitations on their earnings which they may not exceed if they are to retain their annuity benefits. OPM will use the SSA data to verify the earnings information provided directly to OPM by the annuitants.

Office of Personnel Management.

James B. King,

Director.

Report of Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.) require OPM to verify earnings data supplied by civil service annuitants. Section 6103(1)(11) of the Internal Revenue Code requires SSA to disclose tax return information to OPM to administer programs under chapters 83 and 84 of title 5, United States Code. The purpose of the computer match is for OPM to verify earnings information provided directly by civil service annuitants based on tax return information disclosed by SSA to OPM.

C. Authority for Conducting the Match Program

Pub. L. 97-253, Chapter 83 and 84, title 5, United States Code and 26 U.S.C. 6103(1)(11).

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are earnings, self-employment and other data which constitute tax return information pursuant to 26 U.S.C. 6103. The Earnings Recording and Self-Employment Income System (last published in the FR at 59 FR 62407, December 5, 1994) maintains records of individuals' wages or self-employment income from employment under Social Security. The OPM records consists of annuity data from its system of records entitled OPM/Central-1—Civil Service Retirement and Insurance Records (last published in the FR at 60 FR 63075, December 8, 1995).

E. Inclusive Date of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. If no objections are raised by either, and the mandatory 30-day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 96-17249 Filed 7-5-96; 8:45 am]
BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A96-20; Order No. 1123]

Eagle Harbor, New York 14442 (Jean Eddy, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

(Issued June 26, 1996).

Docket Number: A96-20.
Name of affected post office: Eagle Harbor, New York 14442.
Name(s) of petitioner(s): Jean Eddy.
Type of determination: Closing.
Date of filing of appeal papers: June 18, 1996.

Categories of issues apparently raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the

Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by July 3, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.
Cyril J. Pittack,
Acting Secretary.

June 18, 1996	Filing of Appeal letter.
June 26, 1996	Commission Notice and Order of Filing of Appeal.
July 12, 1996	Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)].
July 23, 1996	Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115(a) and (b)].
August 12, 1996.	Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)].
August 27, 1996.	Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)].
September 3, 1996.	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116].
October 16, 1996.	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 96-17215 Filed 7-5-96; 8:45 am]
BILLING CODE 7710-FW-P

West Rushville, Ohio 43163 (Mary R. Defenbaugh, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 26, 1996.

Docket Number: A96-19.

Name of affected post office: West Rushville, Ohio 43163.

Name(s) of petitioner(s): Mary R. Defenbaugh.

Type of determination: Consolidation.

Date of filing of appeal papers: June 19, 1996.

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by July 5, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.
Cyril J. Pittack,
Acting Secretary.

June 19, 1996	Filing of Appeal letter.
June 26, 1996	Commission Notice and Order of Filing of Appeal.
July 15, 1996	Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)].
July 24, 1996	Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)].
August 13, 1996	Postal Service's Answering Brief [see 39 CFR 3001.115(c)].
August 28, 1996	Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)].
September 4, 1996	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
October 17, 1996	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 96-17214 Filed 7-5-96; 8:45 am]
BILLING CODE 7710-FW-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Request for Review of Part B Medicare Claim.

(2) *Form(s) submitted:* G-790, G-791.

(3) *OMB Number:* 3220-0100.

(4) *Expiration date of current OMB clearance:* July 31, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 4,000.

(8) *Total annual responses:* 4,100.

(9) *Total annual reporting hours:* 1,025.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The request provides the means for obtaining reviews by the MetraHealth Insurance Company on claims for Part B Medicare benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 96-17253 Filed 7-5-96; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22049; 811-5966]

Oppenheimer Global Environment Fund; Notice of Application

July 1, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Global Environment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on February 12, 1996, and amended on June 24, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Two World Trade Center, New York, New York 10048-0203.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On November 22, 1989, applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register its shares. The registration statement became effective on March 1, 1990, and the initial public offering commenced on or about the same date.

2. On June 16, 1994, applicant's board of trustees adopted an Agreement and Plan of Reorganization (the "Reorganization Plan") whereby applicant would exchange its net assets for shares of Oppenheimer Global Emerging Growth Fund ("OGEFG"), a registered, open-end management investment company, and the OGEFG shares would be distributed *pro rata* to applicant's shareholders.

3. On August 16, 1994, applicant filed a proxy statement with the SEC that was declared effective on September 19, 1994. Applicant's shareholders approved the Reorganization Plan on November 11, 1994.

4. At the close of business on November 17, 1994, immediately preceding effectiveness of the Reorganization Plan, applicant had 2,815,907.520 shares outstanding. As of that date, applicant's aggregate net assets were \$27,636,863.83, and the net asset value per share was \$9.81. In exchange for 1,540,515.42 shares of OGEFG, applicant transferred to OGEFG its assets less liabilities with respect to: (a) amounts payable for portfolio securities purchased but not yet settled; (b) a cash reserve retained for the payment of the expenses of applicant's dissolution and its liabilities; (c) deferred trustee amounts; and (d) capital stock. Pursuant to the Reorganization Plan, applicant received that number of OGEFG shares having an aggregate net asset value equal to the value of applicant's net assets.

5. On November 18, 1994, the reorganization was consummated. Applicant was subsequently liquidated and applicant's shareholders received *pro rata* the OGEFG shares received by applicant pursuant to the reorganization.

6. The expenses borne by applicant pursuant to the reorganization totalled \$46,775. These expenses included the cost of printing and mailing proxies and proxy statements, a portion of the cost of the tax opinion, with the remainder paid by OGEGF, as well as legal, accounting, and transfer agency expenses. Applicant's share of the expenses was paid from its cash reserve.

7. As of the date of the filing of the application, applicant has no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

8. Applicant filed a termination of trust with Massachusetts authorities on June 26, 1995.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-17252 Filed 7-5-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37388; File No. SR-CBOE-96-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Operation and Enforcement of the Firm Quote Rule in the OEX Trading Crowd

June 28, 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 May 15, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 issue two regulatory circulars pertaining to the administration and enforcement of the firm quote rule in the trading crowd where options on the Standard and Poor's 100 Index ("OEX options") are traded. The text of the regulatory

circulars and the proposed rule change are 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 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

The purpose of the proposed rule change is, first, to consolidate and clarify in a single regulatory circular (referred to as "Regulatory Circular 96-xx") the Exchange's policies concerning the administration and enforcement of the firm quote rule (CBOE Rule 8.51) in the OEX trading crowd, and, second, to set forth in a separate regulatory circular (referred to as "Regulatory Circular 96-yy") the specific fines that may be imposed under the Exchange's summary fine procedure for violations of the requirements of the firm quote program in the OEX crowd, as contemplated in CBOE Rule 17.50(g)(6).

Proposed Regulatory Circular 96-xx consolidates without substantial change various requirements applicable to market makers and floor brokers in the OEX trading crowd under CBOE Rule 8.51 (the firm quote rule). These requirements have previously been set forth in a number of different regulatory circulars, two of which (RG 90-09 and RG 96-25) are currently effective. The proposed regulatory circular would take the place of both of these circulars in order to provide in one place a clear and comprehensive statement of how firm quote requirements apply in the OEX crowd.

In addition to restating what is set forth in existing circulars, the proposed circular would amend those circulars to clarify certain aspects of the obligations of market makers and floor brokers under the firm quote rule, and how those obligations are enforced. Specifically, with respect to market

makers, proposed Regulatory Circular 96-xx sets forth a mechanism for the enforcement of Rule 8.51 in the OEX trading crowd by providing that if the OEX trading crowd fails to honor a

posted quotation in accordance with the firm quote rule, two Floor Officials may designate one or more market makers in the crowd to take the contra side of the order that is entitled to execution. The proposed circular makes it clear that any failure to comply with the Floor Officials' designation is a violation of Rule 8.51, which may subject the violator to summary fine under Rule 17.50 as well as to formal disciplinary proceedings.¹ The circular points out that the fine permitted to be imposed by Floor Officials for such violations can be as high as \$5,000, which is the maximum fine authorized under the summary fine rule. It is the Exchange's expectation that the *in terrorem* effect of a substantial fine will cause market makers to comply with Floor Officials' designations, and the fines themselves will rarely if ever have to be imposed.

Proposed Regulatory Circular 96-xx also clarifies the meaning of the due diligence obligation imposed on floor brokers under Rule 6.73(a), as that obligation applies in the OEX trading crowd in light of the operation of the firm quote rule. The circular describes two alternative ways in which public customer orders eligible for execution under the firm quote rule may be represented: The floor broker may either ask for a market and then immediately fill the order for up to the ten contract limit entitled to execution under the firm quote rule at the better of the posted market or the market given in response to his request, or the floor broker may bid or offer on behalf of his customer at a price between the posted bid and offer in an attempt to obtain an execution at a better price than the posted market. Under the second alternative, the floor broker must then immediately fill the public customer order for up to ten contracts at his announced bid or offer if the crowd is willing to trade at that price, or if not, he must immediately fill the order at the originally posted market.

In all other respects, proposed Regulatory Circular 96-xx is substantially the same as the existing circulars that it will replace.

Proposed Regulatory Circular 96-yy is being issued pursuant to CBOE's summary fine rule (Rule 17.50), which authorizes the summary imposition of fines for certain specified "minor rule violations" in lieu of formal disciplinary proceedings. Paragraph (g)(6) of Rule 17.50 covers the imposition of summary

¹ Violations of Rule 8.51 are deemed to be violations of Rule 6.20(b) pursuant to paragraph (vii) of Interpretation and Policy .04 under Rule 6.20. Rule 6.20(b) requires that fines imposed thereunder must be agreed upon by at least two Floor Officials.

finer for violation of trading conduct and decorum policies established under CBOE Rule 6.20, and states that the specific dollar amount that may be imposed as fines thereunder will be distributed to the membership periodically. The Exchange has previously issued Regulatory Circular 95-37, which sets forth fines for most of the trading conduct and decorum policies established under Rule 6.20, but does not include fines for violation of the firm quote requirements of Rule 8.51, which are deemed to be violations of Rule 6.20(b).² Proposed Regulatory Circular 96-yy cures this omission for violations of the firm quote rule in the OEX crowd by setting forth the specific dollar amounts that may be imposed as summary fines for such violations. As noted above, the fines that may be imposed for refusal to take the other side of an OEX trade entitled to execution under the firm quote rule when directed to do so by Floor Officials range from \$1,000 to \$5,000, which places them at the high end of the scale under Rule 17.50. This is intended to remove any economic incentive for a market maker to refuse to obey the directions of Floor Officials to comply with firm quote requirements.

The Exchange believes that by clarifying the obligations of market makers and floor brokers in the OEX crowd under the firm quote rule and by specifying the fines that may be imposed for failure to honor these obligations, the proposed regulatory circulars will serve to promote just and equitable principles of trade and to protect investors and the public interest, in furtherance of the objectives of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy with respect to the meaning, administration, or enforcement of an existing rule, it has

become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 the CBOE. All submissions should refer to the File No. SR-CBOE-96-31 and should be submitted by July 29, 1996.

For Commission, by the Division of Market Regulation, pursuant to delegated authority.³
Jonathan G. Katz,

Secretary.

[FR Doc. 96-17251 Filed 7-5-96; 8:45 am]

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[Release No. 34-37374; File No. SR-NASD-95-61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Regulation of Cash and Non-Cash Compensation in Connection With the Sale of Investment Company Securities and Variable Contracts

June 26, 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 22,

1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD proposes to amend NASD Rules 2820 and 2830 (formerly Article III, Sections 29 and 26 of the Rules of Fair Practice) to revise existing rules applicable to the sale of investment company securities and establish new rules applicable to the sale of variable contracts.² Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rules of the Association

Conduct Rules

* * * * *

Variable Contracts of an Insurance Company

Rule 2820.

* * * * *

Definitions

(b)
* * *

(3) The terms "affiliated member", "cash compensation", "non-cash compensation" and "offeror" as used in paragraph (h) shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, loan or override received in connection with the sale and distribution of variable contracts. "Non-cash compensation" shall mean any form of compensation received in

¹ On June 14, 1996, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 addresses the relationship of the proposed rule change to industry initiatives concerning compensation practices, expands the scope of the proposed rule change to govern all sales targets, whether or not previously specified and replaces the term "variable contract securities" with the term "variable contract." See Letter from John M. Ramsay, Deputy General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (June 14, 1996).

² NASD Manual, Rules of the Association, Conduct Rules (CCH), Rules 2820, 2830.

² See *supra* note 1.

³ 17 CFR 200.30-3(a)(12).

connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

"Offeror" shall mean an insurance company, a separate account of an insurance company, an adviser to a separate account of an insurance company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

* * * * *

Member Compensation

(h) In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(2) Except for items as described in subparagraphs (h)(3)(a) and (b), a member shall maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(3) No member or person associated with a member shall directly or indirectly accept any non-cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of subparagraph (h)(1), the following items of non-cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by

the Board of Governors³ and are not preconditioned on achievement of a sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of impropriety and is not preconditioned on achievement of a sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (h)(2) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d).

(d) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(e) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

(4) No person associated with a member shall accept any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted:

(a) Cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

(ii) the arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible arrangement; and

(iv) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(b) Contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).

Investment Companies

Rule 2830

* * * * *

(b) [(1) "Associated person of an underwriter," as used in paragraph (l), shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.] The terms "affiliated member", "cash compensation", "non-cash compensation", and "offeror" as used in paragraph (l) shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under

³ The current annual amount fixed by the Board of Governors is \$100.

common control with a non-member company.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, or override received in connection with the sale and distribution of investment company securities.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

"Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

* * * * *

[Dealer concessions]

[(1)(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants or options;]

[(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession: or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.]

[(3)(A) In connection with retail sales or distribution of investment company

shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this subparagraph (3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than \$50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of \$50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this subparagraph (3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.]

[(iii) an unconditional gift of a typical item of reminder advertising such as a

ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than \$50 per person per year.]

[(4) The provisions of this paragraph (1) shall not apply to:]

[(A) Contracts between principal underwriters of the same security.]

[(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.]

[(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

Member Compensation

(1) In connection with the sale and distribution of investment company securities:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission or its staff that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in subparagraph (1)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items described in subparagraphs (1)(5)(a) and (b), a member shall maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company. When special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made

available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus. Prospectus disclosure requirements shall not apply to cash compensation arrangements between:

(a) principal underwriters of the same security; and

(b) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(5) No member or person associated with a member shall directly or indirectly accept any non-cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of subparagraph (1)(1), the following items of non-cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors⁴ and are not preconditioned on achievement of a sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (1)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d).

(d) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (1)(3) is satisfied.

(e) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

(6) No person associated with a member shall accept any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted:

(a) Cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible arrangement; and

(iv) the recordkeeping requirement in subparagraph (1)(3) is satisfied.

(b) Contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).

* * * * *

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

(a) Purpose of Proposed Rule Change Introduction

The NASD is proposing to amend Rule 2820 ("Variable Contracts Rule") and Rule 2830 ("Investment Company Rule") to establish new rules applicable to the sale of variable contracts and revise existing rules applicable to the sale of investment company securities.

Generally, the proposed rule change would: (1) Adopt definitions of the terms "affiliated member," "cash compensation," "non-cash compensation" and "offeror"; (2) prohibit, except under certain circumstances, associated persons from receiving any compensation, cash or non-cash, from anyone other than the member with which the person is associated; (3) require that members maintain records of compensation received by the member or its associated persons from offerors; (4) with respect to the Investment Company Rule, prohibit receipt by a member of cash compensation from the offeror unless such arrangement is described in the current prospectus; (5) retain the prohibition, only with respect to the Investment Company Rule, against a member receiving compensation in the form of securities; (6) prohibit, with certain exceptions, members and persons associated with members from accepting, directly or indirectly, any

⁴The current annual amount fixed by the Board of Governors is \$100.

non-cash compensation in connection with the sale of investment company securities and variable contracts; and (7) prohibit, with certain exceptions, a person associated with a member from accepting, directly or indirectly, any cash compensation in connection with the sale of investment company securities and variable contracts.

The exceptions from the non-cash compensation prohibition would permit: (1) Gifts of up to \$100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or entertainment for associated persons and their guests; (3) payment or reimbursement for training and education meetings held by a broker-dealer or a mutual fund or insurance company for associated persons of broker-dealers, as long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; (5) sales incentive programs of mutual funds and insurance companies for the associated persons of an affiliated broker-dealer; and (6) contributions by any non-member company or other member to a broker-dealer's permissible in-house sales incentive program.

The exceptions from the cash compensation prohibition would permit: (1) In-house sales incentive programs of broker-dealers for their own associated persons; (2) sales incentive programs of mutual funds and insurance companies for the associated persons of an affiliated broker-dealer; and (3) contributions by any non-member company or other member to a broker-dealer's permissible in-house sales incentive program.

Background

The proposed rule change is the latest in a series of NASD determinations designed to control the use of non-cash compensation in connection with a public offering of securities. Previous rule filings amending the NASD's rules established restrictions on non-cash compensation in connection with transactions in direct participation program securities ("DPPs"), real estate investment trusts ("REITs"), and corporate debt and equity offerings.

When the DPP rule was first proposed, commenters urged that if non-cash incentives were inappropriate in connection with the sale of DPPs, they are also inappropriate in connection with the sale of investment company securities and variable contracts. However, the NASD recognized that DPP and investment company securities are treated differently in many regulatory areas including marketing standards,

advertising rules, net capital requirements, fidelity bonding, corporate finance requirements, membership in SIPC, qualification examination requirements and the application of the Investment Company Act of 1940 ("1940 Act"). Similarly, variable contracts are also subject to a separate scheme of regulation under the NASD's advertising rules and corporate financing requirements, net capital requirements, fidelity bonding, membership in SIPC, qualification examination requirements, and are regulated under the 1940 Act. In 1992, the NASD submitted to the SEC proposed rule change SR-NASD-92-36 which proposed recordkeeping and disclosure requirements on the receipt of non-cash compensation in connection with the sale of investment company securities and variable contracts. As a result of SEC staff concerns regarding that proposal, the NASD withdrew SR-NASD-92-36 in April 1994.

In developing the proposed rule change, the Investment Companies and Insurance Affiliated Member Committees of the NASD (the "Committees") have considered the current environment in which investment company securities and variable contracts are sold. The Committees did not find that the manner in which non-cash compensation is offered and paid to members and their associated persons indicates a level of supervisory problems similar to that present in connection with the sale of DPPs which led the NASD to adopt a prohibition on non-cash compensation in connection with such securities in 1988. The Committees believe, however, that the increased use of non-cash compensation for the sale of investment company securities and variable contracts heightens the potential for loss of supervisory control over sales practices and increases the possibility for perception of impropriety, which may result in a loss of investor confidence. The Committees determined, therefore, that the adoption of limitations on non-cash compensation for the sale of investment company securities and variable contracts is appropriate at this time.

The NASD is aware of a broad range of cash compensation practices by which investment company securities and variable contract issuers or their affiliates provide either incentives or rewards to individual broker-dealers and their registered representatives for selling the issuers' products. The NASD believes that the increased use of such practices, which create an incentive to favor one product over another, may

compromise the ability of securities salespersons to render advice and services that are in the best interests of customers.

The NASD issued Notice to Members 94-14 (March 1994), reminding members, among other things, of prospectus disclosure obligations regarding their acceptance of cash and non-cash compensation for the sale of investment company products, and Notice to Members 95-80 (September 26, 1995), reminding members, among other things, that recommendations of investment company securities must be suitable given the investor's investment objectives and not based on incentives received by a registered representative.

Given the recent proliferation of such compensation practices and dramatic increase of public interest in the purchase of investment company securities and variable contracts, the NASD believes it is appropriate to adopt limitations on non-cash compensation and certain types of incentive-based cash compensation for the sale of investment company securities and variable contracts.

A complete discussion of the background of the proposed rule change is set forth in NASD Special Notice to Members 94-67 ("NTM 94-67"), attached to this filing as Exhibit 2, and in an addendum containing background information (referenced in NTM 94-67), attached to this filing as Exhibit 3. These documents are available to the public from the NASD's Office of General Counsel.

Description of the Proposed Rule Change

The current requirements of paragraph (l) of the Investment Company Rule regulate the disclosure and form of dealer concessions between principal underwriters and retail dealers of investment company securities. These provisions prohibit dealer concessions in the form of securities, require that members be able to elect to receive cash in lieu of the receipt of non-cash compensation, and prohibit the payment of concessions directly to associated persons of a member. The provisions also set forth requirements with respect to the disclosure of compensation arrangements between underwriters and dealers in the investment company's prospectus.⁵

⁵ In Notice to Members 94-14 (March 1994), the NASD clarified the obligations of members in complying with the compensation disclosure requirements for investment companies in Subsection 26(l)(1)(C) to Article III of the Rules of Fair Practice. See also Notice to Members 94-41 (May 1994).

With respect to the regulation of variable contracts, the requirements of Rule 2820 currently do not contain similar provisions regulating dealer concessions. Thus, the proposed amendments to the Investment Company Rule would modify current requirements and the proposed amendments to the Variable Contracts Rule would establish new requirements that address compensation arrangements between an offeror and any member participating in the distribution of the company's securities. The discussion below addresses each proposed provision in the Investment Company Rule and its counterpart in the Variable Contracts Rule.

Definitions

Affiliated Member—The NASD is proposing to adopt a definition of the term "affiliated member" for both the Investment Company and Variable Contracts Rules to include a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company. The term is used in the sections of the proposed rule change which address incentive compensation arrangements in order to identify a common type of relationship existing in the investment company securities and variable contracts industries whereby a non-member owns or controls one or more subsidiary broker-dealer member firms used for underwriting and/or wholesale and retail distribution services.

Cash Compensation—As proposed to be defined in the Investment Company Rule, this term would include any discount, concession, fee, service fee, commission, asset-based sales charge, loan or override received in connection with the sale and distribution of investment company securities. This term would encompass compensation arrangements currently covered under the Investment Company Rule in subparagraph (l)(1), as well as asset-based sales charges and service fees as currently defined in subparagraph (b)(9) of the Investment Company Rule. As a result, the proposed new term would apply to all compensation arrangements that would be covered under the current provisions of the Investment Company Rule, with the addition of asset-based sales charges and service fees. The Variable Contracts Rule's proposed definition of cash compensation would have a similar scope with respect to the sale of variable contracts, but does not include asset-based sales charges in recognition of the different structure of compensation arrangements with respect to such products.

Non-Cash Compensation—This definition is proposed to be identical in applicability for both the Investment Company and Variable Contracts Rules and would encompass any form of compensation received by a member in connection with the sale and distribution of investment company securities and variable contracts that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, and payment of travel expenses, meals and lodging. Thus, the definition of "non-cash compensation" encompasses payments of cash to reimburse costs incurred by a member or person associated with a member in connection with travel, meals and lodging. Certain of the proposed rule language is drawn from the current provisions of subparagraph (l)(3)(B) of the Investment Company Rule which identifies items of material value.

Offeror—The NASD is proposing to define the term "offeror" in the Investment Company Rule to include an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person of such entities, and in the Variable Contract rule to include an insurance company, a separate account of an insurance company, an adviser to a separate account of an insurance company, a fund administrator, an underwriter and any affiliated person of such entities. With the exception of "fund administrator," the enumerated entities included in the proposed definition of "offeror" in the Investment Company Rule are currently included in the definition of "associated person of an underwriter," which is proposed to be deleted.⁶ That definition encompasses the issuer, the underwriter, the investment advisor to the issuer, and any affiliated person of such entities.⁷ The term "affiliated person" in the proposed definition of "offeror" is defined in accordance with Section 2(a)(3) of the 1940 Act. The term "underwriter" is defined in Section 2(a)(40) of the 1940 Act and is intended to refer to the principal underwriter through which the investment and insurance company distributes securities to participating dealers for sale to the investor.

⁶There are no current similar terms in the Variable Contracts Rule.

⁷The term is significantly different from the term "person associated with a member" as used throughout the NASD's rules and regulations. Any reference to persons associated with an NASD member firm is defined by the definition of "person associated with a member" or "associated person of a member" in Article I, Section (m) to the NASD By-Laws.

The NASD does not believe that the inclusion of "fund administrator" in the definition of "offeror" in the proposed rule is overbroad as a result of the fact that affiliates of fund administrators would now be included in the definition of offeror. Affiliates of fund administrators are most likely entities already specified in the definition of "offeror," the definition of which is further circumscribed by the requirement that payments of cash or non-cash compensation be made in connection with the sale of investment company securities or variable contracts.

The adoption of this new definition of offeror would change the applicability of paragraph (l) of the Investment Company Rule and paragraph (h) of the Variable Contract rule from focusing on the distribution relationship of the principal underwriter to the retail dealers to focusing on the distribution relationship of the offeror to any participating broker-dealer firm.

Regulation of the Receipt of Cash and Non-Cash Compensation

Introduction—The NASD is proposing to adopt as paragraph (l) of the Investment Company Rule (replacing the current provisions of that section) and paragraph (h) of the Variable Contracts Rule new provisions governing the receipt of cash and non-cash compensation by members and associated persons of members. The proposed amendments would apply to both variable annuity and variable life products under the Variable Contracts Rule. With respect to the Investment Company Rule, the proposed amendments would apply to sales of securities of an investment company registered under the 1940 Act. Thus, the proposed rules would apply to sales of securities by a face-amount certificate company, a unit investment trust, and open-end and closed-end management companies.⁸

The preamble to the new rules provides that such compensation must be received "in connection with the sale and distribution" of investment company securities or variable contracts, as applicable. The preamble is intended to clarify that the provisions only relate to cash and non-cash compensation received in connection

⁸Closed-end management companies also are regulated under The Corporate Financing Rule in Rule 2710 and currently are subject to the prohibition on non-cash compensation contained in subparagraph (c)(6)(ix) thereof. Rule 2710(b)(8)(C) provides an exemption from compliance with Section 44 for securities of investment companies registered under the 1940 Act, except for securities of a closed-end management company as defined in Section 5(a)(2) of the 1940 Act.

with the sale and distribution of the security covered by the rule, but not to other forms of payment that are not for sales and distribution activities.

Subparagraphs 2820(h)(1) and 2830(h)(1): Limitation on Receipt of Compensation by Associated Persons, and Exception from Limitations—The NASD is proposing in new subparagraph (l)(1) of the Investment Company Rule and new subparagraph (h)(1) of the Variable Contract rule to generally prohibit a person associated with a member from accepting any compensation from any person other than the member with which the person is associated. The provision is based on current subparagraph (l)(2) of the Investment Company Rule.

An exception from this general prohibition is proposed which would allow the receipt of commissions by an associated person directly from a non-member if the arrangement is agreed to, and the amount of commission determined, by the member, the receipt is treated as compensation received by the member for purposes of NASD rules, the recordkeeping requirement in the proposed rule change is satisfied, and the member relies on an appropriate rule, regulation, interpretive release or applicable “no-action” or exemptive letter issued by the Commission or its staff. It would only be necessary for a member to obtain from the Commission an interpretation or no-action position in the event that no current rule, regulation, interpretive release, or no-action or exemptive letter applied to the member’s fact situation. Also, the proposed rule change clarifies that the member must treat such direct payments to associated persons as compensation in order to ensure that the member views such payments in the same manner as payments made directly to the member for purposes of NASD rules and posts such payments to the member’s books.

The proposed exception is particularly intended to recognize current practice, commonly referred to as insurance networking, which relies on certain Commission interpretations or staff no-action letters that permit, under limited circumstances, associated persons to receive compensation for the sale of variable annuity products from an insurance company or licensed insurance agency.⁹ The exception reflects the view of the Commission in Securities Exchange Act Release No. 8389 (August 29, 1968) that, under certain circumstances, such commission payments to associated persons may be

made by an insurance company or insurance agency acting on behalf of a broker-dealer.¹⁰

Although the need to recognize such direct payments arose in connection with the sale of variable contract products, the Investment Company Rule includes the same exception in order to recognize Commission staff no-action positions that permit direct payments by certain non-members to associated persons of broker-dealers for the sale of investment company shares.¹¹

Subparagraph 2830(l)(2): Securities as Compensation—The NASD is proposing to retain as new subparagraph (l)(2) of the Investment Company Rule the provision currently in subparagraph (l)(1)(A) that prohibits members and associated persons of members from receiving compensation in the form of securities of any kind. The Variable Contracts Rule does not contain this prohibition, as the prohibition is intended to reflect circumstances that are limited to the sale of investment company securities.

Subparagraphs 2820(h)(2) and 2830(l)(3): Recordkeeping Requirement—The NASD is proposing to adopt as new subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule the general requirement that members maintain records of all compensation, cash and non-cash, received from offerors. The records must include the names of the offerors, the names of the associated persons, and the amount of cash and the nature and, if known, the value of non-cash compensation received.

With respect to the requirement that the actual value of non-cash compensation be recorded, if it is known, the NASD believes that the value of a non-cash item is usually not

¹⁰ Securities Exchange Act Rel. No. 8389 states that the Commission would not recommend enforcement action where the insurance company makes payments directly to its life insurance agents who are also persons associated with the insurance company’s subsidiary broker/dealer, so long as: (1) Such payments are made as a purely ministerial service and properly reflected on the books and records of the broker/dealer; (2) a binding agreement exists between the insurance company and the broker dealer that all books and records are maintained by the insurance company as agent on behalf of the broker/dealer and are preserved in conformity with the requirements of Rules 17a-3 and 17a-4 under the Act; (3) all such books and records are subject to inspection by the Commission in accordance with Section 17(a) of the Act; and (4) the subsidiary broker/dealer has assumed full responsibility for the securities activities of all persons engaged directly or indirectly in the variable annuity operation.

¹¹ See *Chubb Securities Corporation* (Nov. 24, 1993) (financial institutions were permitted to make commission payments to dual employees of the financial institution and a broker-dealer).

known where unaffiliated third parties contribute to a training and education program sponsored by a member. In this case, it would be appropriate to only include a description of the nature of the non-cash item of compensation. In comparison, the value of non-cash items provided by member firms and/or their affiliates is generally readily known or determinable.

The recordkeeping requirement is not applicable to two types of *de minimis* non-cash compensation allowable under subparagraphs (l)(5)(a) and (b) of the Investment Company Rule and subparagraphs (h)(3)(a) and (b) of the Variable Contracts Rule, discussed more fully below under the exceptions to the prohibition on non-cash compensation.

Subparagraph 2830(l)(4): Prospectus Disclosure of Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(4) in the Investment Company Rule the requirement currently in subparagraph (l)(1)(C) that prohibits the acceptance of cash compensation by a member from an offeror unless such compensation is disclosed in a prospectus. In the case where special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members to distribute the securities, the disclosure shall include the name of the recipient member and the details of the special arrangements. The provision has been modified to reference only “cash compensation” because non-cash compensation is proposed to be prohibited in a manner that would not require disclosure of any such non-cash compensation.¹²

The proposed rule change includes two exceptions from the prospectus disclosure requirement in the Investment Company Rule. The two exceptions in paragraphs (a) and (b) track the language in current subparagraphs (l)(4)(A) and (B) of the Investment Company Rule, with minor language changes for clarification. These two provisions provide an exception from disclosure for compensation arrangements between: (1) Principal underwriters of the same security; and (2) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment. By their terms, these provisions describe arrangements that would not trigger the proposed recordkeeping requirements.

The NASD is not proposing to amend the Variable Contracts Rule to adopt a similar prospectus disclosure

⁹ See, e.g., *Wiley, Rein & Fielding* (Oct. 16, 1991); *Traditional Equinet* (Jan. 8, 1992).

¹² See *supra* n. 5.

requirement. Unlike the Investment Company Rule, there is currently no provision in the Variable Contracts Rule requiring disclosure of compensation received by NASD members in connection with the distribution of variable contracts. Arrangements by insurance companies for compensating salespersons for variable contract sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts. Further, the Securities Act of 1933 and rules adopted thereunder do not require such disclosure in the prospectus for variable life and annuity products. As a result, there is no practice for disclosure of any item of compensation in connection with variable life and annuity products, such as commissions and expense allowances. The NASD believes that insurance companies would be required to make significant modifications to their automated systems in order to separate in some manner compensation for sales of securities products from total compensation for all insurance products. The NASD has determined, therefore, that before proposing new rules to require the disclosure of all cash compensation for the sale of variable contracts, more information should be gathered regarding the different kinds of compensation that are paid to broker-dealers for the sale of variable contracts and the form of any required disclosure. The NASD intends to gather such information in the course of conducting a general study of cash compensation practices in connection with investment company securities and variable contracts, as more fully set forth below.

Subparagraphs 2830(l)(5) and 2820(h)(3): Prohibition on Non-Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(5) of the Investment Company Rule and new subparagraph (h)(3) of the Variable Contracts Rule a general prohibition, with certain exceptions, on the receipt of non-cash compensation. The new provisions would prohibit a member or person associated with a member from directly or indirectly accepting any non-cash compensation offered or provided to such member or its associated persons unless such non-cash compensation is permitted under the provisions. Implicit in the prohibition on the “acceptance” of non-cash compensation is the requirement that a member may not make a payment of compensation to another member and its associated persons that results in a violation of the rule by the recipients.

The proposed rule change contains several exceptions from the general

prohibition on the receipt of non-cash compensation.

Subparagraphs 2820(h)(3)(a) and (b) and 2830(l)(5)(a) and (b): The NASD is proposing to adopt exceptions that would permit an associated person to accept from a person other than its member-employer: (1) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors, which is currently \$100 per person; and (2) an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety. These provisions are based on the current provisions of subparagraph (l)(3)(B) of the Investment Company Rule. The latter exception has been revised from the current language of the Investment Company Rule to reflect that entertainment for associated persons will usually include a spouse or guest of the person and that payment for a guest is permissible, but adds cautionary language that the entertainment should not be “so frequent nor so extensive as to raise any question of propriety.” Since such gifts and entertainment are considered non-cash items, they are not required to be disclosed in the prospectus. Additionally, these two forms of non-cash compensation are specifically excepted from the recordkeeping requirement of the proposed rules.

The proposed provisions would require that the receipt of such non-cash items not be preconditioned on the achievement by the associated person of a sales target. This language replaces the current requirement in subparagraph (l)(3)(B)(v) of the Investment Company Rule that entertainment “not be conditioned on sales of shares of investment companies.” The revised language is intended to clarify that such gifts and entertainment are permitted to be provided as recognition for past sales or as encouragement for future sales, but shall not be part of an incentive program or plan which requires that the recipient reach a sales goal as a prior condition to receive the entertainment or gift.

The proposed exceptions for \$100 gifts and entertainment permits the continuation of long-established, normal business practices, while preventing an investment or insurance company from providing the gift or entertainment as part of a non-cash sales incentive program. The exceptions also recognize that the NASD has not detected or been aware of any history of abuses in connection with the receipt of such items of compensation by associated

persons of a member firm in connection with the sale of investment company securities or variable contracts.

Subparagraphs 2820(h)(3)(c) and 2820(l)(5)(c): The NASD is proposing an exception to the prohibition on non-cash compensation for training and education meetings in subparagraph (l)(5)(c) of the Investment Company Rule and subparagraph (h)(3)(c) of the Variable Contracts Rule. The proposed exception would, under certain conditions, permit payment or reimbursement by offerors in connection with meetings held by the offeror or by a member for the purpose of training or education of associated persons of a member.¹³ It is not unusual for offerors to pay for such meetings in order to discuss their products and to reimburse certain expenses related to the member’s meeting in exchange for the opportunity to make a presentation to the associated persons of the member on a particular training or education topic.

This provision is intended to continue to permit members and offerors to hold training or education meetings for associated persons of one or more members, where an offeror or a number of offerors pay for or reimburse the expenses of the meeting. Because investment company securities and variable contract products are continuously offered, it is particularly important that associated persons receive education opportunities with respect to the investment company securities and variable contract industries generally, updates on any portfolio changes or structural changes to a current product, and explanations of new products.

Since the proposed prospectus disclosure provision requires disclosure of cash compensation only, the proposed exception would not trigger the disclosure requirements because the payment or reimbursement of expenses by an offeror for a member’s training and education meeting is considered to be non-cash compensation. The proposed exception would, however, continue to be subject to the prohibition on an associated person accepting any compensation from anyone other than its member-employer.

The NASD anticipates that the agenda of a bona fide training or education

¹³ A member holding a training or education meeting for its associated persons (in comparison to the associated persons of another member) would not be required to comply with this provision if the member does not receive a payment or reimbursement from an offeror for the expenses of the meeting. In this event, the member would not be prohibited from permitting offerors to make a presentation at the meeting.

meeting will reflect the business purpose of the meeting. In order to establish circumstances that will encourage such a business purpose, the NASD is proposing that the exception for training or education meetings be available only if five conditions are met, which conditions are intended to ensure that the meeting is for the purpose of training and education and is not, in fact, a prohibited non-cash sales incentive trip or entertainment. The first condition is that the payment or reimbursement by offerors in connection with such meetings is subject to the proposed recordkeeping requirement in subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule in order that information on such payments and reimbursements is in the records of the member and, therefore, capable of examination and regulatory oversight by the NASD.

The second condition is that associated persons must obtain the member's prior approval to attend the meeting. It is anticipated that members will establish a procedure so that their records reflect that appropriate approval has been provided to associated persons in connection with such meetings. This provision assists members in maintaining supervisory control over their associated persons. Moreover, the second condition also requires that attendance by the member's associated persons may not be based by the employer-member on the achievement of a sales target or any other non-cash compensation arrangement that is permitted in reliance on paragraph (d) of the proposed rule. That provision would permit non-cash compensation arrangements between a member and its associated persons or between a non-member company and its sales personnel who are associated persons of an affiliated member, as more fully discussed below. This condition is intended to ensure that the member does not treat a training or education meeting as a non-cash incentive item. The provision is not, however, intended to prevent a member from designating persons to attend a meeting held by the member or by an offeror to recognize past performance or encourage future performance, so long as attendance at the meeting is not earned through a member's in-house sales incentive program or through the sales incentive program of the member's non-member affiliate or through the achievement of a sales target.

The third condition is that the location of the meeting must be appropriate to its purpose. A showing of appropriate purpose is demonstrated

where the location is the office of the offeror or the member, or a facility located in the vicinity of such office. In order to address meetings where the attendees are from a number of offices in a region of the country, the meeting location may be in a regional location.

The fourth condition is that the payment or reimbursement by an offeror must not be applied to the expenses of guests of the associated person.

The fifth and final condition is that the payment or reimbursement by the offeror must not be conditioned by the offeror on the achievement of a sales target or any other non-cash arrangement permitted by proposed subsection (l)(5)(d) of the Investment Company Rule or proposed subsection (h)(3)(d) of the Variable Contracts Rule. This requirement is intended to ensure that the offeror making the payment or reimbursement does not participate in any manner in a member's decision as to which associated persons will attend a member's or offeror's meeting.

The fifth condition should be compared to the second provision that prohibits a member from basing the associated person's attendance at a training or education meeting on achievement of a sales target or a permissible in-house non-cash incentive arrangement. Taken together, the second and fifth conditions are intended to clarify that attendance at a training or education meeting by an associated person is permitted to be approved by a member as a recognition for past sales or as an encouragement for future sales, but shall not be part of a member's or offeror's incentive program or plan which requires that the recipient or the member reach a sales goal as a prior condition to attending the training or education meeting.

Subparagraphs 2820(h)(3) (d) and (e) and 2830(l)(5) (d) and (e): The NASD is proposing to adopt for the Investment Company Rule and the Variable Contracts Rule exceptions from the prohibition on non-cash compensation that will permit: (1) Non-cash compensation arrangements between a member and its associated persons, (2) non-cash compensation arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member, and (3) contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons.

The three permissible arrangements are subject to four conditions. The conditions that must be met are that: (1) The member's or non-member's non-cash compensation arrangement, if it includes investment company or

variable product securities, must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member, (2) the credit received for each investment company or variable product security must be equally weighted, (3) no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) *the member must maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors.* However, the applicability of the total production and equal weighting requirements to variable contract securities does not require that variable annuity and variable life products be combined in the same incentive arrangement. Because of the substantially different commission structure of each product, the NASD intends that subparagraph (h)(3)(d) of the Variable Contracts Rule apply to each variable contract product type—variable annuity or variable life.

The NASD believes that the proposed rule change distinguishes between non-cash incentives that act at the *point-of-sale* to the investor and those that do not. Point-of-sale non-cash incentive programs reward associated persons only if they sell a certain number of shares of a specific investment company securities or variable contract. Such incentive programs by an offeror or a member will affect the point-of-sale relationship of associated persons with the investor because they influence the salesperson to sell a specific investment company securities or variable contract or the products of only one offeror. In addition, point-of-sale non-cash incentives offered by third-parties to the associated persons of a member firm have the potential to undermine the supervisory control of the member over the sales practices of its associated persons.

The phrase "point-of-sale incentives" is intended to distinguish between different sales incentive structures on the basis of the potential impact of the sales incentive on the recommendation of the associated person at the point of sale to the customer. Where a sales incentive is structured as a "point-of-sales incentive," the associated person's recommendation of a specific product is motivated by the prospect of receiving the sales incentive rather than the desire to match the investment needs of the customer with the most appropriate investment product. An example of this is an incentive program that will

provide a trip to an exotic location or a cash bonus to an associated person who sells \$X million of ABC mutual fund over a three-month period. Such an incentive would have the effect of influencing an associated person to recommend ABC mutual fund over its competitors to customers. In comparison, an incentive program without a point-of-sale impact would be a program organized by the employer broker-dealer of an associated person that would provide for the same trip to the exotic location or a cash bonus for the sale of \$X million of mutual fund products, with the sale of all mutual fund products being equally-weighted. In this case, the incentive program should not impact the point-of-sale recommendation of the associated person, who would focus on matching the appropriate investment needs of the customer in order for the associated person's recommendation to result in a sale.

The NASD's proposed rule change, therefore, limits non-cash sales incentives to situations where such non-cash incentives do not contain the potential to impact the point-of-sale recommendation by an associated person to a customer or to undermine the supervisory control of the member firm with respect to its associated persons.

The NASD is proposing to eliminate the point-of-sale impact of non-cash sales incentives on the sales practices of an associated person with respect to the sale of investment company securities and variable contracts by prohibiting third-party non-cash sales incentive programs and by requiring that all securities of the product type be included in the member's (or its affiliate's) in-house incentive program and be equally weighted. The proposed rule change, therefore, would prohibit a third-party offeror from conducting a non-cash sales incentive program for associated persons of member firms, as such programs only provide incentives that will act at the point-of-sale to influence a salesperson to sell the proprietary products of the offeror and have the potential to undermine the supervisory control of the member with respect to its associated persons, thereby increasing the possibility for a perception of impropriety which may result in a loss of investor confidence. The proposed rule change would, however, continue to permit non-cash incentive programs by a member for its associated persons or by an insurance or investment company for the associated persons of an affiliated member, under the four conditions discussed more fully below. The NASD determined that, in

both cases, the non-cash compensation arrangement is internal to the employer-employee relationship and, therefore, does not raise the supervisory concerns that are present in the compensation arrangements between a non-member and the associated persons of unaffiliated broker-dealers selling its product.

The exception permitting a non-member affiliate to grant non-cash incentives to the associated persons of its affiliated broker-dealer for the sale of investment company securities and variable contracts recognizes the practice that is particularly present in the life insurance industry of a non-member insurance company holding a non-cash sales incentive program for its sales personnel who are also associated persons of the non-member's affiliated broker-dealer. Such sales persons are dual-licensed to sell non-securities insurance products and variable contracts. It is particularly a common practice for a member's parent life insurance company to award "points" for the sale of all insurance products—including securities—toward attendance at the insurance company's annual "leadership conference."¹⁴ Moreover, the exception recognizes that, as a practical matter, an insurance company or investment company affiliated with a broker-dealer is in a position through intra-corporate transfers to contribute to and through its relationship to affect the structure of its affiliated broker-dealer's in-house incentive program.

The permissible in-house non-cash arrangements by a member or its affiliate are subject, moreover, to the first two conditions which are intended to ensure that a non-cash sales incentive earned by a member's associated person is on a delayed basis and does not influence the associated person's point-of-sale relationship with the investor. The first two conditions require that a member's or its affiliate's non-cash sales incentive program, if it includes investment company securities or variable contracts, must be based on the total production of associated persons with respect to the sale of all investment company securities or variable contracts distributed by that member and the credit received for the sale of each investment company security or variable contract must be equally weighted.

The NASD believes that the intent of first two conditions, by focusing on total

¹⁴ As set forth above, arrangements by insurance companies for compensating salespersons for variable product sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts.

production and equal weighting rather than point-of-sale incentives, is to align the interests of associated persons, broker-dealers and investors. Thus, the proposed provisions would allow for sales incentive programs based on such measures as overall gross production, new accounts opened or assets under management. Such measures are not precluded by the proposed rule language and are based on the same intent to align the interests of associated persons, broker-dealers and investors. The concept of total production, for example, is not necessarily restricted to total sales production, but could include total activity in investment company securities, thus allowing for incentive contests based on assets gathered or assets maintained under management.¹⁵

In proposing the second condition requiring equal weighting, the NASD recognizes that differential payouts at all levels is common industry practice and that current methods for determining contest credits vary, including measurements based on gross production to the firm or net commissions to the associated person. The NASD believes that either practice, as well as other arrangements, would be acceptable so long as the concept of "equal weighting" is met and not skewed by disparate commission, payout or reallowance structures for individual products. The condition of equal weighting requires a good faith effort by a member to comply and the test of whether a particular equal weighting methodology is acceptable is whether the contest is still skewed toward a particular product or products.

It is believed that these requirements will ensure that members and their affiliates selling proprietary investment company securities and variable contracts products do not structure in-house non-cash arrangements that are biased in favor of their proprietary products or any one specific product.

A member's or its affiliate's non-cash compensation arrangement is also subject to the restriction that no unaffiliated non-member entity (usually an offeror) or another member can participate directly or indirectly in the member's or its affiliate's organization of a permissible non-cash sales incentive program. This provision is intended to ensure that third-party offerors are not involved in and do not influence the organization of a permissible non-cash sales incentive program by a member or a member's affiliate. The restriction on participation is not, however, intended to prevent a

¹⁵ See Report of the Committee on Compensation Practices, April 10, 1995 ("Tully Report"), at 13.

non-member company from making a presentation on its products at a member's or its affiliate's in-house sales incentive meeting at the member's or affiliate's request.

Finally, the non-cash incentive program of a member or its affiliate for a member's associated persons is also subject to the recordkeeping requirements of the proposed rule. Thus, in the case where the member or its associated persons is in receipt of payments or non-cash sales incentives from its affiliated entity, such payments or non-cash sales incentives must be recorded on the books and records of the member firm.

The NASD is also proposing in subparagraph (l)(5)(e) of the Investment Company Rule and subparagraph (h)(3)(e) of the Variable Contracts Rule that any non-member entity (usually an offeror) or another member continue to be permitted to contribute to any member's in-house non-cash sales incentive program, so long as: (1) The in-house program is based on total production of the investment company securities or variable contract products; (2) each sale receives equal weighting; (3) no entity (other than a member's affiliate) directly or indirectly participates in the member's organization of its permissible non-cash incentive compensation program; and (4) the member maintains records of such contributions. This provision is intended to permit third-party offerors, and their affiliates, to contribute to the non-cash incentive program of a member in order to benefit the associated persons of the member that sell the offeror's securities.¹⁶ The proposed rule change does not similarly permit third party entities to make contributions to the non-cash incentive program of an affiliate of a member because such non-member affiliates are not subject to the recordkeeping requirements of the proposed rule change. Thus, contributions by third parties for a non-cash incentive program for associated persons of a member firm may be made only directly to the member.

Relationship of the In-House Non-Cash Incentive Exceptions for Members and Their Affiliates to the Training or Education Exception: The NASD believes that training/education meetings are important to the investment company/variable contract industries and it is, therefore, important that the NASD's rules continue to permit such meetings. The structure of

the training or education provision permits members to recognize high producers by attendance at such meetings, but prohibits a member from requiring achievement of a specified sales target or any other in-house non-cash arrangement to attend the meeting. Since the proposed rule change would permit members and their affiliates to have an in-house non-cash incentive program for sales of investment company securities and variable contracts (and offerors may contribute to such in-house incentive programs), it is important to clarify the difference between attending a training/education meeting as a permissible "recognition" and attending it as an impermissible "non-cash sales incentive program." The issue arises only where a member is in receipt of any payment or reimbursement for the costs of a meeting or a third-party offeror (or any of its affiliates) pays for any of the costs of a meeting which is attended by associated persons of a member.¹⁷ One clear demarcation is that any meeting held by a member or its affiliate only for the member's associated persons (where contributions are made by a third-party offeror) may be covered either by the exception for in-house non-cash incentives or the exception for a training and education meeting, whereas any meeting held by a third-party offeror must comply with the training/education requirements (because a third-party offeror cannot conduct a non-cash incentive program).

Subparagraphs 2820(h)(4) and 2830(l)(6): Prohibition on Certain Types of Incentive-Based Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(6) of the Investment Company Rule and new subparagraph (h)(4) of the Variable Contracts Rule a prohibition, with certain exceptions, on the receipt of incentive-based cash compensation. The new provision would prohibit a person associated with a member from directly or indirectly accepting any cash compensation preconditioned on the achievement of a sales target offered or provided to such person or the member with the person is associated, unless such compensation is permitted under the provision. Implicit in the prohibition on the "acceptance" of such incentive-based cash compensation is the requirement that a member may not make a payment of compensation to another member and its associated persons that results in a violation of the rule by the recipients.

The inclusion of this provision for the prohibition of incentive-based cash

compensation is intended to ensure that offerors do not circumvent the non-cash incentive prohibition through the offering of cash incentives directly to associated persons. This is consistent with the NASD's intention to prohibit incentives that act as point-of-sale inducements that could influence the advice of a salesperson. The cash incentive prohibition is focused only on cash sales incentive contests that could be used by offerors to reward associated persons of a broker-dealer for the sale of a particular investment company or variable contract security and does not encompass payments at the entity-broker-dealer level that are not passed on to the associated person. Thus, the focus of the prohibition does not include other cash revenue-sharing arrangements intended to be covered by the NASD's study of cash compensation practices, as more fully set forth below. In particular, the proposed provision would not prohibit the practice of paying higher sales charges for reaching increasing sales targets. Also, it is important to note that payments of cash compensation that would be permitted under this provision would not be subject to the proposed disclosure provisions above.

The proposed rule change contains exceptions from the prohibition on the receipt of incentive-based cash compensation.

Subsections 26(l)(6) (a) and (b) and 29(h)(4) (a) and (b): The NASD is proposing to adopt for the Investment Company Rule and the Variable Contracts Rule exceptions from the prohibition on incentive-based cash compensation that, consistent with the non-cash sales incentive prohibition, will permit: (1) Compensation arrangements between a member and its associated persons; (2) compensation arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member; and (3) contributions by a non-member company or other member to a cash compensation arrangement between a member and its associated persons.

The three permissible arrangements are subject to four conditions. The conditions that must be met are that: (1) The member's or non-member's compensation arrangement, if it includes investment company or variable product securities, must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member; (2) the credit received for each investment company or variable product security must be equally weighted; (3)

¹⁶ The provision would also permit a member's affiliate to contribute to the member's in-house non-cash incentive program.

¹⁷ See *supra* note 12.

no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible compensation arrangement; and (4) the member must maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors.

Finally, as with proposed provisions for non-cash compensation arrangements above, the applicability of the total production and equal weighting requirements to variable contract securities does not require that variable annuity and variable life products be combined in the same cash incentive arrangement. Again, because of the substantially different commission structure of each product, the NASD intends that subparagraph (h)(4)(a) of the Variable Contracts Rule apply to each variable contract product type—variable annuity or variable life.

In order to fully understand the applicability of the proposed rule change with respect to training or education meetings and in-house non-cash incentive programs, a chart and five narrative examples are included as Exhibit 5. Copies of these documents are available to the public from the NASD.

Relationship of the Proposed Rule Change to the Tully Report: The Tully Report reviewed industry compensation practices in connection with the sale of all forms of securities for associated persons of members, identified conflicts of interests inherent in such practices and identified the "best practices" used in the industry to eliminate, reduce, or mitigate such conflicts of interest. The rule change proposed herein is limited to addressing certain compensation issues only in connection with the sale of investment company securities and variable contracts. The NASD believes that the proposed rule change is consistent with the characteristics of "best practices" identified in the Tully Report in that the requirements in the proposed rule for the receipt of non-cash and cash incentives eliminates the point-of-sale impact of such incentives on the sales practices of an associated person, thereby helping to align the interests of associated persons, broker-dealers and investors with respect to the sale of investment company securities and variable contracts.

Separate from the proposed rule change, however, the Board of Directors of NASD Regulation, Inc. ("NASDR") has agreed that NASDR, acting through its standing committees, should review the Tully Report recommendations and determine what initiatives, if any, the organization should undertake. NASDR will be collecting the views of the

Committees later this year for consideration by the NASD National Business Conduct Committee ("NBCC").

Proposed Implementation of New Rules

The NASD is proposing that the amendments to the Investment Company and Variable Contracts Rules be implemented in the following manner. The proposed rule change will be effective on the date stated in a Notice to Members announcing Commission approval, which Notice will be issued no later than 60 days after Commission approval. The date stated is the date of the issuance of that Notice. As of that date, members will be required to comply with the proposed rule change. With respect to the non-cash and cash sales incentive provisions, no new sales incentive programs may be commenced after the announced effective date. Sales incentive programs that are currently on-going on the date of effectiveness will be permitted to continue for a period not to exceed six months following the announced effective date. Thus, during the six-month implementation period, no new incentive programs may commence and sales may continue to be applied to existing incentive programs. However, non-cash and cash sales incentives earned by associated persons will be permitted to be received for a period not to exceed twelve months following the expiration of the six-month implementation period in the next calendar year after approval of the amendments by the SEC. Thus, during the calendar year 1996, members and their associated persons would be permitted to receive non-cash sales incentives earned prior to January 1, 1996.

(b) Statutory Basis for Proposed Rule Change

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)¹⁸ of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change is designed: (1) To adopt new regulations with respect to the sales of variable contracts in Rule 2820 that will regulate the direct payment of compensation to associated persons by persons other than the member with which a person is associated, establish recordkeeping requirements, and regulate the receipt of non-cash

compensation by members and their associated persons; (2) amend current regulations with respect to the sale of investment company securities in Rule 2830 that will clarify the circumstances under which associated persons may receive direct payments of compensation from persons other than the member with which a person is associated with, establish recordkeeping requirements, retain current disclosure requirements and a prohibition on the receipt of securities as compensation, and regulate the receipt of non-cash compensation by members and their associated persons and the receipt of cash incentives by associated persons. Moreover, the proposed rule change is designed to minimize the point-of-sale impact of non-cash sales incentives on the recommendations of associated persons to their customers with respect to the sale of investment company securities and variable contracts and eliminate any potential that third party non-cash incentives may undermine the supervisory control of the member with respect to their associated persons, which would increase the possibility for the perception of impropriety which may result in a loss of investor confidence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Comments received on the proposed rule change in response to NTM 94-67 raised a number of concerns regarding the potential discriminatory impact of the proposed rule change as published for comment on issuers of investment company securities and variable contracts and on members not affiliated with an issuer. Because the rule change proposed for comment in NTM 94-67 has been significantly amended to address the arguments of comments with respect to its discriminatory impact, the NASD's discussion of the proposed rule change's burden on competition is set forth below in connection with the comments received on the proposed rule change. On the basis of the discussion set forth below in connection with the comments received, the NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NTM 94-67. 43 comments were received in response thereto. Of the 43 comment letters

¹⁸ 15 U.S.C. § 78o-3.

received, 25 were supportive of the overall goal of the proposed rule change to more closely regulate incentive compensation arrangements, 8 were opposed, and 10 were neither explicitly for nor against the proposal. The rule change published for comment did not include the proposed prohibition on the receipt of cash incentives by associated persons of a member.

Deferral of Cash Compensation Issues

At the time the non-cash compensation proposal was published for comment company securities and variable contracts, and not with respect to disclosure of various forms of cash compensation. A number of commenters raised issues as to whether the requirements of the current Investment Company Rule and the proposed new Variable Contracts Rule would require disclosure of various forms of cash compensation arrangements (e.g., "revenue sharing" and "soft dollar" arrangements) as "special compensation" or as "cash compensation," that are increasingly being provided to members in connection with the sale of investment company securities and variable contracts. Other commenters expressed concerns regarding the possibility that members may provide a disparate cash payout to representatives with respect to sales of proprietary products.

A connected issue concerning the disclosure of such revenue sharing arrangements is whether such disclosed compensation is subject to the sales charge limitations of paragraph (d) of the Investment Company Rule. In a letter dated November 22, 1994, the Division of Investment Management of the SEC requested advice from the NASD as to whether the current disclosure requirements of the Investment Company Rule apply to such revenue sharing arrangements. Specifically, the SEC asked whether such cash compensation and revenue sharing arrangements are a "discount, commission, fee or concession" for purposes of paragraph (l) that are subject to disclosure and should be limited as "sales charges described in the prospectus" for purposes of paragraph 2830(d). In connection with the SEC's request, the NASD Board of Governors approved the proposed rule change to be filed with the SEC but agreed to defer resolution of the revenue sharing issues until a later date. The NASD believes that it should not attempt to determine the applicability of the proposed amendments to the variety of revenue sharing issues without first gathering information about the scope of revenue sharing payments and also

addressing jurisdictional questions. Thus, the NASD has deferred issues regarding revenue sharing arrangements until a study is conducted by NASD staff of members that engage in the sale of investment company securities and variable contracts in order to develop a greater understanding of the different forms of revenue sharing arrangements and to provide information for policy-making by the Committees. It is anticipated that, as a result of the study, the NASD will develop rule proposals with respect to the disclosure of revenue sharing items that will be filed with the SEC and published for comment prior to adoption. Therefore, the NASD will not address at this time issues raised by commenters in response to NTM 94-67 regarding special cash compensation, revenue sharing, soft dollar payments or certain other forms of cash compensation payments made in connection with the sale of investment company securities and variable contracts.

The discussion set forth below of the comments received on the proposed rule change includes the specific comments received with respect to revenue sharing and other cash compensation issues that will be covered by the NASD's study of such arrangements.

Original Proposal

In connection with the sale of investment company securities and variable contracts, the amendments as originally proposed would have: (1) Prohibited, with certain exceptions, members and persons associated with members from accepting any non-cash compensation from an offeror in connection with the sale of investment company securities and variable contracts; (2) prohibited associated persons from receiving any compensation from anyone other than the member with which the person is associated, unless permitted by the rule; (3) prohibited receipt by a member of cash compensation from the offeror unless such arrangement is described in the current prospectus; and (4) required that members maintain records of compensation received from offerors. The amendments also would have retained the prohibition, in connection with the sale of investment company securities, against a member receiving compensation in the form of securities from an offeror.

The exceptions from the non-cash compensation prohibition would have permitted: (1) In-house sales incentive programs of broker-dealers for their own associated persons; (2) sales incentive programs of investment companies and

insurance companies for the associated persons of a broker-dealer subsidiary; (3) payment or reimbursement for training and education meetings held by a broker-dealer or an investment or insurance company for associated persons of broker-dealers; (4) gifts of up to \$100 per associated person annually; and (5) an occasional meal, ticket to a sporting event or theater, or entertainment for associated persons and their guests.

As a result of member comments, the rule language of the proposed amendments published in NTM 94-67 was significantly modified by the Board of Governors. The following is a discussion of member comments in response to NTM 94-67.

General Comments

Rationale for New Rules. Certain commentators opposed to the proposed rule change questioned the necessity for the proposed rule given that both the Insurance Affiliated Members Committee and the Investment Companies Committee did not find that the manner in which non-cash compensation is offered and paid to members and their associated persons indicates a level of supervisory and compliance problems similar to those experienced by the DPP industry in the late 1980s (Massachusetts Mutual Life Insurance Co. ("MML"), New England Funds ("New England"), Wood Logan). One commentator (MML) requested that any final rules be accompanied by a clear and forthright explanation of the abuses which the proposed rules are attempting to correct. Another commentator stated that the possibility of the perception of impropriety is greater in the sale of investment company securities since such securities, unlike variable products, are not subject to state insurance regulation, and expressed concern about broadening the non-cash compensation rules to include variable products without any evidence of actual or potential abuse (ITT Hartford). The commentator expressed concern about extending non-cash prohibitions to variable products solely on the basis of a perception of impropriety.

There were 25 commentators in support of the proposed rule change that provided specific comments in favor of the proposal (ACLI, A.G. Edwards & Sons ("AG Edwards"), American Funds Distributors, Inc., Bridgeway, Calvert Securities Corp. ("Calvert"), Edwards & Angell, Equity Services, Inc., FNIC, Fidelity Investments, IAFF, ICI, IM&R, ML Stern & Co. ("ML Stern"), Mariner, Merrill Lynch, Mutual Service Corporation ("Mutual Service"),

Nuveen, PNMR, Prudential, Putnam Investments, Raymond James, State of New York, T. Rowe Price, Thornburg Securities ("Thornburg"), Titan). The NASD was urged to adopt a policy regarding the treatment of non-cash compensation that is applied "more or less even-handedly" across businesses within the securities industry. It was stated that the potential is present that the abuses identified by the NASD with respect to DPPs in the 1980s may occur with respect to investment company securities and variable contracts. It was pointed out that in many cases the same registered representatives that sell DPPs also sell investment company securities and variable contracts. It was argued that the perception of impropriety may lead to a loss of investor confidence. In this connection, it was pointed out that there had been recent unfavorable media coverage of non-cash incentives in the sale of investment company securities (Edwards & Angell).

Another commentator stated that the proposal will contribute to ethical business practices among registered representatives, instill a greater disclosure responsibility on sponsors and provide an enhanced regulatory effort for the protection of the consumer (Raymond James) and that the proposal on the whole is excellent and will serve to provide full and fair disclosure of all compensation to the public and necessary guidance to members as to acceptable forms of compensation (AG Edwards).

Other commentators stated that prohibiting non-cash compensation will strengthen the ability of member firms to supervise their registered representatives (Merrill Lynch) and that the entire investment community is best served by removing any incentive a registered representative may have to sell a particular product other than one for the clients' best interests (Thornburg). It was also stated that the proposal will provide NASD members with greater control over compensation offered to their registered representatives (Mutual Service). Finally, commentators stated that the proposal protects and enhances investor confidence (IAFP), and decreases the possibility, as well as the consumer's perception of, representatives' impropriety (Calvert).

Other General Comments. One commentator thought the proposed rules were unduly complicated and might unnecessarily penalize members who have creative compensation approaches (Mutual Service). The commentator stated that a simpler way to accomplish the objectives of the proposed rule change would be to

require only that all compensation be disclosed in the prospectus, all cash compensation be paid to the member firm, and all incentive compensation be based on gross production of all products. As set forth above, the NASD will review the current forms of cash compensation received by members in connection with the sale of investment company securities and variable contracts in order to develop rules that will address disclosure of compensation in the prospectus. With respect to the second request that all cash compensation be paid to the member firm, there is a long history of SEC interpretive positions and no-action letters permitting third-parties to make direct payments of cash compensation to associated persons under certain circumstances. The NASD believes it is appropriate that the proposed rule change recognizes these SEC positions. With respect to the third comment, as set forth below, the NASD is revising the proposal published for comment to require that a member's or its affiliate's in-house incentive program must be based on total production of associated persons with respect to sales of investment company securities and variable contracts and that the credit received for the sale of each security is equally weighted. These provisions are discussed more fully below.

Another commentator requested general clarification on the relationship between Rules 2820 and 2830 (Fidelity). As stated in paragraph 2820(a), Rule 2820 applies to member's activities in connection with the sale of variable contracts in lieu of Rule 2830. Thus, variable contracts are regulated solely by Rule 2820—not Rule 2830.

Relationship to Rules for Direct Participation Program Securities. One commentator recommended that if the proposed rule with respect to non-cash sales incentives is adopted that the NASD implement conforming changes with respect to the NASD's rules for direct participation program securities in Rule 2810. It was stated that to regulate the DPP and investment company/variable contracts industries differently would give a competitive advantage to one over another (Edwards & Angell). Another commentator stated that Rule 2810(b)(4)(E) does not contain a similar carve-out for in-house compensation arrangements by affiliates of a broker-dealer and the proposed rule, if adopted, would therefore discriminate against broker-dealers which are not subsidiaries of an investment company or insurance company (Titan II).

The NASD's Direct Participation Programs Committee will review the

proposed rule change in light of the current provisions of the non-cash incentive rule of Rule 2810.

Specific Comments

Definitions of Cash and Non-Cash Compensation

Cash Compensation Definition. In the explanation of the provisions of the proposed rule in NTM 94-67, the NASD stated that the proposed definition of "cash compensation" in paragraph (b)(7) of the Investment Company Rule "encompasses cash compensation arrangements covered under the current provisions of the Investment Company Rule." One commentator stated that this description appears to be inconsistent with the proposed new definition of "cash compensation," which includes, among other things, asset-based sales charges (Fidelity). The commentator suggested that the NASD either eliminate asset-based sales charges from the coverage of the definition or explain more clearly the reasons for its inclusion and the scope of its applicability. The commentator suggested that the NASD also explain the scope of the counterpart definition of cash compensation in subparagraph (b)(3) of the Variable Contracts Rule. The NASD believes that the definition of "cash compensation" in the Investment Company Rule should include coverage of "asset based sales charges" and that they are encompassed in the current Investment Company Rule as a "fee." In comparison to the proposed definition in NTM 94-67, the term "asset based sales charge" has been deleted from the definition of "cash compensation" in the Variable Contracts Rule since there is no provision in the current Variable Contracts Rule for such charges.

One commentator urged that although the proposal appropriately places limits on non-cash compensation, the NASD should go further and only allow, with limited exceptions, the reallocated sales charges in the prospectus (Nuveen). The NASD believes it is appropriate to permit different forms of cash compensation, so long as such compensation arrangements are not contrary to the concepts of fairness and reasonableness under Article III, Section 1 of the NASD's Rules of Fair Practice—the NASD's basic ethical rule. In the course of conducting a study of cash compensation arrangements, the fairness and reasonableness of such arrangements will be considered.

Non-Cash Compensation. The definition of "non-cash" compensation in Subparagraphs (b)(7) of the Investment Company Rule and (b)(3) of

the Variable Contracts Rule includes payments of cash to reimburse members for the costs of travel, meals and lodging. One commentator stated that if cash payments are to be included within the term "non-cash compensation," the term "non-cash compensation" should be recharacterized (MML). The NASD believes it is appropriate to treat cash payments for non-cash items as "non-cash compensation," because the receipt of non-cash items of compensation should be regulated in the same manner regardless of whether the item is received or payment is made for the cost of the item.

However, the NASD believes that there is an issue of whether excess cash payments for training and education meetings meet the definition of non-cash compensation and will seek to clarify in its study on cash compensation whether payments exceeding actual reimbursements fit within the definition of non-cash compensation, and whether any such excess is received in connection with sale or distribution practices.

Special Cash Compensation. The proposed change does not contain a definition of the term "special cash compensation" that is used in the current and proposed disclosure provision of the Investment Company Rule (subparagraph (l)(4) of the Investment Company Rule) and the disclosure provision that was originally proposed in subparagraph (h)(3) of the Variable Contracts Rule. One commentator suggested, for purposes of the Variable Contracts Rule, defining the phrase as "any cash compensation that exceeds the maximum compensation disclosed in the prospectus," which would enable a member to accept less than the maximum disclosed commission without having to force the disclosure in the prospectus of all members who were paid no more than the maximum commission (ITT Hartford).

As set forth above, the NASD has amended the proposed rule change to the Variable Contracts Rule to delete the disclosure provision. The NASD intends, nonetheless, to reconsider the definitions in the proposed rule change with respect to the Investment Company Rule and Variable Contracts Rule and the text of the disclosure provision being proposed herein with respect to the Investment Company Rule (including the requirement for disclosure of "special compensation arrangements") as a part of the study of cash compensation arrangements, referenced above.

Preamble—"In Connection With"

The preambles to the proposed rule change in the Investment Company Rule and the Variable Contracts Rule begin with the phrase "In connection with the sale and distribution of investment company securities [variable contracts]." Commentators stated that there is no guidance to illustrate the meaning of the phrase and requested NASD clarification as to the scope of the phrase and whether it applies to in-house non-cash compensation not intended to serve as a sales incentive such as, for example, compensation paid as a reward to phone representatives for a stellar attendance record or exceptional phone demeanor (MML, Nuveen, T. Rowe Price). Another commentator requested that the final rules clearly state what compensation arrangements are acceptable and suggested that language be incorporated in the final rule clarifying what specific types of compensation are unrelated to sales and distribution, and therefore not covered by the rules (New England).

One commentator identified various current investment company "payment" practices which are not tied to specified sales levels of the broker-dealer, but are intended instead to "solidify the relationship between the broker-dealer and the mutual fund complex," such as when a mutual fund complex: (1) Gives "unrestricted" funds to some of the broker-dealers in its selling group; (2) Gives books to some of its broker-dealers on "how to sell mutual funds" for distribution to its registered representatives; (3) pays for the cost of preparing broker-dealer training materials; (4) pays for advertising in a broker-dealer's internal newsletter (MML). The commentator emphasized that a literal reading of the phrase could cover all of the above examples and, absent clarification, the phrase will be interpreted liberally by some firms and narrowly by others. The commentator recommended that the phrase be deleted in its entirety or clarified to ensure its uniform interpretation and implementation.

The NASD is aware that members and their associated persons receive compensation for the sale of non-securities products from insurance companies and receive other forms of payments from investment and insurance companies that are not for sales and distribution activities. The preamble is not intended to cover compensation and payment arrangements that are clearly not in connection with the sale and distribution of investment company securities or variable contracts. The

extent to which any specific cash payments are considered to be made in connection with the sale of securities will be further considered and clarified as a result of the NASD's study of cash compensation arrangements, as set forth above.

Subparagraphs 2820(h)(1) and 2830(l)(1)—The Ministerial Exception

Proposed subparagraph (l)(1) of the Investment Company Rule and proposed subparagraph (h)(1) of the Variable Contracts Rule would codify the so-called "ministerial exception," which permits a non-member, under certain circumstances, to maintain a commission account as a ministerial service for a member and, on behalf of the member, pay commission checks directly to associated persons of the member.

One commentator stated that, contrary to the assertion in NTM 94-67 that the ministerial exception only recognizes either the conditions set forth in Securities Exchange Act Release No. 8389 or no-action positions on how to comply with conflicting requirements of state insurance and securities laws, there are additional no-action letters from the Commission authorizing other direct payment exceptions based on theories wholly different from either the ministerial exception or state law conflict (MML). The commentator requested modification of the proposed rules to explicitly recognize the existence and validity of such no-action letters. The commentator's recommendation was to add rule language to the end of subparagraphs (l)(1) of the Investment Company Rule and (h)(1) of the Variable Contracts Rule published for comment stating "or where such payments are authorized by a no-action letter issued by the staff of the Securities and Exchange Commission."

One commentator requested that the final rule clarify that an NASD member firm can rely on any no-action position or opinion of counsel without having to obtain its own no-action position in order to take advantage of the ministerial exception (NAVA). Another commentator stated that the ministerial exception should be allowed to be used in all states, regardless of whether a state law impediment exists (PNMR).

The NASD agrees that it was not the intention of the ministerial exception to limit the ability of a member to rely on any applicable SEC interpretations or no-action letters that would permit direct payment of commission checks to associated persons. At the same time, the NASD believes it is necessary to ensure that members rely only on SEC

positions that are issued (in comparison to telephone advice) and that are applicable to the specific fact situation under which such direct payments will be made. Thus, it should only be necessary for a member to obtain from the SEC an exemptive, interpretive or no-action letter in the event that no current rule, regulation, interpretive release, or no-action position that applies to the member's fact situation. Additionally, the NASD believes it is necessary to ensure that direct payments to associated persons are treated as payments directly to the member for purposes of NASD rules.

Therefore, the rule language set forth in subparagraphs (l)(1) and (h)(1) of the Investment Companies and Variable Contracts Rules, respectively, in NTM 94-67 has been revised to clarify that associated persons may be compensated by certain non-members provided: (1) The arrangement is agreed to and the amount of commission determined by the member; (2) the member relies on an appropriate rule, regulation, interpretation or applicable no-action or exemptive letter issued by the SEC or its staff; (3) the payments are treated as compensation received by the member for purposes of the rules of the NASD; and (4) the payments are subject to the proposed rule's recordkeeping requirements. The NASD also revised rule language to recognize the SEC staff's recent no-action letter to Chubb Securities Corporation that permits commission payments by financial institutions directly to associated persons of member firms under certain circumstances.¹⁹

The NASD does not believe it is appropriate, as recommended by one commenter, to amend the rule to recognize an opinion of counsel, standing alone, as the basis for a member's reliance on the ministerial exception. This position does not preclude a member from obtaining an opinion of counsel that the member has based its determination to permit direct payments by a third-party to its associated persons on an appropriate rule, regulation, interpretation, or no-action or exemptive letter of the SEC or its staff and that such rule, regulation, interpretation, or no-action or exemptive letter applies to the specific fact situation of the member.

Subparagraphs 2820(h)(2) and 2830(l)(3)—Recordkeeping Requirement

Subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule, proposed

in NTM 94-67 require member firms to keep records, with certain exceptions, of all cash and non-cash compensation received from offerors.

One commentator suggested that the NASD should consider requiring member firms to file a brief report to the NASD on a standard form each time a program to provide incentives is adopted (Edwards & Angell). Unless specifically required otherwise by law, the NASD allows members to devise their own specific methods and procedures for maintaining various records required to be kept under the rules and regulations of the Association and the SEC. It is not believed necessary for the NASD to monitor compliance with the proposed rule change through such a filing method. The NASD will review member's compliance with the proposed prohibition on the receipt of non-cash compensation in the course of its normal examination of the records of member firms.

In order to avoid duplicative recordkeeping, another commentator suggested including an additional exception to the record keeping requirement to allow records of compensation to be kept on behalf of a member by a member's control person, such as, for example, the investment adviser of a no-load fund complex (T. Rowe Price). The proposed provision does not address the identity of the entity that maintains the member's records. The recordkeeping requirement proposed by the NASD is applicable to the member, regardless of the entity relied on by the member to maintain its records, and it is the obligation of the member to ensure that its records comply with all applicable rules. Any records maintained by a third-party entity for a member must be maintained in accordance with all applicable law and be immediately accessible for examination and other regulatory purposes.

Another commentator recommended that the NASD add the phrase "by the member or its associated persons" after the word "received" in the first sentence of the recordkeeping requirement subsections so that the requirement applies to compensation received by both members and associated persons (MML). The NASD agrees that the proposed rule should be clarified to indicate that the recordkeeping requirement applies to compensation received by members and associated persons and has modified the rule language in subparagraphs (l)(3) and (h)(2) of the Investment Company and Variable Contracts Rules, respectively, accordingly. This amendment is consistent with the

proposed amendments to the "ministerial" exception permitting direct payments to associated persons.

Subparagraph 2830(l)(4)—Disclosure Requirements

The version of the proposed rule change published for comment in NTM 94-67 contained disclosure obligations in both the Investment Company Rule and the Variable Contracts Rule which required that all cash compensation arrangements, including special cash compensation arrangements, be specifically described in the prospectus, with the exception of, among other things, arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member firm.

The Proposed Disclosure Requirement for Variable Contracts. Two commentators stated that any commission/compensation disclosure requirements should be applied equally to both investment company securities and variable annuities since the products are so similar in nature and there is no reasonable basis to do otherwise (Raymond James, New England). Another commentator stated the proposed requirement in the Variable Contracts Rule to disclose non-standard compensation in a variable contract prospectus would result in irrelevant and misleading compensation information and would be financially and functionally burdensome, especially during a period of rapid growth where the daily prospectus amendments could be required (PEN). Another commentator suggested deleting proposed subparagraph (h)(3) of the Variable Contracts Rule (Lincoln National).

Unlike the Investment Company Rule, there is currently no provision in the Variable Contracts Rule requiring disclosure of compensation received by NASD members in connection with the distribution of variable contracts. Arrangements by insurance companies for compensating salespersons for variable product sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts. As discussed above, the NASD believes that, before requiring disclosure of all cash compensation for the sale of variable product securities, more information should be gathered regarding the kinds of compensation that are included in payment for the sale of variable products and the form of any required disclosure. Further, regardless of the few comments received opposed to this provision in the Variable Contracts Rule, the NASD believes it is

¹⁹ Chubb Securities Corporation (Nov. 24, 1993).

apparent from the lack of discussion in the comments that the full potential impact of the proposed disclosure provision in its entirety on the sale of variable contract products has not been fully understood by industry commenters. Therefore, the NASD has modified the language of the Variable Contracts Rule to delete the requirement for disclosure of cash compensation in subparagraph (h)(3) in the Variable Contracts Rule published for comment in NTM 94-67, pending the gathering of more information and industry input, and the Variable Contracts Rule has been renumbered accordingly.

Discriminatory Impact of Exception for Payments to Sales Personnel. A number of commentators indicated that the exception proposed in subparagraph (l)(4)(c) of the Investment Company Rule and subparagraph (h)(3)(c) of the Variable Contracts Rule in NTM 94-67 to the disclosure obligation requirement for proprietary issuers with captive sales forces was unduly burdensome for, and unfairly discriminatory against, member firms selling only "non-proprietary" products, anti-competitive, and/or misleading to a retail public expecting full disclosure (IM&R, FNIC, AG Edwards, Stern, Associated, Mariner, Mutual Service, Cadaret/Grant, Security Life, IAFF, LPL, Putnam, Titan II, PEN). The commentators emphasized that required disclosures should be the same whether the products are proprietary or non-proprietary, and that failure to require uniform disclosure not only frustrates any attempt to achieve a level playing field but also leads to recommendations to customers which are not objective or suitable. Other commentators stated that non-uniform disclosure requirements increases, rather than decreases, the possibility for the perception of impropriety (American Growth Fund Sponsors, Titan II, State of New York, Wood Logan). It was recommended that the exception be deleted. (IAFF, Titan II).

The NASD believes that the exception to which the commentators object was intended to clarify that, since any payments of cash compensation directly to associated persons under the ministerial exception are required to be disclosed in any event by the member employing the associated persons, such direct payments need not be disclosed twice, i.e., as part of the member's receipt of compensation from its affiliated offeror and separately as direct payments to associated persons by an affiliated offeror. The purpose of the exception was to avoid: (1) Duplicate disclosure of compensation received by members affiliated with an offeror; and (2) disclosure of the member's

reallowance to associated persons when it is paid by an offeror affiliated with the member.

Because of the considerable confusion caused by the provision, proposed subparagraph (l)(4) of the Investment Company Rule was revised to delete the exception provision. At the same time, the ministerial exception (as set forth above) is proposed to be revised to make it clear that direct payments to associated persons are treated as compensation received by a member for purposes of NASD rules. Taken together, these changes clarify that direct payments to associated persons must be combined with any other compensation received directly by the member and are subject to the disclosure requirements of the proposed rule.

Revenue Sharing Disclosure. A number of commentators stated there is a growing practice of "revenue sharing" between investment company advisers and retail sellers of investment company shares, whereby the advisers, in either formal or informal agreements with the retailer, agree to pay fees to retailer members—over and above Rule 12b-1 fees—in exchange for, among other things, (1) The placement of the funds onto the retailer's "preferred" list, (2) the retailer agreeing to sell the fund's shares at all, (3) "due diligence" payments for a member's examination of an offeror's products, (4) inclusion of fund data in a member's computerized hypothetical system, and (5) access to a member's E-mail system (Wilmer/Cutler, State of New York, Nuveen).

One of the commentators stated that such practices are required to be disclosed under the proposed *and* existing language of paragraph (l) of the Investment Company Rule, and that the NASD should address this issue directly and immediately by clarifying and affirming that such arrangements must be disclosed in a fund's prospectus (Wilmer/Cutler). The commentator stated that such clarification is essential to fulfill the purpose of paragraph (l) of the Investment Company Rule and the larger goal of investor protection.

Another commentator noted that the NASD's definition of "sales charges" in subparagraphs (d)(1) and (2) of the Investment Company Rule seem sufficiently inclusive to reach and govern revenue sharing practices as well as non-cash compensation (State of New York). The same commentator stated that both principles of agency law and securities anti-fraud statutes and rules provide a basis for requiring brokers to disclose all financial and economic incentives in connection with a securities recommendation (State of

New York). Finally, one commentator stated that such "revenue sharing practices" should be prohibited (Nuveen).

As more fully set forth above, the NASD will defer action on issues regarding revenue sharing and other cash compensation arrangements until a study conducted by NASD staff of members that engage in the sale of investment company securities and variable contract products in order to develop a greater understanding of the different forms of revenue sharing arrangements and to provide information to the NASD for policy making.

Disclosure of Special Cash Compensation. One commentator requested that specific details of special cash compensation arrangements, such as member names and amounts, should only be required to be disclosed where the standards for the receipt of such special cash compensation are not uniformly applicable (American Funds Distributors). Another commentator stated that the customers are not harmed by special cash compensation arrangements, since the limit of the customer's costs has already been disclosed in the prospectus, and suggested deleting proposed subparagraph (h)(3) of the Variable Contracts Rule (Lincoln National).

One commentator stated that the prospectus disclosure requirements would force issuers with non-proprietary sales forces to disclose in prospectuses the terms of each new selling agreement signed as soon as the agreement is signed, thus requiring prospectuses to be stickered sometimes as often as every week (Security Life). The commentator stated that the benefits of such a burden would be de minimis, and suggested that the proposed rule be redrafted to only require the disclosure, for both proprietary and non-proprietary firms, of the maximum amount of cash compensation.

As set forth above, the NASD will defer action on issues regarding special compensation arrangements until a study of cash compensation arrangements is conducted in order to develop a greater understanding of the different forms of special cash revenue sharing arrangements and to provide information to the NASD for policy making.

Burden of Compliance. One commentator objected to the proposed rule's disclosure requirements on the basis that it places the burden of compliance oversight for ensuring proper disclosure on individual member firms rather than on the funds and their

affiliated underwriter (Merrill Lynch). The commentator stated that this burden places each broker-dealer in the difficult position of having to independently evaluate the quality of fund disclosure, and recommended that the NASD either reaffirm the rule's current prohibition on underwriters and their associated persons from paying cash compensation that is not disclosed in the prospectus or, in the alternative, modify the rule language so that both broker-dealers and underwriters have responsibility for compliance with the proposed rule.

With respect to participating broker-dealers that are not the principal underwriter for an investment company, the language of the provision places the burden of ensuring adequate disclosure on each individual member only with respect to the compensation that the member is receiving.²⁰ Such a participating member does not have an obligation to ensure disclosure of compensation received by other member firms.

However, the principal underwriter is responsible for the disclosure of compensation with respect to all members with whom they have entered into dealer agreements. This obligation arises as a result of the disclosure requirements of SEC Registration Statement Form N-1A. In Notice to Members 93-12 (February 1993), in Question 35, the NASD stated that investment companies should provide disclosure in a manner sufficient for member firms to prove that they can sell the fund's shares in compliance with NASD rules. Because the principal underwriter enters into all dealer agreements, the principal underwriter must be responsible for ensuring adequate disclosure of the compensation received by all participating dealers.

Treatment of Payments for Training or Education Meetings; Potential Discriminatory Impact. Offerors from time to time hold and pay for training and/or educational meetings with different members to differing degrees, resulting in disparate payment levels to members. One commentator, assuming that such payments could be regarded as special cash compensation, stated that the NASD should clarify that such situations do not require any special prospectus disclosure (Prudential). Other commentators stated that if a non-proprietary fund family's contribution toward an unaffiliated broker-dealer's

cost of a public seminar (i.e., training or education meeting) is considered cash compensation requiring prospectus disclosure, then such unaffiliated broker-dealers will be placed at a significant competitive disadvantage when marketing to the public compared to proprietary funds/firms which would not have to disclose such compensation under the proposed rule (FNIC, Stern).

Payments made by offerors for training and education meetings which meet all the requirements for training and education meetings set forth under subparagraphs (l)(5)(c) or (h)(3)(c) of the Investment Company and Variable Contracts Rules, respectively, are not required, as non-cash compensation, to be disclosed in the prospectus. Thus, there is no discriminatory impact on unaffiliated broker-dealers, as such firms are not required to disclose payments received as reimbursements for their costs in conducting a training or education meeting. Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Other Comments. The proposed rule does not specifically address the payment practice of "overcredits," which is a payment made by an offeror to a member firm over and above the reallocation in a full dealer reallocation offering. One commentator criticized the proposed rule for failing to require that the practice of awarding overcredits be included as a disclosure item (Thornburg). Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Two commentators stated that the NASD exceeds its authority in mandating disclosure requirements which fall within the jurisdiction of the SEC (Cadaret/Grant, New England Funds). The NASD does not believe it exceeds its authority by imposing rules on its members with respect to disclosure of compensation or any other information to investors, so long as such disclosure requirements are not contrary to the rules and regulations of the SEC. The proposed disclosure requirements do not change, and do not attempt to change, in any way the existing prospectus disclosure requirements under the registration and disclosure provisions of the Securities Act of 1933 or the Investment Company Act of 1940.

Subparagraphs 2820(h)(3) and 2830(l)(5)—Prohibition on Non-Cash Compensation

General Comments on Prohibition.

One commentator stated that the proposed prohibition on non-cash compensation as published for comment in NTM 94-67 ought not to prohibit an offeror from reimbursing a member firm for all or a portion of the expenses incurred in conducting a seminar for the benefit of potential investors, because no public policy interest is served by prohibiting such arrangements (AG Edwards). The NASD believes that a "road show" or seminar for investors is not the same as a training or education meeting that is intended only for associated persons of member firms nor is it a non-cash sales incentive trip that was intended to be prohibited by the proposed rule. Thus, it appears appropriate to interpret the proposed rule to not prohibit reimbursements of the expenses of members for road shows for the benefit of investors. Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Another commentator suggested that an additional exemption be added from the prohibition on non-cash compensation for due diligence meetings sponsored and paid for by an offeror on behalf of selected registered representatives of the offeror's selling group broker-dealer who were invited by the offeror on the basis of the amount of assets generated or procured the reps for the offeror's funds (Thornburg). Such meetings, the commentator stated, are specifically for the purpose of clarifying detailed fund portfolio and investment information so that registered representatives will be able to answer sophisticated client queries concerning such matters. Due diligence meetings, as "due diligence" is referenced in Section 11 of the Securities Act of 1933, are attended by the due diligence personnel of a broker-dealer firm for the sole and narrow purpose of ensuring the adequacy and accuracy of the information in the offering document. Such meetings would be held at a location appropriate to the conduct of due diligence, such as the issuer's offices. NASD staff are not aware of such meetings in the investment company securities or variable contract context. The commenter's description of "due diligence" meetings does not comport with the narrow purpose of ensuring the adequacy and accuracy of

²⁰The rule language states "No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company."

the offering document. Instead, it appears that the meeting being described is a training and education meeting, which would be required to comply with the exception for training or education meetings. To the extent bona fide due diligence meetings are held, as may occur in the case of a new investment company, the proposed prohibition on non-cash sales incentives does not prohibit such meetings and the expenses related to such meetings are considered expenses of the offeror.

De Minimis Exceptions. One commentator stated that the protections contained in proposed subparagraph (l)(5) of the Investment Company Rule, which would prohibit members and their associated persons from accepting any non-cash compensation, are illusory since the proposed rule does not require any recordkeeping and accountability for the acceptance of *de minimis* gifts and entertainment in paragraphs (a) and (b) (State of New York). Another commentator suggested that these exceptions retain the current language of the Investment Company Rule which would require that such gifts and entertainment "conditioned on sales of share" to clarify that, contrary to the explanation in NTM 94-76 (p. 433), such gifts should not even be permitted as rewards, since rewards in effect invariably become a *de facto* sales incentive program (Nuveen).

The NASD agrees with the general premise of the commenters that any item of value given by an offeror to an associated person has some influence on that person. The issue is, however, whether the \$100 gift exception and the entertainment exception provide for items of value that are sufficient to influence the sales practices of the recipient associated person. The exemptions for gifts and entertainment have long been in the Investment Company Rule and are particularly appropriate in the context of a continuously-offered security, when it should be anticipated that offerors will want to maintain a business relationship with associated persons of member firms. The NASD is not aware of any abuse of these exemptions and believes that they represent such a *de minimis* activity that they do not have the ability to undermine investor protection. The NASD has, nonetheless, amended the language of the first two exceptions to modify the phrase "not preconditioned on achievement of a specified sales target" to clarify that the sales target cannot be "previously specified." The NASD believes that this requirement as well as the *de minimis* nature of the gift or entertainment proposed in subparagraphs (l)(5)(a) and (b) and

(h)(3)(a) and (b) of the proposed rule change are sufficiently restrictive in scope and amounts to allay concerns that such gifts and gratuities may become substantial *de facto* incentive programs that have the potential to undermine investor protection.

Another commentator suggested deleting in its entirety the meals and entertainment exception since such *de minimis* payments have never posed serious non-cash compensation problems and the subjective language of the subsection makes it unenforceable (Titan). The proposed exception for meals and entertainment is drawn from the current language of the Investment Company Rule and has not previously presented an enforcement problem. While the requirement that such meals and entertainment be "neither so frequent nor so extensive as to raise any question of propriety" is subjective, it is believed that such a standard is not inconsistent with and is no more subjective than the Article III, Section 1 standard that members are required to "observe high standards of commercial honor and just and equitable principles of trade" which allows the NASD to take a broad regulatory approach on a case-by-case basis if necessary. It is believed that the proposed rule language provides sufficient specificity to put the membership on notice of the need to exercise appropriate discretion when relying on the exception.

One commentator stated that it is unclear whether the exceptions for \$100 gifts and entertainment would be available if a fund sponsor makes such payments available to a broker-dealer in connection with the firm's internal sales campaign, which campaign is based on all of the firm's products during a specific period of time rather than specified sales targets for particular funds (MML). The NASD believes that this comment reflects the proposed structure of the rule change published for comment which would have prohibited third-party offerors from contributing to a member's in-house incentive program. Regardless of how the broker-dealer's in-house compensation program is structured, the exceptions for \$100 gifts and entertainment cannot be combined with the member's in-house incentive program because the third-party offeror would be participating in the organization of the member's program which is proposed to be prohibited. As amended, the proposed rule change would permit, however, third-party offerors to make cash contributions to the member's in-house incentive program.

Another commentator suggested that the \$100 gift exception be revised to replace the subsection's fixed dollar limitation with the language "neither so frequent nor so extensive as to raise any question of propriety" found in subparagraph (h)(4)(b) of the Variable Contracts Rule (ITT Hartford). The commentator reasoned that the standard of propriety is more appropriate than a fixed dollar limitation in the context of variable contracts. The \$100 exemption is consistent with Article III, Section 10 of the Rules of Fair Practice which allows such gifts between a member and the personnel of another firm and with the Corporate Financing and DPP Rules which permit an issuer to provide up to \$100 of non-cash sales incentives to associated persons annually in connection with the sale of corporate equities, real estate investment trusts, closed-end funds, debt, and DPP offerings.²¹ The NASD believes it appropriate to provide a fixed dollar amount as proposed.

Exception for Training and Education Meetings. It was pointed out by commentators that a discrepancy may exist between the text of proposed subparagraph (l)(5)(c)(v) of the Investment Company Rule (which specifies that sponsors cannot contribute to the training/educational meetings if the payment or reimbursement is conditioned on sales or the promises of sales) and its counterpart in the Variable Contracts Rule, and the explanation of the subsection on page 434 in NTM 94-67, which appears to go further than the actual rule language in saying that members cannot condition attendance at their training meetings through satisfaction of in-house sales incentive requirements, regardless of whether they accept offeror contributions (MML, Mutual Service). Both commentators expect the literal rule language to govern, and one (MML) requested clarification of this expectation in the final release. Similarly, commenters stated that, contrary to the NASD's interpretation, example #4 in NTM 94-67 should *not* be interpreted as preventing a product sponsor from contributing to the expenses a member incurs for awarding a trip based on an in-house, total products sales contest (Calvert, LPL). Such sponsor contributions, one of the commenters argued (LPL), are payments for the opportunity to address and educate registered representatives, not rewards

²¹ The SEC approved in Securities Exchange Act Release No. 35862 (June 19, 1995) a change to Rule 2710 that amended its non-cash incentive provision to change the gift exception from \$50 to \$100.

for product-specific sales performances. Another commenter stated that the proposed rule appears to prohibit certain fact-specific situations that ought not to be prohibited, such as a broker-dealer's incentive offer of a business development conference/meeting/trip to any of its associated persons (and guests) as an award for achieving a specific sales target (measured by either "commissions earned" or "assets raised") where the majority of the costs of the conference/meeting/trip are paid for by invited investment and insurance companies who also help to conduct some of the training and educational presentations (Raymond James). The commenter stated further that such incentive contests and their variants ought to be specifically exempted from the proposed rule's prohibitions since they satisfy the general intent of the proposed rules and help to increase the level of education and training in the fund industry. Finally, other commentators stated that the proposed non-cash restrictions would be detrimental to the variable product marketplace (NAVA) and variable product consumers and urged the NASD to amend its proposal to permit continued product sponsor support of legitimate educational and training seminars, without limitation on the methodology used by insurers to invite agent attendees (PEN).

The NASD believes that training/education meetings are important to the investment company/variable contract industries and it is, therefore, important that the NASD's rules continue to permit such meetings without problems of enforcing the non-cash incentive prohibition. It was anticipated when the training and education meeting exception was developed that members would recognize high producers by attendance at such meetings. Because members are permitted to have an in-house non-cash incentive program for sales of investment company securities and variable contract products (and offerors may contribute to such in-house incentive programs), it is important to appropriately clarify the difference between attending a training/education meeting as a permissible "recognition" and attending it as an impermissible "non-cash sales incentive program." In order to prevent a member from combining a permitted in-house sales incentive program with a training/education meeting held by an offeror, the NASD has revised proposed subparagraphs (l)(5)(c)(ii) of the Investment Company Rule and (h)(3)(c)(ii) of the Variable Contracts

Rule to specify that attendance of associated persons at bona fide training/education meetings must not be based by the member on achievement of a sales target or any other non-cash compensation arrangement permitted under paragraph (d) (which permits in-house non-cash arrangements by a member or its affiliate). When this requirement is taken together with the requirement that the offeror cannot condition its payment or reimbursement on sales or the promise of sales, these two requirements clarify that attendance at a training or education meeting by an associated person is permitted to be approved by a member as a recognition for past sales or as an encouragement for future sales, but shall not be part of a member's or offeror's incentive program or plan which requires that the recipient or the member reach a specific sales goal as a prior condition to attending the training or education meeting.

Other commentators suggested that the NASD should make explicit in the proposed rule language for subparagraph (l)(5)(c)(v) of the Investment Company Rule that attendance at a member's training meeting cannot be earned through a member's in-house product-specific sales incentive contest, but only through generic in-house sales criteria (FNIC, Stern). The NASD has, as set forth above, amended the training or education exception to clarify that attendance at any training or education meeting where a member's costs of the meeting are paid for or reimbursed by a third-party offeror cannot be earned through any in-house incentive contest—even though such contest is in compliance with the proposed rule. If a member holds a training or education meeting for its own associated persons and offerors or other third-parties pay or reimburse the costs of the meeting, the meeting must comply with the training or education meeting exception. If no third-party pays or reimburses the expenses of a member in connection with its internal training or education meeting, the meeting need not comply with the training or education exception as the member is not in receipt of non-cash compensation. Further, in the latter instance, the member is not prevented from inviting a third-party offeror to be a speaker at the meeting.

One commentator objected to having any limitations at all imposed on the ability of fund groups and product sponsors to participate, both financially and in terms of product content, in national or regional training, education and compliance meetings, particularly where the right to attendance at the meetings is earned by product sales

(IM&R). The NASD disagrees with the position of the commentator and believes that it is appropriate to regulate the manner in which training or education meetings are held to ensure that such meetings are not prohibited non-cash incentive meetings.

Another commentator suggested that the NASD clarify that the limitations imposed for training and education meetings apply to an offering of new funds as well as existing funds (Prudential). The requirements for training or education meetings apply to any meeting considered a training or education meeting with respect to new or existing funds. As set forth above, however, investor seminars and bona fide due diligence meetings (which are more likely to occur in the case of a new fund) are not considered training or education meetings.

A commenter also stated that payment or reimbursement by offerors to members for the cost of educational meetings should be strictly limited to expenses actually incurred by the member in connection with the meeting, and that such payments not exceed the annual amount per person fixed periodically by the Board of Governors under proposed subparagraph (l)(5)(a) of the Investment Company Rule (Nuveen). The NASD is not proposing, at this time, to limit the payments for educational meetings to the expenses actually incurred by the member in connection with the meeting. Payments of a member's meeting expenses that exceed the costs of the meeting will, however, along with other cash payments be considered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

According to some commenters, the proposed rule's provision regarding the site for training and education meetings is excessively harsh and unrealistic, because it restricts site location to a specific region for non-affiliated broker-dealers while permitting a national brokerage firm to choose any location (Nike, Capital Analysts). Another commenter stated that the proposed rule language should be expanded to state that a national meeting may be held at a national location (Fidelity). Another commenter stated that since every location in the United States, or the world for that matter, could be viewed as a "regional location," it is uncertain what regulatory purpose is served by putting such an ambiguous and virtually limitless requirement in the proposed rules (MML).

With respect to the first comment, without a restriction with respect to the

location of a training/education meeting, it is probable that offerors will compete for sales of their products on the basis of the location of the training/education meeting that they are willing to hold for associated persons of broker-dealers. Members, on the other hand, would be in a position to negotiate with offerors for reimbursement of expenses of training/education meetings in exotic locations on the basis of the sales they have generated. Thus, it appears important that a restriction be included with respect to the location of the meeting.

While the second commenter is correct that members with an international business are not subject to any location limitation, it is important to note that the agenda for such meetings must be appropriately focused on training and education. As a practical matter, certain business structures give a natural advantage to some members. It is believed that if the focus of the meeting is training or education, that the meeting is most likely to be within the 48 contiguous states.

The NASD determined not to include express limits on the location of national training and education meetings. The establishment of objective standards to limit national meetings would require precise definitions of the terms and phrases "office of the offeror or member," "facility located in the vicinity of such office," and "regional location." Because members' business lines and distribution systems are structured in myriad and sometimes substantially dissimilar ways, especially with respect to physical location, precise definitions of such terms may deprive some members of the needed flexibility to structure their meetings. Thus, it would be very difficult to establish any objective geographical standards without avoiding what might appear to be discriminatory effects on certain members. The NASD believes that whether a particular location is appropriate for a training and education meeting will be dependant, to a significant extent, on the facts and circumstances of each situation.

Furthermore, the NASD believes that the limitations proposed for the nature of educational meetings in the proposed rule will discourage sponsors from holding training and education meetings in exotic places. Because the burden is now on members to show that a training and education meeting is bona fide, the NASD anticipates that members will generally avoid excessively expensive and lavish training and education settings that would be difficult to justify

under the strictures of the proposed rule.

Another commenter suggested limiting issuer-sponsored trips to the corporate headquarters of the issuer for educational purposes only, and to substantiate the purpose of such trips with records of the meeting agendas (LPL). The NASD agrees with the comment that the purpose of training or education meetings should be substantiated by the member on the basis of the meeting agenda, but does not believe it necessary to limit meetings to the corporate headquarters.

Exception for In-House Sales Incentives. The major comments on the exceptions in the version of the proposed rule change in NTM 94-67 permitting in-house sales incentive arrangements argued that allowing direct payments by an affiliated offeror to a member's permissible in-house program discriminated between members that sell proprietary products and members that do not, and between investment/insurance companies with and without an affiliated broker-dealer. In particular, smaller members were concerned regarding the disparate impact of the sales incentive prohibition because the largest broker-dealers also generally sell proprietary products. Commenters also expressed particular concern regarding the ability of an affiliated investment company or insurance company (or other non-member affiliate, such as a bank) to contribute to a member's in-house incentive program, whereas non-affiliates were prohibited by the proposal from making similar contributions.

Two commentators stated that the reasons offered for the proposed rule change, namely, to prevent the increasing potential for loss of supervisory control and to preempt the possibility of perception of impropriety and loss in investor confidence, were less than compelling justifications for regulation that not only discriminates against certain firms but also encourages the sale of unsuitable products to the investing public (Security Life, Wood Logan). One commentator stated that the exception in NTM 94-67 permitting in-house non-cash compensation eviscerates the goal of aligning the salesperson's interest with the client's interest (State of New York). Commentators stated that proposed subparagraph (h)(5) of the Variable Contracts Rule in NTM 94-67, by allowing non-cash compensation programs for insurance companies with proprietary products and sales forces, creates an uneven playing field in favor of "proprietary providers" over

"independent providers" and is anti-competitive (Skandia, Capital Analysts, Security Benefit, American Growth Fund Sponsors). Some commentators suggested either deleting subparagraph (h)(5) of the Variable Contracts Rule entirely or expanding it to allow independent providers to offer non-cash compensation programs on the same basis as proprietary providers (Skandia, PNMN).

The NASD was concerned about the disparate impact of the rule proposal that would result from a member firm with proprietary products conducting an in-house contest which includes direct or indirect economic support and funding through sales of its proprietary products, and was sympathetic to the comments of those members without proprietary products who argued that they would be unable to afford in-house contests without the economic support of outside issuers. In addition, the NASD was concerned regarding the potential disparate impact of the rule proposal on affiliated investment or insurance companies that did not have an affiliated member distributing their products and would not be permitted to contribute to the in-house incentive program of unaffiliated members.

The NASD focused on three provisions in subparagraphs (l)(6) and (h)(5) of the Investment Company and Variable Contracts Rules, respectively, as proposed in NTM 94-67. These are: (1) The language in the introduction which permitted a non-member (including offerors) to provide a sales incentive program for its salespersons that are associated persons of an affiliated broker-dealer; (2) paragraph (a) of subparagraphs (l)(6) and (h)(5) which required that the member's in-house incentive program must be multi-product type oriented or, for single product type firms, based on the gross production of the associated person; and (3) paragraph (b) of subparagraphs (l)(6) and (h)(5) which prohibited an unaffiliated non-member (including offerors) or other member from participating in and contributing to a member's in-house incentive program.

In general, the NASD determined that the goal of prohibiting non-cash incentives for the sale of a particular investment company's securities would not be compromised if non-member entities and other members are allowed to contribute to any member's in-house program, so long as restrictions are imposed on the structure of the in-house program. The NASD believes that the proposal should distinguish between incentives that act at the point-of-sale to influence the salesperson's recommendation to the investor and

incentives which do not have such effect. Non-cash incentive programs by an offeror that involve only a single product (regardless of whether the product is proprietary) affect the point-of-sale relationship with the investor and are more likely to influence the salesperson to sell a specific investment company's securities or variable contract. The NASD believes that contributions by a non-member to a member's in-house incentive program that includes all variable annuity or variable life or investment company products does not have the same "incentive" effect because the member's in-house incentive is a reward for total production—not for the sale of a specific variable annuity or variable life contract product or investment company security.²²

The NASD has modified and restructured the provisions proposed in subparagraphs (l)(6) of the Investment Company Rule and (h)(5) of the Variable Contracts Rule in NTM 94-67. The subparagraphs have been renumbered in the proposed rule change as subparagraphs (l)(5)(d) and (e) and (h)(3)(d) and (e). Subparagraph (d) of the Investment Company Rule and of the Variable Contracts Rule permits all members and non-member affiliates of members to hold in-house incentive programs so long as certain conditions are met which are for the purpose of avoiding the point-of-sale impact of the incentives, and subparagraph (e) permits any non-member company and other member to contribute to, but not to hold or organize, a permissible in-house non-cash sales incentive program between a member and its associated persons so long as the same conditions for subparagraph (d) are met. By its limiting language, permissible contributions under subparagraph (e) may only be given to an in-house non-cash sales incentive program held by a member firm; such contributions may not be given to an in-house non-cash sales incentive program held by a non-member affiliate because the non-member affiliate is not required by NASD rules to maintain records of the receipt of such contributions.

With respect to the second condition on the structure of a member's or affiliate's in-house incentive program proposed in subparagraph (l)(6)(b) of the Investment Company Rule in NTM 94-67, two commentators observed that since almost all proprietary firms have investment company securities and

cloned variable products, an incentive program could be based on just two product types, and recommended either deleting the exception for in-house sales entirely or changing the language of the provision to make in-house sales incentive programs available only if based on gross production of all products (FNIC, Stern). Another commentator recommended that the "multi-product type" condition be revised to make clear that the test is not satisfied by selecting one security of each product type, for example, a proprietary investment company and a proprietary variable product (Wood Logan).

The conditions applicable to the member's and its affiliate's permissible non-cash sales incentive programs in subparagraphs (l)(5)(d) and (e) of the Investment Company Rule and (h)(3)(d) and (e) of the Variable Contracts Rule were modified from those proposed in NTM 94-67 in the following manner: (1) The member's in-house non-cash incentive program, when it includes investment company securities or variable contracts, must include the total production of associated persons with respect to all investment company securities and variable annuity or life contracts distributed by the member, which modifies the "multi-product type" rule language in NTM 94-67; (2) the credit received for each variable contract (i.e., variable annuity or variable life) must be equally weighted, which is a new provision that was not included in the language of NTM 94-67; and (3) no non-member company or other member may directly or indirectly participate in the organization of a permissible non-cash compensation arrangement, which modified the corresponding provision in NTM 94-67 by deleting the words "or contributes to" in order to allow contributions to permissible non-cash programs by outside unaffiliated non-members or other members as long as their involvement is limited only to such contributions under new paragraph (e). The fourth requirement, the recordkeeping requirement, was not modified from the language of NTM 94-67.

The NASD believes that these changes to the non-cash compensation provisions proposed in subparagraphs (l)(5)(d) and (e) of the Investment Company Rule and subparagraphs (h)(3)(d) and (e) of the Variable Contracts Rule eliminate the point-of-sale impact of non-cash sales incentives on the sales practices of an associated person with respect to the sale of investment company securities and variable contracts by prohibiting third-

party non-cash sales incentive programs and by requiring that all securities of the product type be included in the member's (or its affiliate's) in-house incentive program and be equally weighted. At the same time, the NASD believes that any potential discriminatory impact that is not in furtherance of the Act is addressed by permitting non-members and other members to contribute to a member's in-house incentive program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commentators specifically address the following issues:

1. The proposed rule change would continue to permit an associated person to accept gifts from offerors if the total value of gifts from an offeror to an associated person does not exceed \$100 per person per year and if such gifts are not preconditioned on meeting a sales target. Associated persons also could continue to accept an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment from offerors if the entertainment is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on meeting a sales target. The NASD states that it is not aware of any abuse of these exemptions and believes that they represent such a *de minimis* activity that they do not have the ability to undermine investor protection. Should members be required to keep records of such gifts or entertainment to enable the NASD to surveil effectively for abuse?

2. The proposed rule change would permit a member or an associated

²² See *supra* discussion explaining the NASD's rationale underlying the proposed non-cash compensation provisions in Subsections 26(l)(5) and 29(l)(3) of the Investment Company and Variable Contract Rules, respectively.

person to accept payment or reimbursement from an offeror for expenses incurred in connection with meetings held by the offeror for the purpose of training or educating associated persons of a member. Such meetings can be held at or near an office of the offeror or an office of the member or a regional location with respect to regional meetings—a third-party offeror with a regional business may not conduct a meeting outside that region unless the member has a more widespread business. The provision would permit offerors to hold training meetings in resort locales if that offeror or the member has an office in that resort locale.

The NASD states that it “believes that the limitations proposed for the nature of educational meetings in the proposed rule will discourage sponsors from holding training and education meetings in exotic places. Because the burden is now on members to show that a training and education meeting is bona fide, the NASD anticipates that members will generally avoid excessively expensive and lavish training and education settings.” Are the recordkeeping requirements proposed by the NASD sufficient to support determinations of whether such meetings will be bona fide?

3. The NASD states in its filing that a member holding a training or education meeting for its associated persons would not be required to comply with the conditions imposed with respect to training and education meetings held by offerors or unaffiliated members “if the member does not receive a payment or reimbursement from an offeror for the expenses of the meeting. In any event, the member would not be prohibited from permitting offerors to make a presentation at the meeting.” The proposed rule change establishes three separate levels of regulation of training and education meetings depending upon whether a member or an offeror holds a training and education meeting and depending upon whether a member who holds a training and education meeting accepts reimbursement from an offeror.

a. If an offeror holds a training and education meeting, that meeting must comply with the training and education exception.

b. If a member holds training and education meeting, and accepts reimbursement from an offeror for certain expenses, the meeting must comply with either the training and education exception or the in-house sales incentive exception (permitting contributions by offerors).

c. If a member holds a training and education meeting for its own associated persons and accepts no reimbursement from offerors, the proposed rule change does not regulate that meeting because the meeting is not in connection with the sale or distribution of investment company/variable contract securities.

Commenters are asked to address whether a training and education meeting should constitute non-cash compensation subject to the proposed rule change if an offeror participates in organizing the meeting even though an identical meeting would not be subject to the proposed rule change if organized by the member for its own associated persons.

4. The Tully Committee identified the practice of payment of higher commissions to registered representatives for proprietary products than for non-proprietary products as an arrangement that can create conflicts of interest. The proposed rule change would not prohibit or regulate this practice. The NASD has stated that “it has generally not been the practice for the NASD to regulate the internal compensation arrangements between a member and its associated persons.” The proposed rule change would, however, prohibit contests granting cash awards if the contest gives greater weight to certain securities than others. Commenters are invited to address whether the proposed rule change should be extended to cover ordinary compensation practices in addition to incentive compensation practices.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 96-17250 Filed 7-5-96; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Notice is being given that two new chapters are being issued, Chapter TC, Office of the Chief Actuary and Chapter TE, Office of the Deputy Commissioner, Communications and that Chapter TA, Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA) is being reissued.

Within the Deputy Commissioner, Programs, Policy, Evaluation and Communications notice is given that the Office of the Actuary (TAC); the Office of Communications (TAL); the Resources Management Staff (TAA-1); the Office Automation Support Staff (TAA-2); the Office of Program Coordination and Planning (TAB); the Office of Policy Analysis and Evaluation (TAQ); the Office of Policy (TAK); and the Office of Disclosure Policy (TAG) are abolished. Notice is also given of the establishment of the Office of Policy and Planning (TAR) and the Office of Program Support (TAS) and the retitling of the Office of Research and Statistics (TAN) as the Office of Research, Evaluation and Statistics.

Finally, notice is given that in the Office of Disability (TAE) the Office of Medical Evaluation (TAEA) is being abolished. The functions are being redistributed among the Office of the Associate Commissioner for Disability, the Division of Medical and Vocational Policy (TAEC) and the Federal Disability Determination Services (TAEB).

The new and reissued Chapters read as follows:

ADD new chapter

Chapter TC—Office of the Chief Actuary

TC.00 Mission

TC.10 Organization

TC.20 Functions

Section TC.00 *The Office of the Chief Actuary*—(Mission): The Office of the Chief Actuary (OACT) plans and directs a program of actuarial estimates and analyses pertaining to the SSA-administered retirement, survivors and disability insurance programs and supplemental security income program and to projected changes in these programs. Evaluates operations of the

Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund; estimates future operations of the trust funds; conducts studies of program financing; performs actuarial and demographic research on social insurance and related program issues; and estimates future workloads. Provides technical and consultative services to the Commissioner, the Board of Trustees of those two Trust Funds, and, as requested, congressional committees. Appears before congressional committees to provide expert testimony on the actuarial aspects of Social Security issues.

Section TC.10 *The Office of the Chief Actuary*—(Organization): The Office of the Chief Actuary under the leadership of the Chief Actuary, includes:

- A. The Chief Actuary (TC).
- B. The Deputy Chief Actuary (Short-Range) (TC).
- C. The Deputy Chief Actuary (Long-Range) (TC).
- D. The Immediate Office of the Chief Actuary (TCA).
- E. The Office of Short-Range Actuarial Estimates (TCB).
- F. The Office of Long-Range Actuarial Estimates (TCC).

Section TC.20 *The Office of the Chief Actuary*—(Functions):

- A. The Chief Actuary (TC) is directly responsible to the Commissioner for carrying out OCACT's mission and for providing supervision to the major components of OCACT.
- B. The Deputy Chief Actuary (Short-Range) (TC) assists the Chief Actuary in carrying out his/her OCACT-wide responsibilities and performs other duties as prescribed.
- C. The Deputy Chief Actuary (Long-Range) (TC) assists the Chief Actuary in carrying out his/her OCACT-wide responsibilities and performs other duties as prescribed.
- D. The Immediate Office of the Chief Actuary (TCA) provides the Chief Actuary and his/her Deputies with staff assistance on the full range of their responsibilities; provides liaison and coordination; and conducts special actuarial studies and analyses.
- E. The Office of Short-Range Actuarial Estimates (TCB) is responsible for planning, directing and coordinating the development of short-range cost estimates for all Social Security programs both under current provisions and proposed changes in law or regulation. The programs for which estimates are prepared include the retirement, survivors and disability insurance program, and the supplemental security income program.

Develops special cost analyses involving technical actuarial issues; projects operations of the Trust Funds; provides a variety of data services including data collection, statistical support; and prepares estimates for general fund and interprogram reimbursement.

F. The Office of Long-Range Actuarial Estimates (TCC) is responsible for planning, directing and coordinating the development of long-range cost estimates for the retirement, survivors and disability program both under current provisions and proposed changes in law or regulation. Provides all revenue estimates in both the near-term and the long-term for the retirement, survivors and disability insurance program and in the near-term for the hospital insurance program. Designs the economic, demographic and programmatic assumptions and the methods needed to develop these estimates; analyzes and publishes actuarial research based on projections and actual program experience; and provides authoritative advice to agency policy makers and congressional staffs relating to the long-range actuarial impact of current law and proposed program changes.

ADD new chapter.

Chapter TE—Office of the Deputy Commissioner, Communications

TE.00 Mission

TE.10 Organization

TE.20 Functions

Section TE.00 *The Office of the Deputy Commissioner, Communications*—(Mission): The Office of the Deputy Commissioner, Communications (ODCCOMM) directs a program to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance of SSA programs, policies and procedures and for providing avenues of public participation in the decision making processes of SSA. Plans, directs, coordinates, effects and evaluates SSA's nationwide public communications program and activities. Develops public information programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under the programs administered by SSA. Plans, directs, implements and evaluates SSA's internal communications programs. Directs SSA's Satellite Communications Network activities. Coordinates the non-English communications activities

within SSA. Provides a central receipt, control, acknowledgment, response, and referral program for all public inquiries. Serves as the focal point for conducting Focus Groups and coordinates public relations activities for SSA.

Section TE.10 *The Office of the Deputy Commissioner, Communications*—(Organization): The Office of the Deputy Commissioner, Communications, under the leadership of the Deputy Commissioner, Communications, includes:

- A. The Deputy Commissioner, Communications (TE).
 - B. The Assistant Deputy Commissioner, Communications (TE).
 - C. The Immediate Office of the Deputy Commissioner, Communications (TEA).
 - D. The Office of Communications Technology (TEB).
 - 1. The Visual Graphics and Community Affairs Staff (TEB1).
 - 2. The Audiovisual Media Operations Staff (TEB2).
 - E. The Office of Editorial Policy and Communications (TEC).
 - 1. The Editorial Policy and Communications Staff (TEC1).
 - 2. The Special Communications Staff (TEC2).
 - F. The Office of National Affairs (TEE).
 - G. The Office of Regional Affairs and Special Projects (TEG).
 - H. The Office of Public Inquiries (TEH).
 - 1. The Policy, Procedures and Systems Group (TEH1).
 - 2. The Correspondence Analysis and Response Group (TEH2).
- Section TE.20 *The Office of the Deputy Commissioner, Communications*—(Functions):
- A. The Deputy Commissioner, Communications (TE) is directly responsible to the Commissioner for carrying out ODCCOMM's mission and providing managerial direction to the major components of ODCCOMM.
 - B. The Assistant Deputy Commissioner, Communications (TE) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.
 - C. The Immediate Office of the Deputy Commissioner, Communications (TEA) provides the Deputy Commissioner and Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.
 - D. The Office of Communications Technology (TEB) directs and implements technical information communications for the Agency. Develops the Agency's goals and objectives for using the media to

promote SSA programs and policies. Is responsible for the design and production of audiovisual and graphics materials. Utilizes state-of-the-art technological theories, principles and methodologies in determining and creating the most effective means of communicating the Agency's information.

1. The Visual Graphics and Community Affairs Staff (TEB1).

a. Plans, designs and produces Agency display, presentation, media and photographic materials for internal and external public information programs.

b. Produces materials in various media formats for the observance of special ceremonial events.

c. Plans and implements a program of community liaison in the Baltimore/Washington metropolitan area.

2. The Audiovisual Media Operations Staff (TEB2).

a. Plans, develops and directs electronic systems required for the Agency's television and audiovisual productions and management communications.

b. Coordinates all technical activities related to the Agency's television and audiovisual production system.

c. Plans, writes, directs and edits motion picture and television productions covering all aspects of Social Security for public information, SSA training and management information purposes.

d. Plans, designs and coordinates satellite communication programs for SSA and other agencies nationwide.

E. The Office of Editorial Policy and Communications (TEC) directs SSA's information activities to ensure public knowledge and understanding of programs administered by SSA. Develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information needs, and carries out programs to inform the public of the purposes and provisions of SSA-administered programs, program changes and people's rights and responsibilities under these programs. Prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs, evaluates the quality of informational materials to ensure a high-quality product and helps in public affairs training in SSA.

1. The Editorial Policy and Communications Staff (TEC1).

a. Develops and evaluates goals and objectives, policies, standards and guidelines for SSA public information needs. Prepares public information

workplans and SSA's National Communications objectives.

b. Provides direction and quality control of information materials for the administration of SSA public affairs and public information programs.

c. Writes, edits and produces a variety of public information materials.

Provides advice and consultation to other components on editorial policy and methods of initiating and developing informational programs.

d. Conducts editorial reviews and approves content, format and style of Social Security information materials for use in all media.

e. Plans and conducts a public information management program. Determines public information strategies for a wide variety of public information materials on all phases of SSA-administered programs.

f. Designs and conducts broad evaluation programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. The Special Communications Staff (TEC2).

a. Directs the internal communications program in SSA. Publishes a variety of informational materials, including a monthly national employee magazine and Central Office Bulletin. Prepares and edits administrative reports and presentations.

b. Provides assistance to and appraises internal communications activities in SSA field organizations. Identifies weaknesses in communications SSA-wide and recommends improvements.

F. The Office of National Affairs (TEE) implements and directs programs designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, other Federal agencies and State and local governments. Presents, explains, advocates and defends the views and objectives of SSA. Provides the avenue for bringing the views and opinions of influential organizations into the Agency. Is responsible for reviewing and considering the validity of SSA-related issues and concerns raised by a variety of external sources and recommending changes or referring the matter to other SSA components for further study. Facilitates operational dealings between these organizations and other SSA components.

G. The Office of Regional Affairs and Special Projects (TEG) provides onsite leadership and direction to the regional SSA public communications program. Analyzes and evaluates regional public communications activities and issues

national public communications policies. Plans and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs. Oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Advises the Regional Public Affairs Officers in carrying out SSA public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing and evaluating public communications/public information needs of the regions. Performs research to assess the public's and SSA employees' reactions to, and perceptions of, policies, products and services through content analysis and other evaluation studies/activities.

H. The Office of Public Inquiries (TEH) provides a central receipt, control, acknowledgment, response and referral program for high priority and other inquiries addressed to SSA Headquarters. Develops correspondence policy and procedure and guide language on recurring topics and issues for use throughout the Agency.

1. The Policy, Procedures and Systems Group (TEH1) develops policy and procedures concerning the style, control, workflow and signature of correspondence and disseminates the information to headquarters components. Performs a pre-release quality review of final replies prepared in the Office of Public Inquiries (OPI) to ensure that they are well-written, accurate and responsive. Designs and administers OPI's electronic correspondence management system and provides support to system users. Directs surveys and analyses to increase the effectiveness of the correspondence workflow process throughout SSA.

2. The Correspondence Analysis and Response Group (TEH2) collects, stores and maintains information needed to respond to congressional, White House and public inquiries. Prepares responses in conformance with SSA standards, policies and procedures. Performs correspondence receipt, screening, imaging, routing and letter-writing functions. Identifies sensitive inquiries and trends and reports them to appropriate officials. Receives and responds to telephone inquiries.

REISSUE chapter.

Chapter TA—Office of the Deputy Commissioner, Programs and Policy

TA.00 Mission

TA.10 Organization

TA.20 Functions

Section TA.00 *The Office of the Deputy Commissioner, Programs and Policy*—(Mission): The Office of the Deputy Commissioner, Programs and Policy (ODCPP) directs the formulation of overall program policy for SSA. Directs the formulation and issuance of program objectives. Directs and manages the planning, development, issuance and evaluation of program and operational policies, standards and instructions for the retirement and survivors insurance, disability insurance and supplemental security income programs. Serves as a focal point for international program policy issues and activities. Oversees Agency hearings and appeals activities. Serves as a focal point for all program-related litigation. Oversees the collection, use and dissemination of both personal and non-personal information to ensure consistency with Agency objectives, law and the expectations of the American public. Provides information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic and demographic forces. Through an Executive Team, provides executive leadership for unified planning and resource management within ODCPP. Provides leadership to ODCPP's financial, personnel and administrative management programs.

Section TA.10 *The Office of the Deputy Commissioner, Programs and Policy*—(Organization): The Office of the Deputy Commissioner, Programs and Policy under the leadership of the Deputy Commissioner, Programs and Policy includes:

A. The Deputy Commissioner, Programs and Policy (TA).

B. The Assistant Deputy Commissioner, Programs and Policy (TA).

C. The Immediate Office of the Deputy Commissioner, Programs and Policy (TAA).

D. The Office of Policy and Planning (TAR).

E. The Office of Disability (TAE).

F. The Office of Hearings and Appeals (TAH).

G. The Office of International Policy (TAJ).

H. The Office of Research, Evaluation and Statistics (TAN).

I. The Office of Program Benefits Policy (TAP).

J. The Office of Program Support (TAS).

Section TA.20 *The Office of the Deputy Commissioner, Programs and Policy*—(Functions):

A. The Deputy Commissioner, Programs and Policy (TA) is directly responsible to the Commissioner for carrying out the ODCPP mission and for providing general supervision to the major components of ODCPP.

B. The Assistant Deputy Commissioner, Programs and Policy (TA) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Programs and Policy (TAA) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Policy and Planning (TAR) provides Agency leadership in the policy-making process and manages all planning activities for the Deputy Commissioner. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern. Directs a comprehensive ODCPP program to address policy-related issues. Ensures the integration of the Agency's policy development and analysis activities and its program evaluation and research plans. Conducts broad analyses of major social and economic trends and their impact on social security program policy. Conducts targeted evaluations of the effectiveness and appropriateness of specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums (e.g., internal Administration policy debates, congressional hearings and debates, Advisory Board deliberations). Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA. Assures programmatic support to legislative planning activities. Provides staff support to the ODCPP Executive Team.

E. The Office of Disability (TAE) develops, coordinates and evaluates the disability program and issues related operational policies, standards and procedures. Develops and issues policies and guidelines for use by State and Federal or private contractor providers which implement the disability provisions of the Social

Security Act, as amended. Ensures that interrelated program policy and procedural areas are coordinated.

F. The Office of Hearings and Appeals (TAH) holds hearings and issues decisions as part of the SSA appeals process. Directs a nationwide field organization which conducts impartial hearings and makes decisions on appealed determinations involving retirement, survivors, disability, health insurance, black lung and supplemental security income benefits. Performs central office reviews of decisions.

G. The Office of International Policy (TAJ) serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides training programs and technical consultation on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security matters outside the United States.

H. The Office of Research, Evaluation and Statistics (TAN) is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces. Plans and directs a continuing program of economic and social research to evaluate the effectiveness of national policies in meeting desired program outcomes. Plans and directs studies and surveys to evaluate the effectiveness of policy development, implementation and program outcomes of the disability, retirement and survivors and supplemental security income programs.

I. The Office of Program Benefits Policy (TAP) develops, coordinates and evaluates the retirement and survivors insurance and supplemental security income programs and issues related operational policies, standards and instructions. Develops and issues policies and guidelines for use by State and Federal organizations which implement supplemental security income provisions. Develops

agreements with the States that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes.

J. The Office of Program Support (TAS) provides leadership in overseeing the Agency's system of programmatic instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of policy decisions into operational policies, procedures and notices. Responsible for the Agency's Regulatory Program, including development of SSA's Regulatory Plan and the Agency's portion of the Unified Agenda of Federal Regulations. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public and provides program management of such technological applications. Assures programmatic support to legislative implementation activities. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under the provisions of the Privacy Act and the Freedom of Information Act. Sponsors and supports ODCPP Interdisciplinary Teams established to address cross-cutting policy issues and initiatives. Designs, implements and maintains automated information and communications systems ODCPP-wide.

Subchapter TAR—Office of Policy and Planning

TAR.00 Mission
TAR.10 Organization
TAR.20 Functions

Section TAR.00 *The Office of Policy and Planning*—(Mission): The Office of Policy and Planning provides Agency leadership in the policy-making process and manages all planning activities for the Deputy Commissioner. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern. Directs a comprehensive ODCPP program to address policy-related issues. Ensures the integration of the Agency's policy development and analysis activities and its program evaluation and research plans. Conducts broad analyses of major social and economic trends and their impact on social security program policy. Conducts targeted evaluations of the effectiveness and appropriateness of

specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums (e.g., internal Administration policy debates, congressional hearings and debates, Advisory Board deliberations). Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA. Assures programmatic support to legislative planning activities. Provides staff support to the ODCPP Executive Team. Section TAR.10 *The Office of Policy and Planning*—(Organization): The Office of Policy and Planning, under the leadership of the Associate Commissioner for Policy and Planning, includes:

A. The Associate Commissioner for Policy and Planning (TAR).

B. The Deputy Associate Commissioner for Policy and Planning (TAR).

C. The Immediate Office of the Associate Commissioner for Policy and Planning (TAR).

Section TAR.20 *The Office of Policy and Planning*—(Functions):

A. The Associate Commissioner for Policy and Planning (TAR) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPP's mission and providing managerial direction to OPP.

B. The Deputy Associate Commissioner for Policy and Planning assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Policy and Planning (TAR) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

1. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups.

2. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern.

3. Directs a comprehensive ODCPP program to address policy-related issues, ensuring the integration of the Agency's policy development and analysis activities and its program evaluation and research plans.

4. Conducts broad analyses of major social and economic trends and their impact on social security program policy.

5. Conducts targeted evaluations of the effectiveness and appropriateness of specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums.

6. Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA.

7. Assures programmatic support to legislative planning activities.

8. Provides staff support to the ODCPP Executive Team.

Subchapter TAE—Office of Disability

TAE.00 Mission
TAE.10 Organization
TAE.20 Functions

Section TAE.00 *The Office of Disability*—(Mission): The Office of Disability (OD) plans, develops, evaluates and issues the operational and administrative appeals process policies, standards and instructions for the SSA administered disability programs. Develops and promulgates policies and guidelines for use by State, Federal or private contractor providers which implement the disability provisions of the Social Security Act as amended. Provides operational policy advice, technical support and management direction to central office, regional office and field components in the administration of the disability programs. Evaluates the effects of proposed legislation and legislation pending before Congress to determine the impact on the disability programs. Ensures that interrelated policy areas are coordinated. Processes State agency workloads on a temporary or transitional basis.

Section TAE.10 *The Office of Disability*—(Organization): The Office of Disability under the leadership of the Associate Commissioner for Disability, includes:

A. The Associate Commissioner for Disability (TAE).

B. The Deputy Associate Commissioner(s) for Disability (TAE).

C. The Immediate Office of the Associate Commissioner for Disability (TAE).

D. The Federal Disability Determination Services (TAE.B).

E. The Division of Medical and Vocational Policy (TAE.C).

F. The Division of Field Disability Operations (TAEE).

G. The Division of Disability Process Policy (TAEG).

H. The Division of Disability Program Information and Studies (TAEH).

I. The Division of Employment and Rehabilitation Programs (TAEJ).

Section TAE.20 *The Office of Disability—(Functions):*

A. The Associate Commissioner for Disability (TAE) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OD's mission and provides general supervision to the major components of OD.

B. The Deputy Associate Commissioner(s) for Disability (TAE) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Disability (TAE) provides the Associate Commissioner and the Deputy Associate Commissioner(s) with advisory services and staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of OD components.

D. The Federal Disability Determination Services (TAEB):

1. Develops and adjudicates disability determinations either temporarily as help for one or more Disability Determination Services (DDS) or as a transition until a permanent alternative case processing operation is fully operational in the event that SSA must assume the disability determination function for a State because of noncompliance with regulations and guidelines, or voluntary withdrawal.

2. Pilot tests new work processes, procedures and systems prior to nationwide implementation; validates and conducts useability tests on new and/or revised systems processes; evaluates new or revised disability adjudication policies for national consistency and practical application; and conducts special studies and policy reviews required for management purposes.

3. Reviews and makes disability decisions on applications for disability under Title II and Title XVI of the Social Security Act on initial applications, on reconsideration requests and continuing disability.

4. Screens disability applicants for, and makes referrals to, vocational rehabilitation (VR) agencies; develops and evaluates medical/vocational evidence; and arranges for procurement and payment of such evidence, as required.

5. Reviews State hearing officer and Federal hearing officer decisions; prepares decisions on foreign claims and revises hearing officers' determinations in accordance with the regulations at 404.918 and 416.1418; participates in hearing process studies; and prepares statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

6. In conjunction with the Division of Medical and Vocational Policy, provides medical consultation required in the formulation of medical evaluation policies and guides. Conducts medical reviews of evidence for purposes of adjudication of medical aspects of claims, as part of an evaluation of the application of policies and procedures and/or as part of a study to develop new medical policies, guides and training.

E. The Division of Medical and Vocational Policy (TAEC).

1. Develops broad medical concepts and policies for the administration of the Title II and Title XVI programs, and provides consultation for research evaluating impairment severity and disability.

2. Provides leadership and professional direction to Regional Medical Officers and consultants, and to State Disability Determination Services (DDS) medical personnel engaged in Title II and Title XVI related activities.

3. Provides medical consultation required in the formulation of medical evaluation policies and guides and develops orientation and training programs for medical personnel in regional offices and State DDS's.

4. Develops, evaluates, implements and maintains medical policy for deciding disability claims for all body systems to be used at all adjudicative levels.

5. Develops, evaluates, implements and maintains policy for deciding disability claims, including such areas as residual functional capacity, medical improvement review standard and other continuing disability issues, onset, duration, weighing of evidence and other issues affecting disability claims at all adjudicative levels.

6. Develops, evaluates, implements and maintains policy for all vocational issues, such as age, education, work experience the vocational rules and work evaluations which are used to decide disability claims at all adjudicative levels.

7. Develops, evaluates, implements and maintains all policy used to decide disability in childhood disability claims, including the childhood Listings of Impairments, individualized

functional assessment and functional equivalency for all adjudicative levels.

8. Coordinates recommendations concerning which court decisions should be appealed; coordinates development of responses to interrogatories and court orders; and ensures that policies and procedures are changed to reflect specific court orders and legal precedents.

F. The Division of Field Disability Operations (TAEE).

1. Provides national guidance for the administrative aspects of the disability determination function whether administered through State DDS, contracted out to the private sector, or accomplished by designated SSA organizational components.

2. Develops pertinent policies, regulations and procedures by establishing standards and guides for performance; monitoring performance; initiating corrective action where needed; coordinating workloads and administering the funds for the DDSs, etc. Conducts such studies and reviews as are necessary to the disability determination function.

3. Works through SSA regional offices, interested national organizations and other SSA central office components to accomplish objectives or, in special situations, works directly with the component performing the disability determination function.

4. Plans, coordinates and manages the Office of Disability systems related activities, including DDS and Federal Disability Determination Services automation, information resource management, expert systems, development of user specifications, and installation and testing of hardware, networks and communications links for DDSs.

5. Analyzes, plans, distributes and monitors all DDS funding on a State-by-State basis. This includes establishing and monitoring workload and productivity targets for each DDS.

G. The Division of Disability Process Policy (TAEI).

1. Develops procedures and instructions for the disability provisions of other programs including certain Title XVI and XVIII provisions unique to the disability programs. Maintains the integrity of the consultative examination process by developing regulations and conducting oversight activities.

2. Develops and issues the policies, procedures and instructions relating to the development of nonmedical evidence and the processing of initial disability claims and fraud situations. Develops policy guidelines and technical procedures for the Continuing Disability Review process and oversees

this process. Prepares Office of Disability positions for response to court suits against SSA on disability cases.

3. Develops the procedures and instructions which define the administrative appeals process, including policies and procedures for the disability hearings process. Develops notice policy and issues language and forms for use in disability claims and notices including foreign language and Braille notices.

4. Carries out professional relations efforts in support of SSA's efforts to gain support from professional medical associations. Maintains liaison and assists with professional relations efforts to gain the support of nonvocational rehabilitation advocacy groups, Federal, State and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

H. Division of Disability Program Information and Studies (TACH).

1. Conducts studies on the disabled population and recipients relative to specific operational/administrative program issues.

2. Designs evaluation systems for and evaluates demonstration projects.

3. Develops and maintains data bases for statistical activities and program information. Provides recurring and specialized reports, and coordinates information requirements.

I. The Division of Employment and Rehabilitation Programs (TAEJ).

1. Implements the provisions of the Social Security Act which call for the referral of beneficiaries and recipients to the State or alternate vocational rehabilitation (VR) providers, evaluates VR provider services, reimburses VR providers for successful rehabilitations, ensures that client participation in a program is appropriate and meets the requirements of the Act and develops proposals and plans for new VR initiatives.

2. Implements and evaluates test models for delivering rehabilitation, job placement and post-employment services and for making appropriate referrals to public and private agencies. Administers contracts to support projects.

3. Develops initiatives to promote public understanding and use of work incentives through enhanced outreach activities and by building networks with community-based agencies and service providers.

4. Prepares and revises regulations, operating policies and training materials. Develops proposals and plans for new work incentives.

5. Develops procedures and instructions for implementation of the drug addiction and alcoholism referral and monitoring provisions. Administers agreements implementing the provisions.

6. Maintains liaison and assists professional relations efforts to gain the support of private advocacy groups, Federal, State and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

Subchapter TAH Office of Hearings and Appeals

TAH.00 Mission

TAH.10 Organization

TAH.20 Functions

Section TAH.00 *The Office of Hearings and Appeals*—(Mission): The Office of Hearings and Appeals (OHA) administers the nationwide hearings and appeals program for SSA. Provides the basic mechanisms through which individuals and organizations dissatisfied with determinations affecting their rights to and amounts of benefits or their participation in programs under the Social Security Act may administratively appeal these determinations in accordance with the requirements of the Administrative Procedure and Social Security Acts. OHA includes a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct impartial hearings and make decisions on appeals filed by claimants, their representatives, providers-of-service institutions and others under the Social Security Act. The Appeals Council of OHA impartially reviews ALJ decisions, either on the Appeals Council's own motion or at the request of the claimant, and renders the Commissioner's final decision when review is taken. Reviews new court cases to determine whether the case should be defended on the record or the Commissioner should seek voluntary remand, and reviews final court decisions in light of the programmatic and administrative implications involved and makes recommendations as to whether appeal should be sought. Provides advice and recommendations on Social Security Administration program policy and related matters, including proposed Social Security Rulings.

Section TAH.10 *The Office of Hearings and Appeals*—(Organization): The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

A. The Associate Commissioner for Hearings and Appeals (TAH).

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH).

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) which includes:

1. The Executive Secretariat (TAH-1).

2. The Special Counsel Staff (TAH-2).

D. The Office of the Chief Administrative Law Judge (TAHA).

1. The Division of Field Operations and Liaison (TAHA1).

2. The Division of Field Practices and Procedures (TAHA2).

3. The Vocational Expert and Medical Advisor Staff (TAHA3).

4. The Division of Medicare Part B (TAHA4).

E. The Offices of the Regional Chief Administrative Law Judges (TAH-F1—TAH-FX).

F. The Office of Appellate Operations (TAHB), which includes the Executive Director who also serves as Deputy Chair of the Appeals Council, the Appeals Council and its Administrative Appeals Judges, Appeals Officers, a Deputy Director to the Executive Director, and a Director of Operations.

1. The Operations Management, Analysis and Coordination Staff (TAHB1).

2. The Division of Program Support (TAHB2).

3. The Medical Support Staff (TAHB3).

4.-22. The Disability Program Branches 1-19 (TAHB4-9 and TAHBA-Q).

23.-24. The Court Case Preparation and Review Branches 1-2 (TAHBR-S).

25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT).

G. The Office of Policy, Planning and Evaluation (TAHC).

1. The Division of Litigation Analysis and Implementation (TAHC1).

2. The Division of Planning and Evaluation (TAHC2).

3. The Division of Policy (TAHC3).

H. The Office of Management (TAHE).

1. The Equal Employment Opportunity Staff (TAHE1).

2. The Division of Congressional and Public Inquiries (TAHE2).

3. The Division of Budget and Financial Management (TAHE3).

4. The Division of Materiel Resources (TAHE4).

5. The Division of Systems Resources (TAHE5).

6. The Division of Management Analysis and Employee Development (TAHE6).

Section TAH.20. The Office of Hearings and Appeals—(Functions):

A. The Associate Commissioner of Hearings and Appeals (TAH) is directly

responsible to the Deputy Commissioner for Programs and Policy for carrying out OHA's mission of holding hearings and rendering decisions on appeals filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Associate Commissioner is responsible for planning, directing, managing, coordinating and maintaining the integrity of the nationwide SSA hearings and appeals system. As Chair of the Appeals Council, the Associate Commissioner is responsible for the decisions issued at the final administrative level of the Social Security Administration.

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH) assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) provides the

Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. The Executive Secretariat (TAH-1) is the liaison and coordination point between the Office of the Associate Commissioner and major SSA and OHA components. It serves as the primary point of contact with the Office of the Commissioner, ODCPP, other Deputy and Associate Commissioners and other top SSA staff for sensitive and urgent matters and to ensure OHA support to those officials.

2. The Special Counsel Staff (TAH-2) serves as professional legal advisor to the Associate Commissioner, OHA, and to other members of the OHA Executive Staff on all matters pertaining to the legislative process, labor relations law, ethics and administrative law, with special emphasis on the Administrative Procedure Act.

D. The Office of the Chief Administrative Law Judge (TAHA) serves as the principal consultant and advisor to the Associate Commissioner on all matters concerning the Administrative Law Judge (ALJ) hearing function. Under the executive leadership of the Associate Commissioner, the Chief Administrative Law Judge manages and administers a hearings organization consisting of a nationwide network of hearing offices and supporting regional offices nationwide. The Chief Administrative Law Judge has primary responsibility for maintaining effective channels of communication between the Associate

Commissioner and the Regional Chief Administrative Law Judges (RCALJs) and the ALJ corps. Formulates and develops broad policies and objectives and establishes program goals for OHA's ALJ corps. Maintains a continuous review of all aspects of OHA field operations and implements improvements where needed. Is responsible for developing and maintaining the procedures for effective operation of the hearings process. Provides management oversight for all administrative and managerial functions involved in the day-to-day operations of field activities; coordinates regional and hearing office activities; prepares, reviews and drafts decisions and dismissals in Medicare Part B cases; and conducts liaison with other government and private agencies on issues falling within the Office's area of responsibility.

1. The Division of Field Operations and Liaison

(TAHA1) serves as liaison for the field with all headquarters components, and provides advice, guidance and counsel to field units in all areas of identified needs. Assists the Chief Administrative Law Judge in setting field office objectives. Analyzes field resource needs, including staffing, equipment, training and travel and recommends resource allocations to meet those needs. Represents the field on ongoing or ad hoc workgroups, task forces, etc.

2. The Division of Field Practices and Procedures (TAHA2) formulates, develops, communicates and oversees field practices and procedures governing the conduct of the hearing process and other program operations issues in response to the Associate Commissioner, the Chief Administrative Law Judge, or other OHA management officials, as well as a result of court orders and/or changes in the law and regulations.

3. The Vocational Expert and Medical Expert Staff (TAHA3) formulates, develops and oversees the national program for recruitment and use of Vocational Experts and Medical Experts at hearings before Administrative Law Judges. On an ongoing basis, monitors Regional and Hearing Office operations regarding the program and when appropriate provides guidance and makes necessary changes.

4. The Division of Medicare Part B (TAHA4) processes Medicare Part B cases on receipt from Health Care Financing Administration (HCFA) contractors. Researches the law, regulations and relevant policy to resolve case-related issues as necessary. Drafts all decisions where an on-the-record decision is requested and drafts

decisions where hearings are held by an Administrative Law Judge who is attached directly to the division. Provides technical and staff assistance to the Chief Administrative Law Judge and all Administrative Law Judges concerning the adjudication of Medicare Part B cases.

E. Each Office of the Regional Chief Administrative Law Judge (TAH-F1—TAH-FX) acts on behalf of the Associate Commissioner and the Chief Administrative Law Judge at the respective regional levels on all matters involving the hearings process and is directly responsible for the effective execution of the hearings process within the region. Provides direction, leadership, management and guidance to the regional office staff and to the hearing offices in the region, including Administrative Law Judges and their staffs. Is responsible for the regional implementation of national policies, goals, objectives, and procedures pertaining to the hearings process, and formulates policies, goals, and objectives for the ALJs and support staff in the region. Develops and recommends OHA action with respect to allegations of unfair hearings within the region. Is responsible for evaluating the effectiveness of regional and hearing office management. Reviews hearing practices and procedures to detect trends, training needs, and operational problems. Investigates allegations of improper employee conduct, and makes recommendations as to necessary corrective action. Has responsibility for the acquisition and distribution of human and materiel resources within the region. Coordinates operational and administrative activities with SSA regional offices, other SSA regional components, State Agencies, and others, as necessary. Establishes a program to maintain ongoing communication with congressional offices on issues of mutual interest and ensures timely and accurate responses to congressional inquiries. Ensures that court remands are processed efficiently within the region, and coordinates with the Office of the Chief Counsel in the region to foster OHA compliance with court requirements. Serves as an expert advisor on substantive issues within the region, and upon request by ALJs, provides advice and guidance in matters relating to adjudicating cases under the provisions of the Social Security Act, as amended. Reviews and analyzes fee petitions from attorneys and representatives of claimants for the provision of services at the hearing level, and authorizes payment of fees in those cases where the fees are beyond

the authority of a hearing office Administrative Law Judge.

F. The Office of Appellate Operations (TAHB) consists of the Appeals Council and its support staff. In accordance with a direct delegation of authority from the Commissioner of Social Security, the Appeals Council is the final level of administrative review under the Administrative Procedure Act for claims filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Executive Director of the Office of Appellate Operations (OAO) is the Deputy Chair of the Appeals Council and is responsible for the day-to-day operations of a program of administrative review of ALJ decisions issued under the provisions of the Social Security Act. Upon claimant request or on the Appeals Council's own motion, OAO reviews ALJ decisions and dismissals involving claims for benefits filed under Titles II and XVI of the Social Security Act, as amended, health insurance cases under Title XVIII of the Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Act, and claims under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, to determine if jurisdiction exists, and, if so, takes appropriate action. The Appeals Council identifies cases which represent broad policy matters or have national impact, conducts oral hearings and acts to resolve the issues in such cases, establishing binding adjudicatory standards and decisional principles that govern OHA's adjudicatory process. Tracks and analyzes court case trends and disseminates information to guide adjudicators with respect to case law, to implement an effective appeals strategy, and to identify areas and make recommendations as to policies which need to be developed and/or clarified, new regulations which need to be developed, or clarifying legislation which should be sought.

1. The Operations Management, Analysis and Coordination Staff (TAHB1) provides a comprehensive program of management analysis and evaluative services to assist the Appeals Council in adjudicating cases, to assist the Executive Director of OAO, and to assist the support staff of the Appeals Council in performing their program review function.

2. The Division of Program Support (TAHB2) under the direction of the Director of Operations of OAO, provides

support services to the Appeals Council, including reconstruction of lost claim files and receiving and analyzing fee petitions. Provides reprographic services and controls transcription of hearing cassettes in preparation of the official answer to civil actions filed against the Commissioner of SSA.

3. The Medical Support Staff (TAHB3) consists of staff physicians, consulting physicians, and support staff and provides expert professional judgment to the Appeals Council on individual disability and health insurance claims. Provides informational, advisory and consultant services to the Appeals Council and its support staff on matters of interpretation and application of national policy on SSA and OHA disability criteria and regulations. It reviews disability evaluation training manuals for consistency and national uniformity, represents OHA in contacts with appropriate professional affiliations, and coordinates with the Office of Disability and International Operations all matters of joint interest in the area of medical disability evaluation.

4.-22. The Disability Program Branches 1-19 (TAHB4-9 and TAHBA-Q) serve as support staff providing advice to the Appeals Council in its review of ALJ decisions and dismissals involving claims for benefits. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, the staff in the program review branches examine hearing decisions and other final actions of the Administrative Law Judges, and requests for Appeals Council review, and make recommendations to the Appeals Council as to what action should be taken on cases pending before the Council. Analyze and recommend action on cases remanded by the courts and those referred by the Office of General Counsel for consideration of whether remand should be requested at the Commissioner's motion. Recommend to OGC defense on the record of certain litigated cases if further administrative action is not warranted.

23.-24. The Court Case Preparation and Review Branches 1-2 (TAHBR-S) serve as a support staff to OAO. Prepare remand orders and affidavits and related correspondence on cases in which a complaint has been filed in Federal court. Within published guidelines, recommend to OGC defense on the record for certain litigated cases if further administrative action is not warranted. Analyze and recommend action on cases remanded by the courts.

Prepare all court transcripts and control and maintain all certified records of claims at the civil actions level.

25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT) serves as a support staff and provides advice to the Appeals Council in its review of decisions and dismissals involving claims to establish entitlement to Health Insurance benefits under Title XVIII of the Social Security Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification under the Social Security Act, decisions and dismissals involving claims to establish entitlement and the amount of benefits in old-age, survivors and disability under Title II of the Social Security Act; and claims to establish eligibility for and benefits payable in Title XVI cases. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, examines hearing decisions and other final actions of the ALJ, and requests for Appeals Council review, and makes recommendations to the Administrative Appeals Judges as to what action should be taken on cases pending before the Council whether before or after a civil action is filed.

G. The Office of Policy, Planning and Evaluation (TAHC) plans, analyzes and develops OHA-wide policy for the hearings, appeals and civil actions processes. Responsible for SSA policy with respect to claimant representation and fees charged for their services. Manages the overall OHA hearings and appeals process policy communications system. Is responsible for OHA activity with respect to Social Security regulations, including developing an OHA position with respect to program regulations proposed by SSA components. Monitors OHA's implementation of program regulations governing the hearings and appeals process. Plans and conducts a comprehensive OHA-wide evaluation program designed to support OHA policy and regulatory initiatives and measure the overall effectiveness of the nationwide hearings and appeals process. Provides advice and guidance throughout OHA on matters involving program policies, planning and evaluation. Coordinates policy, planning and evaluation matters within OHA, with OGC, other SSA components, with HCFA and with other Federal agencies and private

organizations. Develops and coordinates program training in conjunction with appropriate OHA, SSA, HCFA and OGC components. Develops and implements an appeals strategy, in conjunction with other OHA components, that identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process.

1. The Division of Litigation Analysis and Implementation (TAHC1) develops and implements, in conjunction with other OHA components, an appeals strategy that identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process. Develops and maintains a compendium of circuit court case law with systems-based access. Tracks pending class actions, forecasts potential workload impact, and makes recommendations to workload components regarding workload impact. Uses court trend information to identify and make appropriate recommendations with respect to areas in which policies need to be developed and/or clarified, new regulations need to be developed, or clarifying legislation should be sought. Prepares and updates significant court case requirements used in reviewing court cases. Uses court trend information to identify areas where additional training is needed or other measures are needed to improve defensibility. Advises OHA officials of significant cases and trends and of litigation issues which may require revision of operating instructions, and assists with the preparation of the instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases and to requests for appeals recommendations from ODCPP, obtains the views of affected OHA components and formulates an OHA position on appeal. Maintains liaison with OGC and ODCPP to coordinate the settlement of class actions and class action implementation. In coordination with other OHA components, develops instructions for OHA implementation of class action orders, monitors implementation and serves as a focal point for questions from OHA adjudicators. Responds to requests from OGC and ODCPP regarding information about OHA operations requested in the course of litigation. Coordinates OHA's

response to discovery requests. Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA.

2. The Division of Planning and Evaluation (TAHC2) develops, coordinates and conducts a comprehensive OHA-wide program of studies and analyses of the application of and compliance with SSA and OHA policies and procedures in all phases of OHA's hearings and appeals processes and SSA's claimant representation process and the quality of results achieved. Provides advice and assistance to other OHA components in designing and implementing appropriate systems and procedures for collecting, recording, analyzing and evaluating data to assess the quality of work emanating from the hearings and appeals processes. Conducts studies of policy implementation within OHA. Identifies problem areas and deficiencies in policies. Develops techniques and systems for conducting evaluations of the substantive and technical aspects of claims throughout OHA.

3. The Division of Policy (TAHC3) plans, develops and coordinates the preparation of regulations, policies and guidelines for the hearings, appeals, civil actions and claimant representation processes under Titles II, XVI and XVIII of the Social Security Act, as amended, and under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Ensures that operating procedures and instructions developed to implement the hearings and appeals process conform with SSA benefit program policy and OHA hearings and appeals process policy. Provides advisory services, consultation, and staff assistance to other components of OHA. Maintains ongoing liaison with SSA, HCFA, OGC and others with respect to program, legislative and policy matters. Reviews current and developing trends in administrative law and litigation; analyzes and prepares policy recommendations; and develops long-range and short-range plans for hearing and appeals policy matters and OHA's implementation of benefit program policy matters. Develops and coordinates program training in conjunction with other OHA, SSA, and OGC program components.

H. The Office of Management (TAHE) provides administrative support to the Associate Commissioner for all management and systems related activities for OHA. Coordinates with the Chief Administrative Law Judge with respect to management, financial, materiel resources and systems support

functions which affect field operations. Has direct line authority for all management and administrative support functions for Headquarters' components of OHA and in coordination with the Chief ALJ, for all field components of OHA including its regional offices (ROs) and hearing offices nationwide. Coordinates and integrates the management programs and administrative planning initiatives of OHA into the long-range goals and objectives of SSA. Monitors OHA's progress toward meeting established Agency goals and makes recommendations for needed adjustments to enable OHA to meet these goals. Plans, directs and implements an Equal Employment Opportunity (EEO) program within OHA. Plans, directs, administers and evaluates the congressional and public inquiries activities for OHA. Plans, directs and administers a comprehensive nationwide management analysis program to identify areas requiring improvement to enhance the quality and effectiveness of management practices and to assess trends in management.

1. The Equal Employment Opportunity Staff (TAHE1) is responsible for OHA's EEO program. Plans, develops, implements and monitors OHA's affirmative action program, and administers the EEO complaint process for OHA headquarters. Provides guidance for, and monitoring of, OHA regional EEO programs.

2. The Division of Congressional and Public Inquiries (TAHE2) formulates policies, procedures and guidelines for use in responding to high priority correspondence from the public and congressional offices. Serves as the correspondence liaison staff with the Commissioner's Office, the Office of Communications and other SSA components.

3. The Division of Budget and Financial Management (TAHE3) plans, develops and coordinates OHA's budget and financial management programs, advising the Director of OM and/or the Associate Commissioner of the financial impact of all decisions which may affect the program and administrative operations of the Agency. Formulates, justifies and presents OHA's annual and multi-year budget submissions. Reviews and analyzes budget requests submitted by OHA components and formulates OHA's financial operating plans and budget projections. Works with SSA budget officials to obtain the resources necessary to meet OHA goals and objectives. Develops all necessary applications for generating budget data

and financial management reports. Executes and administers a financial management system, integrating resource management controls. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Administers the travel and payroll function for all OHA headquarters components and ALJs nationwide.

4. The Division of Materiel Resources (TAHE4) plans, directs and provides administrative support services in the areas of space planning and management; forms and records management; property management; equipment control and maintenance; graphic arts; safety and self-protection, including emergency planning; security; procurement and supply; laboring services; mail and messenger services; motor vehicle operations; and communications systems management. Organizes, controls and coordinates procurement and property management activities, including development of specifications and requisitions for procurement of property, inspections of property owned or leased by the United States Government and property accountability. Administers an occupational health and safety program in compliance with established health and safety concepts, regulations, standards and procedures.

Administers security programs and inspections, and coordinates with local law enforcement officials to ensure protection of OHA property and personnel.

5. The Division of Systems Resources (TAHE5) is the focal point for all OHA systems-related activities. Provides office automation and data processing support to all OHA components. Develops OHA's long-range systems goals and objectives. Provides computer programming and systems support for the planning, design, development and implementation of all OHA automated data processing systems. Serves as liaison with the Office of Systems on all matters pertaining to systems, and ensures that OHA systems efforts are undertaken, that projects underway are carried out successfully and that OHA participates fully in the SSA systems strategy.

6. The Division of Management Analysis and Employee Development (TAHE6) advises the Director of OM and the Associate Commissioner in all management areas involving management practices, management analysis, operational analysis and the resolution of management/employee concerns and problems. Plans, designs and administers evaluation programs

and tracking systems to assess the efficiency and effectiveness of OHA operations in the field and headquarters. Serves as the focal point of contact for coordinating the General Accounting Office, the Office of the Inspector General, SSA and other studies of OHA operations. Coordinates, develops and publishes administrative delegations of authority for OHA. Administers OHA's Employee Development Program. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs; and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees.

Subchapter TAJ—Office of International Policy

TAJ.00 Mission

TAJ.10 Organization

TAJ.20 Functions

Section TAJ.00 *The Office of International Policy—(Mission):* The Office of International Policy serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments, and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides programs of training and technical consultations on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security program matters outside the United States.

Section TAJ.10 *The Office of International Policy—(Organization):* The Office of International Policy, under the leadership of the Associate Commissioner of the Office of International Policy includes:

A. The Associate Commissioner for International Policy (TAJ).

B. The Immediate Office of the Associate Commissioner for International Policy (TAJ).

C. The Division of International Program Policy and Agreements (TAJA).

D. The International Activities Staff (TAJB).

Section TAJ.00 *The Office of International Policy—Functions):*

A. The Associate Commissioner for International Policy (TAJ) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out the OIP mission and provides supervision to the major components of OIP.

B. The Immediate Office of the Associate Commissioner for International Policy (TAJ) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities, helps coordinate the activities of OIP components, and acts as the SSA or United States Government representative to international organizations and world bodies involved with international social security matters.

C. The Division of International Program Policy and Agreements (TAJA).

1. Plans, develops and evaluates program policies and procedures relating to foreign claims administration, foreign evidence and beneficiaries and modifies policies and procedures to meet program requirements in foreign countries.

2. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops policies and procedures to implement agreements and administers the coverage provisions of the agreements.

3. Issues certificates of coverage to United States-based workers who are on temporary assignments in countries with which the United States has international totalization agreements to exempt them (and their employers) from foreign social security taxes.

4. Interacts with various SSA components, other Federal agencies and governments of other countries on all foreign program matters, including evaluation of foreign social insurance systems for alien nonpayment purposes, benefit payment delivery and restrictions, acceptability of foreign evidence, program integrity and mutual assistance arrangements with other countries.

5. Conducts legislative and regulatory reviews, studies and analyses of all matters relating to international policy and international Social Security agreements and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

D. The International Activities Staff (TAJB).

1. Develops and coordinates individualized programs of consultation and observation for foreign Social

Security officials and experts in related fields on the United States Social Security system.

2. Coordinates SSA's technical assistance to foreign countries in designing and/or modernizing existing social security systems.

3. Serves as SSA's focal point in disseminating information about the United States Social Security program to foreign organizations.

4. Plans and coordinates SSA's international travel plan, including providing logistical support and administering all activities relating to control of official passports for SSA staff traveling abroad.

5. Plans, implements and manages SSA-hosted international conferences, meetings and seminars.

Subchapter TAN—Office of Research, Evaluation and Statistics

TAN.00 Mission

TAN.10 Organization

TAN.20 Functions

Section TAN.00 *The Office of Research, Evaluation and Statistics—(Mission)*: The Office of Research, Evaluation and Statistics is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces. Plans and directs a continuing program of economic and social research to evaluate the effectiveness of national policies in meeting desired program outcomes. Plans and directs studies and surveys to evaluate the effectiveness of policy development, implementation and program outcomes of the disability, retirement and survivors and supplemental security income programs.

Section TAN.10 *The Office of Research, Evaluation and Statistics—(Organization)*: The Office of Research, Evaluation and Statistics under the leadership of the Associate Commissioner for Research, Evaluation and Statistics, includes:

A. The Associate Commissioner for Research, Evaluation and Statistics (TAN).

B. The Deputy Associate Commissioner for Research, Evaluation and Statistics (TAN).

C. The Immediate Office of the Associate Commissioner for Research, Evaluation and Statistics (TAN).

D. The Publications Staff (TANA).

E. The Division of Program Analysis (TANB).

F. The Division of Economic Research (TANC).

G. The Division of Earnings Statistics and Analysis (TANE).

H. The Division of Retirement, Survivors, Disability Insurance Research Statistics (TANG).

I. The Division of SSI Analysis/Management Statistical Support (TANH).

J. The Disability Research Staff (TANJ).

Section TAN.20 *The Office of Research, Evaluation and Statistics (Functions)*:

A. The Associate Commissioner for Research, Evaluation and Statistics (TAN) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out ORES' mission, and providing general supervision to the major components of ORES.

B. The Deputy Associate Commissioner for Research, Evaluation and Statistics (TAN) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Research, Evaluation and Statistics (TAN) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of ORES components.

D. The Publications Staff (TANA).

1. Advises ORES on the development, organization and presentation of research and statistical studies.

2. Publishes and distributes these studies to national and international audiences.

3. Assesses informational needs of SSA staff, staff in other Government agencies, the social science research community and the public for data and findings from the ORES research program.

E. The Division of Program Analysis (TANB).

1. Plans, designs and conducts surveys of program target groups and performs policy-relevant research.

2. Analyzes the impact of proposed policy options, legislative proposals and special high-priority issues and prepares briefing materials for SSA administrators.

3. Plans, conducts and publishes the results of cross-national research on social security programs worldwide.

F. The Division of Economic Research (TANC).

1. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy and other aspects of society.

2. Interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

3. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

G. The Division of Earnings Statistics and Analysis (TANE).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to earnings, employment and employer classification. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities, and private research organizations.

2. Provides ORES and other SSA researchers with support in the development of social science survey data linked with SSA administrative record data.

H. The Division of Retirement, Survivors and Disability Insurance Research Statistics (TANG).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to RSDI claims and benefits provisions of Title II of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities and private research organizations.

I. The Division of SSI Analysis/Management Statistical Support (TANH).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to the Supplemental Security Income provisions of Title XVI of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA and for research by other Federal and State and local government agencies,

universities and private research organizations.

2. Provides management statistical services to SSA operating and policy components, including such activities as the development of general purpose and customized field office samples, development of work sampling systems and quality assurance systems, and the design and analysis of operational pilot studies. Provides support for the development and use of mathematical models and statistical methods.

J. The Disability Research Staff (TANJ).

1. Plans, directs and implements a wide range of studies and analyses, utilizing data from surveys and administrative records, on the national disabled population, disability applicants and disability beneficiaries.

2. Develops research in response to DI program issues.

3. Maintains and develops research surveys and administrative data files used in the analysis of disability data.

Subchapter TAP—Office of Program Benefits Policy

TAP.00 Mission

TAP.10 Organization

TAP.20 Functions

Section TAP.00 *The Office of Program Benefits Policy*—(Mission): The Office of Program Benefits Policy provides SSA-wide leadership and direction to the development, coordination and promulgation of RSI and SSI policies and procedures. Develops, coordinates and evaluates the program and issues the operational policies, standards and instructions for the RSI and SSI programs. Develops and issues policies and guidelines for use by State and Federal organizations which implement the SSI provisions. Develops agreements with the States and other agencies that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes.

Section TAP.10 *The Office of Program Benefits Policy*—(Organization): The Office of Program Benefits Policy, under the leadership of the Associate Commissioner for Program Benefits Policy includes:

A. The Associate Commissioner for Program Benefits Policy (TAP).

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP).

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP).

D. The Division of Benefit Continuity (TAPA).

E. The Division of Coverage (TAPB).

F. The Division of Entitlement (TAPC).

G. The Division of Payment Policy (TAPE).

H. The Division of Program Requirements Policy (TAPG).

I. The Division of Program Management, Research and Demonstration (TAPH).

Section TAP.20 *The Office of Program Benefits Policy*—(Functions):

A. The Associate Commissioner for Program Benefits Policy (TAP) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPBP's mission and provides general supervision to the major components of OPBP.

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP) provides the Associate Commissioner and Deputy Associate Commissioner(s) with staff assistance on the full range of their responsibilities and helps coordinate the activities of OPBP components.

D. The Division of Benefit Continuity (TAPA).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of benefit continuity.

2. Develops, issues and evaluates guidelines, directives, instructions and operating procedures for such areas as work notices, annual and monthly earnings tests, suspensions and terminations, governmental pension offset and enforcement and beneficiary compliance, overpayments, underpayments, recovery and waiver, garnishment, payment delivery, onsite review, accounting, representative payee selection, advance notice, capability/incapability and use and misuse.

E. The Division of Coverage (TAPB).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of coverage.

2. Develops and issues guidelines, directives, instructions and operating procedures for such coverage and

employment subject areas as wages, coverage and exceptions, anti-poverty programs, earnings records and earnings records discrepancies, coverage aspects of international agreements, self-employment status and income, religious exemptions, State and local coverage and statutes of limitations.

F. The Division of Entitlement (TAPC).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of entitlement.

2. Develops and issues guidelines, directives, instructions and operating procedures for such entitlement subject areas as applications, insured status, veterans' benefits, railroad employment, family relationships, dependency and support, evidence, school attendance, indexing of earnings, primary insurance amount computation, reduction of benefits for age, family maximums, saving clauses, recomputations and recalculations of benefits, period of disability computations, awards, disallowances and abatements of claims, earnings records, claims application forms, administrative finality, adjudicative standards, evidence, documentation, conspicuous characteristics and social security numbers.

G. The Division of Payment Policy (TAPE).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of payment policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such payment policy subject areas as redeterminations, SSI notices, SSI appeals and overpayments/underpayments matching and interfaces, mandatory and optional State supplemental payments, pass through of rate increases, monitoring of fiscal information systems with the States, maintenance of State agreements, food stamps, Medicaid, State assistance reimbursements, energy assistance, State data exchange systems and postadjudicative issues.

H. The Division of Program Requirements Policy (TAPG).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income

program in the area of program requirements policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such program requirements subject areas as individual/couple/child eligibility status, in-kind income, support and maintenance, in-kind living arrangements, institutionalization, special classifications of income and medical social services, generic income issues, deeming of income and resources, computation of income, certain grandfather clauses, special sponsored alien deeming, color of law alien status, presence in the United States, generic resources issues, trust policy, filing for other benefit requirements and property essential for self-support.

1. The Division of Program Management, Research and Demonstration (TAPH).

1. Designs, manages and conducts studies to measure and evaluate the impact and effectiveness of the supplemental security income and the retirement and survivors insurance program policies, procedures and programs on the population.

2. Establishes, maintains and operates statistical program data base extract systems to provide program information for internal and external use; develops functional specifications and programs; validates output; and assists requestors in verifying final product.

3. Manages demonstration cooperative agreements and initiatives to target special populations and program issues. Evaluates the effectiveness of demonstrations and initiatives and develops new and revised policies and procedures to implement program improvements.

4. Coordinates and directs assignments and projects related to program redesign and systems modernization efforts, including development of program specifications for expert systems. Formulates, plans and implements computer programs and other automation activities in support of program policy, research and administrative needs.

5. Develops and issues guidelines, directives, instructions and operating procedures for SSI applications policy, including protective filing and advance filing and SSI work incentive provisions, including plans for achieving self support and Section 1619 provisions.

Subchapter TAS—Office of Program Support

TAS.00 Mission

TAS.10 Organization

TAS.20 Functions

Section TAS.00 *The Office of Program Support* (Mission): The Office of Program Support provides leadership in overseeing the Agency's system of programmatic instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of strategic policy decisions into operational policies, procedures and notices. Responsible for the Agency's Regulatory Program, including development of SSA's Regulatory Plan and the Agency's portion of the Unified Agenda of Federal Regulations. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public. Assures programmatic support to legislative implementation activities. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under provisions of the Privacy Act and the Freedom of Information Act. Sponsors and supports ODCPP Interdisciplinary Teams established to address cross-cutting policy issues and initiatives. Designs, implements and maintains automated information and communications systems ODCPP-wide. Section TAS.10 *The Office of Program Support* (Organization): The Office of Program Support, under the leadership of the Associate Commissioner for Program Support includes:

A. The Associate Commissioner for Program Support (TAS).

B. The Deputy Associate Commissioner for Program Support (TAS).

C. The Immediate Office of the Associate Commissioner for Program Support (TAS).

Section TAS.20 *The Office of Program Support* (Functions):

A. The Associate Commissioner for Program Support (TAS) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPS's mission and providing managerial direction to OPS.

B. The Deputy Associate Commissioner for Program Support (TAS) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner of the Office of Program Support (TAS) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

1. Provides leadership in overseeing the Agency's system of programmatic

instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of strategic policy decisions into operational policies, procedures and notices.

2. Responsible for the Agency's Regulatory Program.

3. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public.

4. Assures programmatic support to legislative implementation activities.

5. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under provisions of the Privacy Act and the Freedom of Information Act.

6. Sponsors and supports ODCPP Interdisciplinary Teams.

7. Designs, implements and maintains automated information and communications systems ODCPP-wide.

Dated: June 19, 1996.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 96-17244 Filed 7-5-96; 8:45 am]

BILLING CODE 4190-29-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-106]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of India Regarding Patent Protection for Pharmaceuticals and Agricultural Chemicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of India that may result in the denial of patents and exclusive marketing rights to U.S. individuals and firms involved in the development of innovative pharmaceutical and agricultural chemicals products. The United States alleges that these acts, policies and practices are inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), administered by the World Trade Organization (WTO). USTR

invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on July 2, 1996. Written comments from the public are due on or before noon on Monday, August 12, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property, (202) 395-6864, or Thomas Robertson, Assistant General Counsel, (202) 395-6800.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301") with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On July 2, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to determine whether certain laws and regulations of India affecting the grant of patents and exclusive marketing rights in innovative pharmaceutical and agricultural chemical products are actionable under section 301(a). Article 70 of the TRIPs Agreement requires all countries that do not provide product patent protection for pharmaceuticals and agricultural chemicals on January 1, 1995, to establish by that time a means by which applications for patents for such inventions can be filed, which is commonly referred to as a "mailbox." These applications are to be reviewed when such protection is ultimately provided in accordance with the transitional provisions of the TRIPs Agreement. This provision allows "mailbox" applicants to preserve their original filing date for the purposes of novelty and nonobviousness considerations in patentability determinations. Article 70 of the TRIPs Agreement also requires those WTO members delaying the grant of pharmaceutical and agricultural chemical product patent protection to grant "mailbox" applications up to five years of marketing exclusivity if such applicants are granted a patent and marketing approval in another WTO

member and marketing approval in the member providing marketing exclusivity. India has not yet established a permanent formal "mailbox" system for the filing of pharmaceutical and agricultural chemical product patent applications, nor has it established a system for the grant of exclusive marketing rights. The Indian Government did attempt to establish such systems in early 1995 (although the marketing exclusively system appeared flawed), but the Indian legislature failed to act in the area and they expired. United States Government officials have repeatedly raised this issue with their Indian counterparts, but have received no satisfactory response. India's failure to establish such systems permanently in a way that gives legal assurances to the parties that file "mailbox" applications would appear to be inconsistent with the obligations set forth in Article 70 of the TRIPs Agreement.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of India regarding the issues under investigation. The request was made pursuant to Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPs Agreement (to the extent it incorporates by reference Article XXII of the General Agreements on Tariff and Trade 1994). If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of India which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments

must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Monday, August 12, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301-106) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301-106) may be made by calling Brenda Webb (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,
Chairman, Section 301 Committee.
[FR Doc. 96-17242 Filed 7-5-96; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Thrall Car Manufacturing Company a request for a waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Thrall Car Manufacturing Company

[Docket No. SA-96-2]

Thrall Car seeks a waiver of compliance from certain sections of 49 CFR Part 231, Railroad Safety Appliance Standards. Thrall Car is requesting a permanent waiver of the provisions of 49 CFR Part 231 which requires that the

bottom side handhold be located not more than (21) inches from top tread of sill step—.

Thrall Car built 629 covered hopper cars beginning in 1995 which have the bottom side handhold located (21–3/8) inches from the top tread of sill step.

Car series:

CCBX 58595 thru 59000 = 406 cars.

FMLX 62001 " 62040 = 40 cars.

OCPX 70901 " 70944 = 44 cars.

UTCX 49148 " 49287 = 139 cars.

49 CFR 231.27(e)(3) requires in part that the bottom side handholds be located not more than (21) inches from top tread of sill step—.

Thrall Car state that this discrepancy originated with the introduction of a new car in June of 1995 and continued until discovery. Design corrections have been made with all subsequent covered hopper cars.

Thrall Car request to continue the use of these subject cars as they do not believe this condition presents a safety concern due to the small variance from the standard.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—SA-96-2 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Communications received before August 19, 1996, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, DC, on July 1, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96-17298 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-06-P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS-AP)-No. 3402

Applicant: Burlington Northern Railroad Company

Mr. William G. Peterson,
Director Signal Engineering,
1900 Continental Plaza,
777 Main Street,
Fort Worth, Texas 76102-5384.

The Burlington Northern Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system (TCS), associated with the installation of an automatic block signal (ABS) system with track warrant control, on the single main track between Appleton, Minnesota, milepost 578 and Hettinger, South Dakota, milepost 925.9, on the Willmar and Yellowstone Divisions, Appleton, Mobridge, and Hettinger Subdivision, a distance of approximately 348 miles. The proposed changes include: conversion of "Big Stone Power Plant" and "West Aberdeen" Control Points to remote-controlled interlockings, replacement of all power-operated and spring switches with circuit controller monitored hand-operated switches, removal of all switch electric locks, and modification of signal placement and spacing.

The reasons given for the proposed changes are that reduced traffic patterns do not justify the high cost to maintain an aging TCS, and this application will retain the safety of train operations provided by an ABS system while providing economic relief from having to maintain the additional plant associated with TCS.

BS-AP-No. 3403

Applicant: Burlington Northern Railroad Company

Mr. William G. Peterson,
Director Signal Engineering,
1900 Continental Plaza,
777 Main Street,
Fort Worth, Texas 76102-5384.

The Burlington Northern Railroad Company seeks approval of the proposed reduction to the limits of the automatic block signal system, on the single main track, between "P.A.

Tower", milepost 109.9 and Grand Forks, milepost 107.6, North Dakota, Fargo Division, Grand Forks Subdivision; consisting of the discontinuance and removal of automatic block signals 107.9, 107.8, 108.3, 108.4, and 109.2, and conversion of automatic block signal 109.3 to a distant approach signal.

The reasons given for the proposed changes are the reduction in train movements over the trackage and to provide a more efficient operation.

Rules Standards & Instructions Application (RS&I-AP)-No. 1101

Applicant: Florida East Coast Railway Company

Mr. Charles R. Lynch,
Vice President-Maintenance,
One Malaga Street,
P.O. Box 1048,
St. Augustine, Florida 32085-1048.

The Florida East Coast Railway Company (FEC) seeks temporary relief from the requirements of 49 CFR, Part 236, Section 236.566 of the Rules, Standard and Instructions, for a 30 day period, to the extent that FEC be permitted to operate non-operational automatic train control (ATC) equipped locomotives, over FEC's entire ATC territory by way-side signal indications of the traffic control system, to accommodate modifications to both the onboard and roadway ATC equipment.

Applicant's justification for relief: To implement changes to the ATC system code rates in order to enhance and improve the reliability of the system, associated with the designed elimination of cab signal flips.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 1, 1996.
 Phil Olekszyk,
 Deputy Associate Administrator for Safety
 Compliance and Program Implementation.
 [FR Doc. 96-17297 Filed 7-5-96; 8:45 am]
 BILLING CODE 4910-06-P

Research and Special Programs Administration

[Docket No. P-96-8W; Notice 1]

CNG Transmission Company; Petition for Waiver

AGENCY: Research and Special Programs
 Administration, DOT.

ACTION: Notice of petition for waiver.

SUMMARY: CNG Transmission Company (CNGT) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with provisions of 49 CFR 192.611(a) requiring confirmation of the maximum allowable operating pressure (MAOP) by hydrostatic testing. Instead, CNGT requests they be permitted to requalify the MAOP by an alternative approach involving a combination of hydrostatic testing and inspection by an instrumented internal inspection device commonly known as a "smart pig". The need to confirm the MAOP results from a recent increase in the population density along certain segments of a 26-inch diameter gas transmission line in Ohio.

DATES: Written comments submitted in duplicate must be received on or before August 7, 1996. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Comments may be mailed or hand delivered to the Dockets Unit [DHM-20], Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001. Comments should specify the Docket No. stated in the heading of this document; the original and two copies should be submitted. Dockets may be reviewed and copied between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
 Albert C. Garnett, (202) 366-2036,
 Office of Pipeline Safety, regarding the
 subject matter of this notice or the
 Dockets Unit, (202) 366-5046, for copies
 of this notice or other materials in the
 docket.

SUPPLEMENTARY INFORMATION:

Background

By correspondence dated April 23, 1996, CNGT requested a waiver from compliance with the MAOP confirmation or revision provisions of 49 CFR 192.611(a) for pipeline segments where the hoop stress corresponding to the established MAOP is not commensurate with the present class location. The requested waiver applies to ten segments (totaling 10.91 miles) and located on CNGT's transmission line TL-400.

Transmission line TL-400 begins at the Lebanon Compressor Station in Warren County, Ohio, and transports gas eastward to the Gilmore Compressor station in Tuscarawas County, Ohio, a distance of 163.19 miles. The 26-inch diameter transmission line was designed and tested to operate at an MAOP of 850 psig.

The ten line segments that are the subject of this waiver request operate at a hoop stress of greater than 40% of the specified minimum yield strength (SMYS) and are located in areas where a recent increase in population indicated a change in their class location. Accordingly, CNGT complied with the provisions of § 192.609 and completed a study of the subject segments to determine: (a) their present class location; (b) a comparison of their original design, construction, and testing procedures with the provisions required for their present class location; (c) their physical condition ascertained from available records; (d) their operating and maintenance history; (e) their maximum actual operating pressure and corresponding operating hoop stress; and (f) the extent of the area affected by the population increase and other factors which may limit further expansion of the more densely populated area.

CNGT determined from the study required by § 192.609 (a) and (f) that the recent expansion of the population density had changed the subject segments from Class 1 locations to Class 2 locations. CNGT also determined from the study required by § 192.609 (b)-(e) that the ten segments were in good physical condition. Consequently, in accordance with the provisions of § 192.611 (a) and (c), CNGT must confirm or revise the originally established MAOP (850 psig) within the 18-month period ending October 19, 1996.

The hydrostatic test which established the MAOP at 850 psig was performed at a pressure of 953 psig, although a test pressure of 935 psig would have been sufficient under the

provisions of § 192.619(a)(2)(ii). After October 19, 1996, these segments may not be operated at an MAOP above 762 psig (a reduction of 88 psig) due to their reclassification as Class 2 locations. However, CNGT seeks to maintain the MAOP at 850 psig in order to meet their gas delivery commitments. Consequently, requalification by hydrostatic testing to a minimum pressure of 1,063 psig would be in accordance with § 192.611(a)(3).

TL-400 is a single long transmission line that transports gas from third parties to local distribution companies and to underground storage facilities. CNGT states that it would be unreasonable to reduce the MAOP and thereby lose gas throughput that would prevent them from meeting their contractual obligations. CNGT also asserts that hydrostatically testing all ten segments would require the line to be taken out of service for a minimum of 16 days. Additionally, CNGT asserts that the acquisition and disposal of the water used in the hydrostatic testing would be burdensome.

Alternative Approach

Instead of hydrostatically testing all ten segments, CNGT requested a waiver permitting an alternative approach which they believe would achieve both an equivalent level of safety in the subject segments and a complete evaluation of the 163.19 mile transmission line. Additionally, CNGT expects the proposed approach to be considerably less costly and to reduce the number of days that the transmission line would be out of service.

CNGT's proposal consists of two alternatives supplemented by a work plan (dated May 14, 1996). Although, not set out as such in the petition, the alternatives are identified for the purposes of this document as *Alternative A* and *Alternative B*:

Alternative A consists of the following:

(A1) Conducting a close interval pipe-to-soil corrosion survey (CIS) of the 163.19 mile line;

(A2) Hydrostatic testing four segments (totaling 4.96 miles). If no leak occurs, or only a *specified minor leak*¹ occurs and is remediated, the hydrostatic testing is completed;

(A3) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig." Any defects impacting the MAOP are promptly

¹ *Specified minor leak*—A leak from valve packings, gaskets, threaded fittings, or hydrostatic test equipment; and from localized corrosion pitting on the 26-in line pipe.

remediated. All defects detected by the "smart pig" are cross-referenced with the CIS to correct any deficiencies in the cathodic protection system, all before October 19, 1996; and

(A4) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig" and remediation of any defects impacting the MAOP, all in the year 2001.

Alternative B would be performed only if, during the implementation of (A2), a leak *other than a specified minor leak*² occurs. *Alternative B* consists of the following:

(B1) If a leak, *other than a specified minor leak* occurs during (A2) and is remediated, the hydrostatic testing of the four segments is completed;

(B2) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig." Any defects impacting the MAOP are promptly remediated. All before October 19, 1996; and

(B3) The period to qualify the MAOP is extended until (B3) is completed. All defects detected by the "smart pig" are cross-referenced with the CIS to correct any deficiencies in the cathodic protection system. Hydrostatic testing and remediation of any leaks occurring in the remaining six segments (totaling 5.95 miles), all before June 30, 1997.

Basis for the Alternative Approach

CNGT's proposed alternative approach is based on the contention that this transmission line is in good physical condition. In the petition, they supported that assertion by providing information on the line's construction, operation, and maintenance history.

CNGT states that the 26-in diameter line is constructed of submerged-arc welded steel pipe that has been joined by welding. The pipe is internally coated with mill-applied liquid epoxy and externally coated with mill-applied coal tar enamel. The line was hydrostatically tested and commissioned in December 1968. Cathodic protection is provided by impressed current remote groundbeds and assisted with magnesium anode beds. CNGT states that the 21 test stations used to monitor the level of cathodic protection in the subject segments do not show any areas of low potential. CNGT states that, aside from one failure in 1981 due to third party damage, no other leaks have occurred since the line has been in service. Moreover, during the period 1990

through 1996, the MAOP of six other such segments in this line were requalified by hydrostatic testing under § 192.611(a) without a leak or failure.

The proposed alternative approach expresses the petitioner's confidence that the line is in good physical condition. Any leak *other than a specified minor leak* occurring during the hydrostatic testing of (A2) would trigger the requirement to implement the more costly and time consuming *Alternative B*. Under (B1) and (B3), CNGT would need to hydrostatically test all ten segments required by § 192.611(a). Moreover, under (B2), they would need to inspect the 163.19 mile line with a geometry pig and with a high resolution "smart pig."

RSPA Response

Our review of the petition for waiver showed the following:

(1) CNGT's contention that this particular line is in good physical condition is well supported with information on the pipe, internal and external coatings, cathodic protection, and the transmission line's outstanding leak record;

(2) The provisions of § 192.611(a) for requalification would be only partially waived during (A2), because four of the ten segments (representing 4.96 miles or a 45.46% sampling of the total 10.91 miles) would be hydrostatically tested;

(3) If a leak, *other than a specified minor leak* occurs during the hydrostatic testing of (A2), then under (B3) the remaining six segments would be hydrostatically tested. This would result in compliance with § 192.611(a). Additionally, during (B2) there would be an internal inspection of the complete 163.19 mile transmission line;

(4) Otherwise, during (A3) and (A4), the complete transmission line would be internally inspected during 1996 and internally inspected again during the year 2001;

(5) The implementation of either (A3) or (B2) (the in-line inspection in 1996) would be the first time transmission line TL-400 has been inspected by a "smart-pig;" and

(6) A "smart pig" is capable of detecting certain flaws in the pipe wall that (when interpreted) may disclose defects that jeopardize the safe operation of the gas transmission line. CNGT would run a "smart pig" of the high resolution type, which is considered to be state-of-the-art technology for the identification of pipe wall defects.

In view of the foregoing, it appears that neither *Alternative A* nor its back up, *Alternative B*, would be inconsistent with pipeline safety. Instead, we see the

implementation of either alternative as contributing to the safety of this 163.19 mile transmission line. Consequently, RSPA proposes to grant the waiver.

Interested persons are invited to comment on the proposed waiver by submitting their views or arguments with supporting data, if available, in the manner described under the heading **ADDRESSES** (above). All comments received before the date shown under **DATES** (above) will be considered before final action is taken. Late filed comments will be considered as far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the Federal Register if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Authority: 49 U.S.C. 60118(c); and 49 CFR 1.53.

Issued in Washington, DC, on July 2, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96-17300 Filed 7-5-96; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Mutual Holding Companies.

DATES: Written comments should be received on or before September 6, 1996 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550-0071 and 1550-0072. These submissions may be hand delivered to 1700 G Street, NW. From

² *Other than a specified minor leak*—A leak from a crack, crack-like defects, general corrosion, or from any other source (except localized corrosion pitting) on the 26-inch line pipe.

9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments over 25 pages in length should be sent to FAX Number (202) 906-6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Requests for additional information should be directed to Teresa Valocchi, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906-7299.

FOR FURTHER INFORMATION CONTACT: Teresa Valocchi, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906-7299.

SUPPLEMENTARY INFORMATION:

Title: Mutual Holding Company (No Form).

OMB Number: 1550-0071.

Form Number: Not Applicable.

Abstract: The information collections described herein will apply to mutual holdings companies and their subsidiaries. The collections are necessary (i) to facilitate review of transactions that present special risks, and (ii) to monitor activities that present special risks.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 35.

Estimated Time Per Respondent: 102.4 hours average.

Estimated Total Annual Burden Hours: 3,585 hours.

Title: Mutual Holding Company.

OMB Number: 1550-0072.

Form Number: OTS Forms MCH-1 and MCH-2.

Abstract: The information collection applies to mutual holding companies and their subsidiaries. The collection is necessary to facilitate the review of transactions that present special risks and to monitor activities that present special risks.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 14.

Estimated Time Per Respondent: 375 hours average.

Estimated Total Annual Burden Hours: 5,250 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: July 1, 1996.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96-17180 Filed 7-5-96; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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: 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.

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: 751,315.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

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 information collection should be directed to the OMB Desk Officer within 30 days of this notice.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: June 25, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96-17206 Filed 7-5-96; 8:45 am]

BILLING CODE 8320-01-P

**Agency Information Collection:
Submission for OMB Review;
Comment Request**

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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: Direct Deposit Enrollment, VA Form 24-0296 (Test).

Type of Review: New collection.

Need and Uses: The form will be used to gather the necessary information

required to enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,800 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 84,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

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 information collection should be directed to the OMB Desk Officer within 30 days of this notice.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: June 25, 1996.

By direction of the Secretary,
William T. Morgan,
Management Analyst
[FR Doc. 96-17207 Filed 7-5-96; 8:45 am]

BILLING CODE 8320-01-P

**United States
Federal Reserve**

Monday
July 8, 1996

Part II

**Department of
Housing and Urban
Development**

**Notice of Funding Availability (NOFA) for
Supportive Housing for the Elderly**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner; Notice of Funding
Availability (NOFA) for Supportive
Housing for the Elderly**

[Docket No. FR-4052-N-01]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1996.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. This document describes the following: (a) the purpose of the NOFA, and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1-800-685-8470 (the TTY number is 1-800-483-2209); and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4:00 p.m. local time on August 19, 1996. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2502-0267. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102-550, approved October 28, 1992), and by the Rescissions Act (Pub. L. 104-19, approved July 27, 1995). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (now the Federal Deposit Insurance Corporation (RTC/FDIC), to be used as supportive housing for the elderly in accordance with part 891.

Note that on March 22, 1996, HUD published a final rule (61 FR 11948) that consolidated the regulations for the Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities in 24 CFR part 891.

For supportive housing for the elderly, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996)(Act) provides \$ 780,190,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959, (as amended by the NAHA and

HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. In accordance with the waiver authority provided in the Act, the Secretary is extending the determinations made in the Notice published in 61 F.R. 3047 to Fiscal Year 1996 funding by waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to a minimum term of 5 years and a maximum term which can be supported by funds authorized by the Act. The Department anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, the Department will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

Please note that the waiver broadening the eligibility of tenants to persons with incomes at 80 percent of the median or below (61 FR 3047, January 30, 1996) is not being extended to the projects funded in accordance with this NOFA. The statutory provision limiting eligibility to persons with incomes at 50 percent of the median or below remains in effect.

In accordance with an agreement between HUD and the Rural Housing Service (RHS), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly. HUD reserves project rental assistance funds based upon 75 percent of the current operating cost standards to support the units selected for capital advances sufficient for minimum 5-year project rental assistance contracts.

The allocation formula for Section 202 funds consists of a measure of the number of one- and two-person elderly renter households with incomes at or below the very low income limit (50

percent of area median family income, as determined by HUD, with an

adjustment for household size) that have housing deficiencies.

advance funds as shown on the following chart:

Based on the allocation formula, HUD has allocated the available capital

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

[Fiscal Year 1996 Section 202 Allocations]

Offices	Metropolitan capital advance		Nonmetropolitan capital advance		Totals capital advance	
	Authority	Units	Authority	Units	Authority	Units
New England						
Massachusetts	\$16,928,076	209	811,584	10	17,739,660	219
Connecticut	8,469,328	104	811,584	10	9,280,912	114
New Hampshire	3,524,494	55	2,337,888	36	5,862,382	91
Rhode Island	5,056,731	62	811,584	10	5,868,315	72
Total	33,978,629	430	4,772,640	66	38,751,269	496
New York/New Jersey						
New York	46,612,243	574	811,584	10	47,423,827	584
Buffalo	11,833,398	161	2,170,874	29	14,004,272	190
New Jersey	19,404,325	239	0	0	19,404,325	239
Total	77,849,966	974	2,982,458	39	80,832,424	1,013
Mid-Atlantic						
Maryland	6,089,477	88	693,228	10	6,782,705	98
West Virginia	1,547,082	25	1,288,313	21	2,835,395	46
Pennsylvania	15,174,384	201	1,846,426	25	17,020,810	226
Pittsburgh	6,927,904	103	1,460,882	22	8,388,786	125
Virginia	4,786,791	83	1,555,627	27	6,342,418	110
D.C.	6,352,868	89	0	0	6,352,868	89
Total	40,878,506	589	6,844,476	105	47,722,982	694
Southeast/Caribbean						
Georgia	5,480,957	94	2,207,076	38	7,688,033	132
Alabama	4,059,898	72	1,598,816	28	5,658,714	100
Caribbean	4,080,160	50	1,497,853	18	5,578,013	68
South Carolina	3,624,585	59	1,352,145	22	4,976,730	81
North Carolina	6,948,455	97	2,867,705	40	9,816,160	137
Mississippi	1,344,186	25	1,764,272	33	3,108,458	58
Jacksonville	17,575,395	281	1,197,782	19	18,773,177	300
Kentucky	3,714,788	62	1,850,921	31	5,565,709	93
Knoxville	2,526,597	47	862,595	16	3,389,192	63
Tennessee	3,601,685	66	1,266,354	23	4,868,039	89
Total	52,956,706	853	16,465,519	268	69,422,225	1,121
Midwest						
Illinois	20,663,241	262	2,817,536	36	23,480,777	298
Cincinnati	4,878,158	79	615,451	10	5,493,609	89
Cleveland	9,025,257	130	1,300,050	19	10,325,307	149
Ohio	3,649,114	60	1,306,088	21	4,955,202	81
Michigan	9,766,665	138	710,136	10	10,476,801	148
Grand Rapids	3,364,612	56	1,348,633	22	4,713,245	78
Indiana	6,206,555	99	1,687,713	27	7,894,268	126
Wisconsin	7,204,475	104	2,337,209	34	9,541,684	138
Minnesota	6,655,168	92	2,264,831	31	8,919,999	123
Total	71,413,245	1,020	14,387,647	210	85,800,892	1,230
Southwest						
Texas/New Mexico	\$7,008,273	125	1,918,418	34	8,926,691	159
Houston	4,543,462	80	937,853	16	5,481,315	96
Arkansas	2,288,279	45	1,526,086	30	3,814,365	75
Louisiana	4,443,157	82	1,107,452	20	5,550,609	102
Oklahoma	2,971,733	55	1,374,535	25	4,346,268	80
San Antonio	3,705,807	69	903,813	17	4,609,620	86
Total	24,960,711	456	7,768,157	142	32,728,868	598
Great Plains						
Iowa	2,705,698	46	1,814,317	31	4,520,015	77
Kansas/Missouri	4,572,145	77	1,783,825	31	6,355,970	108
Nebraska	1,403,364	25	1,090,587	19	2,493,951	44

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—Continued
 [Fiscal Year 1996 Section 202 Allocations]

Offices	Metropolitan capital advance		Nonmetropolitan capital advance		Totals capital advance	
	Authority	Units	Authority	Units	Authority	Units
St. Louis	4,970,257	74	1,626,892	24	6,597,149	98
Total	13,651,464	222	6,315,621	105	19,967,085	327
Rocky Mountains						
Colorado	6,296,423	98	2,459,438	41	8,755,861	139
Total	6,296,423	98	2,459,438	41	8,755,861	139
Pacific/Hawaii						
Hawaii						
(Guam)	3,043,440	25	1,217,376	10	4,260,816	35
Los Angeles	33,883,830	425	798,058	10	34,681,888	435
Arizona	4,211,257	75	561,346	10	4,772,603	85
Sacramento	5,725,771	73	781,150	10	6,506,921	83
California	18,885,597	238	1,282,883	17	20,168,480	255
Total	65,749,895	836	4,640,813	57	70,390,708	893
Northwest/Alaska						
Alaska	3,043,440	25	1,217,376	10	4,260,816	35
Oregon	4,990,487	74	1,730,664	27	6,721,151	101
Washington	7,168,921	97	1,521,969	21	8,690,890	118
Total	15,202,848	196	4,470,009	58	19,672,857	254
National Total	402,938,393	5,674	71,106,778	1,091	471,370,274	6,726

C. Eligibility

Private, nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in a single geographical region in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition (acquisition permitted only with RTC/FDIC properties) of 200 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD Offices. Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a HUD Office or 125 units, whichever is less. Reservations for projects will not be approved for less than 5 units.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for Section 202 capital advances that are received by HUD at the appropriate address by 4:00 p.m. local time on August 19, 1996, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail and facsimile, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 8 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD-92015-CAs, Articles of Incorporation, IRS exemption rulings, Forms SF-424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 8-day period. These applications will undergo a complete

analysis. If a reviewer finds that clarification is needed to complete the review, or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, lack of site control, and unacceptable site based upon a site visit. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. HUD will afford an applicant 10 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or

technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification in the Application Package. There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in section I.D.3. of this NOFA. Applications, submitted in response to the advertised metropolitan allocations and nonmetropolitan allocations, which have a total score of 60 points or more will be eligible for selection and will be placed in rank order per metropolitan/nonmetropolitan allocation. These applications will be selected based on rank order, to and including the last application that can be funded out of each of the local HUD Office's metropolitan/nonmetropolitan allocations. HUD Offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections in each allocation area, any residual funds may be utilized to fund the next rank-ordered application by reducing the units by no more than 10 percent rounded to the nearest whole

number; provided the reduction will not render the project infeasible. Projects of nine units or less may not be reduced.

Once this process has been completed, HUD Offices may combine their unused metropolitan and nonmetropolitan funds in order to select another application in either category, using the unit reduction policy described above, if necessary.

Funds remaining after these processes are completed will be returned to Headquarters. These funds will be used first to restore units to projects reduced by HUD Offices as a result of the instructions above and, second, for selecting applications on a national rank order. However, no more than one application will be selected per HUD Office from the national residual amount unless there are insufficient approvable applications in other HUD Offices. If funds still remain, additional applications will be selected based on a national rank order, insuring an equitable distribution among HUD Offices.

3. Selection Criteria

Applications for Section 202 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (60 points maximum—55 base points plus 5 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project, and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (30 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (13 points);

(3) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and raise local funds (12 points); and

(4) The Sponsor's involvement of elderly persons, including minority elderly persons, in the development of the application and its intent to involve elderly persons, including minority elderly persons, in the development of the project (5 bonus points);

(b) The need for supportive housing for the elderly in the area to be served and the suitability of the site,

considering the following (30 points maximum—25 base points plus 5 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. HUD will make this determination by considering the Sponsor's evidence of need in the area based on the guidelines in the Application Package, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and RHS) (e.g., considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities, Federally assisted housing for the elderly under construction or for which fund reservations have been issued, and in accordance with an agreement between HUD and the RHS, comments from the RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points).

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (10 points); and

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (7 points).

(4) The project will be located within the boundaries of a Place Based Community Revitalization Area defined as a federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, Urban Enhanced Enterprise Community, or a HUD-approved CDBG neighborhood revitalization strategy area (5 bonus points).

(c) Adequacy of the provision of supportive services and of the proposed facility, considering the following (20 points maximum):

(1) The extent to which the proposed design will meet the special physical needs of elderly persons (3 points);

(2) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (4 points);

(3) The extent to which the proposed design of the housing will accommodate the provision of supportive services that

are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (3 points);

(4) The extent to which the proposed supportive services meet the identified needs of the residents (5 points); and

(5) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent, long-term basis (5 points).

For the selection criterion in b.(4) above, the Secretary's Representative, or the Secretary's Representative in consultation with the State/Area Coordinator, may assign the 5 bonus points to an application if the site for the proposed project is approvable, is located within the boundaries of a Place Based Community Revitalization Area, as defined above, and the locally developed strategy for the area involves items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 10 bonus points for a maximum total of 110 points.

II. Application Process

All applications for Section 202 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4:00 p.m. local time on August 19, 1996, unless that date and time is extended by a Notice published in the Federal Register. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify elderly and minority media, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for elderly households.

Organizations interested in applying for a section 202 capital advance should contact the Multifamily Housing Clearinghouse at 1-800-685-8470 (the TTY number is 1-800-483-2209) for a copy of the application package, and advise the HUD Office whether they wish to attend the workshop described below. HUD encourages minority

organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 202 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, they can obtain Application Packages from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section of this NOFA, above). Contact the appropriate HUD Office with any questions regarding the submission of applications.

At the workshops, HUD will explain application procedures and requirements. HUD will also address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below (with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles), and must be indexed and tabbed. Such previously selected Section 202 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The local HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 202 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications,

applicants will be able to use information and exhibits previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, applicant experience in provision of housing and services, supportive services plan, community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD-92015-CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of *each* Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption.

Note: Sponsors who have received a section 202 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the latest application and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purposes and activities, ties to the community, and minority support, and how long the Sponsor has been in existence (include any additional related information);

(b) A description of Sponsor's housing and/or supportive services experience.

The description should include any rental housing projects and/or medical facilities, sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving the elderly and/or families and minorities;

(c) A description of Sponsor's participation in joint ventures and experience in contracting with minority-owned businesses, women-owned businesses, and small businesses over the last three years, including a description of the joint venture, partners and the Sponsor's involvement and a summary of the total contract amounts awarded in each of the three categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(d) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed \$10,000, if nonaffiliated with a National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed \$25,000, for all other Sponsors;), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as its intent to involve elderly persons in the development of the project.

4. Project information, including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and RHS; e.g., public

housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition, the types of supportive services arrangements currently available in the area and the use of such services as evidenced by data from local social service agencies or agencies on aging.

(b) Description of the project, including the following:

(1) Narrative description of the building design, including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10-20 years.

(2) Describe whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) Evidence of site control and permissive zoning.

(1) Evidence that the Sponsor has entered into a legally binding option agreement (which extends through the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional six months) to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC/FDIC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate

local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 202 project or from any other development team member.

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (e.g., a summary of the results of any requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for the elderly.

(4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(5) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528-93 and E 1527-93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. Sponsors may choose to automatically complete a Phase I Environmental Site Assessment in lieu of completing the Transaction Screen Questionnaire. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site.

Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: This could be an expensive undertaking. The cost of the study will be borne by the sponsor if the application is not selected.

If the Phase II Assessment reveals site contamination, the extent of the contamination, and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1996 funding, this information would have to be submitted to the local HUD Office *no later than 30 days after the application deadline date*.

Note: For properties to be acquired from the RTC/FDIC, include a copy of the RTC/FDIC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC/FDIC Environmental Guidelines.

(6) If applicable, identify whether the site for the proposed project is located within the boundaries of a Place Based Community Revitalization Area, as defined above. If the site is in a Place Based Community Revitalization Area, briefly summarize the locally developed strategy for the area involving items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

(d) Provision of supportive services and proposed facility.

(1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy.

(2) Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(4) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including whether a service coordinator will facilitate the adequate provision of such

services, and how the services will meet the identified needs of the residents.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's Federal Register). Indicate by HUD Office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 1995 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD-2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its applications, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that (a) identifies all persons (families, individuals, businesses, and nonprofit organizations), identified by race/ minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction and other project costs).

9. SF-424. A certification on SF-424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than \$100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than \$100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF LLL form is applicable.

11. Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed

project will be located must be submitted by the Sponsor. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA. The Plan regulations are published in 24 CFR part 91.

12. Sponsor Certifications. (a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600-3619) and the implementing regulations at 24 CFR part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's project design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing

regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 891.155(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 891.305) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

IV. Development Cost Limits

(a) The following development cost limits, adjusted by locality as described in (b) below, shall be used to determine the capital advance amount to be reserved for projects for the elderly:

(1) The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

Non-elevator structures:

- \$28,032 per family unit without a bedroom;
- \$32,321 per family unit with one bedroom;
- \$38,979 per family unit with two bedrooms;

For elevator structures:

- \$29,500 per family unit without a bedroom;
- \$33,816 per family unit with one bedroom;
- \$41,120 per family unit with two bedrooms;

(2) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the accessibility requirements of § 891.120(b); and the project design and cost standards of § 891.120.

(b) Increased development cost limits.

(1) HUD may increase the development cost limits set forth in paragraph (a)(1) of this section by up to 140 percent in any geographic area

where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(2) If HUD finds that high construction costs in Alaska, Guam, Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in this paragraph (a), the amount of the capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

V. Other Matters

A. Environmental Impact

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, SW, Washington, DC 20410. This NOFA only solicits applications for supportive housing for the elderly.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for elderly persons. Since any effect on families is beneficial, this

NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). This final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the Federal Register (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access Requirements

HUD will 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, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will 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 will 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 requirements.)

2. Disclosures

HUD will 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) will 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—will 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.)

E. Prohibition Against Advance Information on Funding Decisions.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR 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 limited 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 (TTY/Voice). (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.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)(the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding \$100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

G. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 27, 1996.

Nicolas P. Retsinas,
Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—New England Area

Connecticut State office

First Floor, 330 Main Street, Hartford, CT
06106-1860, (203) 240-4523

Massachusetts State Office

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA
02222-1092, (617) 565-5234

New Hampshire State Office

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101-2487, (603) 666-7681

Rhode Island State Office

Sixth Floor, 10 Weybosset Street, Providence, RI 02903-3234, (401) 528-5351

HUD—New York, New Jersey Area

New Jersey State Office

Thirteenth Floor, One Newark Center, Newark, NJ 07102-5260, (201) 622-7900

New York State Office

26 Federal Plaza, New York, NY 10278-0068, (212) 264-6500

Buffalo Area Office

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203-1780, (716) 551-5755

HUD—Midatlantic Area

District of Columbia Office

820 First Street, NE., Washington, D.C.
20002-4502, (202) 275-9200

Maryland State Office

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201-2505, (410) 962-2520

Pennsylvania State Office

The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390 (215) 656-0600

Virginia State Office

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230-0331, (804) 278-4507

West Virginia State Office

Suite 708, 405 Capitol Street, Charleston, WV 25301-1795, (304) 347-7000

Pittsburgh Area Office

339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222-2515 (412) 644-6428

HUD—Southeast/Caribbean Area

Alabama State Office

Suite 300,
Beacon Ridge Tower,
600 Beacon Parkway, West,
Birmingham, AL 35209-3144,
(205) 290-7617

Caribbean Office

New San Juan Office Building,
159 Carlos Chardon Avenue,
San Juan, PR 00918-1804,
(809) 766-6121,

Georgia State Office

Richard B. Russell Federal Building,
75 Spring Street, S.W.,
Atlanta, GA 30303-3388,
(404) 331-5136

Kentucky State Office

601 West Broadway,
P.O. Box 1044,
Louisville, KY 40201-1044,
(502) 582-5251

Mississippi State Office

Suite 910,
Doctor A.H. McCoy Federal Building,
100 West Capitol Street,
Jackson, MS 39269-1096,
(601) 965-5308

North Carolina State Office

Koger Building,
2306 West Meadowview Road,
Greensboro, NC 27407-3707,
(919) 547-4001

South Carolina State Office

Strom Thurmond Federal Building,
1835-45 Assembly Street,
Columbia, SC 29201-2480,
(803) 765-5592

Tennessee State Office

Suite 200,
251 Cumberland Bend Drive,
Nashville, TN 37228-1803,
(615) 736-5213

Jacksonville Area Office

Suite 2200,
Southern Bell Tower,
301 West Bay Street,
Jacksonville, FL 32202-5121,
(904) 232-2626

Knoxville Area Office

Third Floor,
John J. Duncan Federal Building,
710 Locust Street,
Knoxville, TN 37902-2526,
(615) 545-4384

HUD—Midwest Area

Illinois State Office

Ralph H. Metcalfe Federal Building,
77 West Jackson Boulevard,
Chicago, IL 60604-3507,
(312) 353-5680

Indiana State Office

151 North Delaware Street,
Indianapolis, IN 46204-2526,

(317) 226-6303
Michigan State Office
Patrick V. McNamara Federal Building,
477 Michigan Avenue,
Detroit, MI 48226-2592,
(313) 226-7900

Minnesota State Office,
220 Second Street, South,
Minneapolis, MN 55401-2195,
(612) 370-3000

Ohio State Office
200 North High Street,
Columbus, OH 43215-2499,
(614) 469-5737

Wisconsin State Office
Suite 1380,
Henry S. Reuss Federal Plaza,
310 West Wisconsin Avenue,
Milwaukee, WI 53203-2289,
(414) 297-3214

Cincinnati Area Office
525 Vine Street,
Seventh Floor,
Cincinnati, OH 45202-3188,
(513) 684-2884

Cleveland Area Office
Fifth Floor,
Renaissance Building,
1350 Euclid Avenue,
Cleveland, OH 44115-1815,
(216) 522-4065

Grand Rapids Area Office
Trade Center Building,
Third Floor,
50 Louis Street, NW,
Grand Rapids, MI 49503-2648,
(616) 456-2100

HUD—Southwest Area

Arkansas State Office
Suite 900,
TCBY Tower,
425 West Capitol Avenue,
Little Rock, AR 72201-3488,
(501) 324-5931

Louisiana State Office
Ninth Floor,
Hale Boggs Federal Building,
501 Magazine Street,
New Orleans, LA 70130-3099,
(504) 589-7200

Oklahoma State Office
500 Main Plaza,
500 West Main Street,
Suite 400,
Oklahoma City, OK 73102-2233,
(405) 553-7400

Texas State Office
1600 Throckmorton Street,
P.O. Box 2905,
Fort Worth, TX 76113-2905,
(817) 885-5401

Houston Area Office
Suite 200,
Norfolk Tower,
2211 Norfolk,
Houston, TX 77098-4096,
(713) 313-2274

San Antonio Area Office
Washington Square,
800 Dolorosa Street,
San Antonio, TX 78207-4563,
(210) 472-6800

HUD—Great Plains

Iowa State Office
Room 239,
Federal Building,
210 Walnut Street,
Des Moines, IA 50309-2155,
(515) 284-4512

Kansas/Missouri State Office
Room 200
Gateway Tower II,
400 State Avenue,
Kansas City, KS 66101-2406,
(913) 551-5462

Nebraska State Office
Executive Tower Centre,
10909 Mill Valley Road,
Omaha, NE 68154-3955,
(402) 492-3100

Saint Louis Area Field Office
Third Floor,
Robert A. Young Federal Building,
1222 Spruce Street,
St. Louis, MO 63103-2836,
(314) 539-6583

HUD—Rocky Mountains Area

Colorado State Office
633 17th Street,
Denver, CO 80202-3607,
(303) 672-5440

HUD—Pacific/Hawaii Area

Arizona State Office
Suite 1600,
Two Arizona Center,
400 North 5th Street,
Phoenix, AZ 85004-2361,
(602) 379-4434

California State Office
Philip Burton Federal Building and U.S.
Courthouse,
450 Golden Gate Avenue,
P.O. Box 36003,
San Francisco, CA 94102-3448,
(415) 436-6532

Hawaii State Office
Suite 500,
7 Waterfront Plaza,
500 Ala Moana Boulevard,
Honolulu, HI 96813-4918,
(808) 522-8175

Los Angeles Area Office
1615 West Olympic Boulevard,
Los Angeles, CA 90015-3801,
(213) 251-7122

Sacramento Area Office
Suite 200,
777 12th Street,
Sacramento, CA 95814-1997,
(916) 498-5220

HUD—Northwest/Alaska Area

Alaska State Office
Suite 401,
University Plaza Building,
949 East 36th Avenue,
Anchorage, AK 99508-4399,
(907) 271-4170

Oregon State Office
400 Southwest Sixth Avenue,
Suite 700,
Portland, OR 97204-1632,
(503) 326-2561

Washington State Office
Suite 200,
Seattle Federal Office Building,
909 First Avenue,
Seattle, WA 98104-1000,
(206) 220-5101

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July 8, 1996

Part III

**Department of
Housing and Urban
Development**

**Supportive Housing for Persons with
Disabilities: Funding Availability; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4053-N-01]

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner; Notice of Funding
Availability (NOFA) for Supportive
Housing for Persons with Disabilities**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1996.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. This document describes the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1-800-685-8470 (the TTY number is 1-800-483-2209); and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4:00 p.m. local time on August 19, 1996. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the

applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2502-0267. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (Pub. L. 101-625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102-550, approved October 28, 1992), and by the Rescissions Act (Pub. L. 104-19, approved July 27, 1995) authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and the HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation, now the Federal Deposit Insurance Corporation (RTC/FDIC), of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

Note that on March 22, 1996, HUD published a final rule (61 FR 11948) that consolidated the regulations for the Section 202 Program of Supportive Housing for the Elderly and the Section

811 Program of Supportive Housing for Persons with Disabilities in 24 CFR part 891.

For supportive housing for persons with disabilities, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996) (Act) provides \$233,168,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA. Twenty-five percent of this amount is being set aside for tenant-based assistance administered through public housing agencies (PHAs) for persons with disabilities and will be announced through a separate Notice in the Federal Register.

In accordance with the waiver authority provided in the Act, the Secretary is extending the determinations made in the Notice published in 61 F.R. 3047 to Fiscal Year 1996 funding by waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to a minimum term of 5 years and a maximum term which can be supported by funds authorized by the Act. The Department anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, the Department will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent. PLEASE NOTE THAT THE WAIVER BROADENING THE ELIGIBILITY OF TENANTS TO PERSONS WITH INCOMES AT 80 PERCENT OF THE MEDIAN OR BELOW (61 F.R. 3047, JANUARY 30, 1996) IS NOT BEING EXTENDED TO THE PROJECTS FUNDED IN ACCORDANCE WITH THIS NOFA. THE STATUTORY PROVISION LIMITING ELIGIBILITY TO PERSONS WITH INCOMES AT 50 PERCENT OF THE MEDIAN OR BELOW REMAINS IN EFFECT.

In accordance with an agreement between HUD and the Rural Housing Service (RHS) (formerly the Administration For Rural Housing and Economic Development Services (ARHEDS)), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to

notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities. HUD reserves project rental assistance funds based upon 75 percent of the current operating cost standards to support the units selected for capital advances sufficient for minimum 5-year project rental assistance contracts.

The allocation formula for Section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and
2. A measure of the number of persons identified as having a work disability.

The Section 811 capital advance funds have been allocated, based on the formula above, to 51 HUD Offices as shown on the following chart:

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES
[Fiscal Year 1996 Section 811 Allocations]

Offices	Capital advance authority	Units
New England:		
Massachusetts	\$2,304,347	30
Connecticut	1,775,776	23
New Hampshire	1,272,707	21
Rhode Island	1,163,556	15
Total	6,516,386	89
New York/New Jersey:		
New York	4,621,108	60
Buffalo	1,907,911	27
New Jersey	2,848,274	37
Total	9,377,293	124
Mid-Atlantic:		
Maryland	1,588,274	24
West Virginia	1,275,059	22
Pennsylvania	2,815,166	39
Pittsburgh	1,686,184	26
Virginia	1,443,678	26
D.C.	1,644,052	24
Total	10,452,413	161
Southeast/Caribbean:		
Georgia	1,872,307	34
Alabama	1,588,206	29
Caribbean	2,065,136	27
South Carolina	1,546,241	26
North Carolina	2,368,371	35

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES—Continued

[Fiscal Year 1996 Section 811 Allocations]

Offices	Capital advance authority	Units
Mississippi	1,280,439	25
Jacksonville	3,308,152	55
Kentucky	1,544,489	27
Knoxville	1,123,096	22
Tennessee	1,213,784	23
Total	17,910,221	303
Midwest:		
Illinois	3,396,420	45
Cincinnati	1,282,225	22
Cleveland	1,997,821	30
Ohio	1,267,812	22
Michigan	2,292,272	34
Grand Rapids	1,179,163	20
Indiana	1,726,524	29
Wisconsin	1,641,472	25
Minnesota	1,589,090	23
Total	16,372,799	250
Southwest:		
Texas/New Mexico	1,960,498	37
Houston	1,495,930	27
Arkansas	1,135,063	24
Louisiana	1,489,983	29
Oklahoma	1,230,229	24
San Antonio	1,350,583	26
Total	8,662,286	167
Great Plains:		
Iowa	1,178,380	21
Kansas/Missouri	1,426,009	25
Nebraska	804,793	15
St. Louis	1,524,072	24
Total	4,933,254	85
Rocky Mountains:		
Colorado	1,664,893	28
Total	1,664,893	28
Pacific/Hawaii:		
Hawaii		
(Guam)	1,745,334	15
Los Angeles	4,776,022	63
Arizona	1,258,733	23
Sacramento	1,558,476	21
California	2,972,723	39
Total	12,311,288	161
Northwest/Alaska:		
Alaska	1,745,334	15
Oregon	1,467,167	23
Washington	1,687,959	24
Total	4,900,460	62
National Total ...	93,101,293	1,430

C. Eligibility

Nonprofit organizations that have a Section 501(c)(3) tax exemption from the Internal Revenue Service are the only eligible applicants under this program. A single Sponsor shall not request more units in a given HUD

Office than permitted for that HUD Office in this NOFA.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening.

HUD will review applications for section 811 capital advances that HUD receives at the appropriate address by 4:00 p.m. local time on August 19, 1996, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail and facsimile, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 8 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD-92016-CAs, Articles of Incorporation, IRS exemption rulings, Forms SF-424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing.

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 8-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 only on those applications containing satisfactory evidence of site control. (Applications selected with sites identified will receive environmental reviews after submission to HUD of satisfactory evidence of site control and prior to approval of the sites.)

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, insufficient need for the project, insufficient evidence that the Sponsor will obtain control of the identified site

within six months of fund reservation award if the Sponsor did not submit site control evidence with its application, the project will adversely affect other HUD insured and assisted housing or an unsatisfactory Supportive Services Certification by the appropriate State or local agency.

The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons and affording the applicant an opportunity to appeal. HUD will afford an applicant 10 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification in the Application Package. There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection

criteria in section I.D.3. below. Applications that have a total score of 60 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections, any residual funds may be utilized to fund the next rank-ordered application by reducing the units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. Projects of nine units or less may not be reduced.

Funds remaining after this process is completed will be returned to Headquarters. These funds will be used first to restore units to projects reduced by HUD Offices as a result of the instructions above and, second, for selecting applications on a national rank order. However, no more than one application will be selected per HUD Office from the national residual amount unless there are insufficient approvable applications in other HUD Offices. If funds still remain, additional applications will be selected based on a national rank order, insuring an equitable distribution among HUD Offices.

3. Selection Criteria.

Applications for Section 811 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (70 points maximum—60 base points plus 10 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (32 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (13 points);

(3) Applications submitted by Sponsors whose boards are comprised of at least 51 percent consumers with disabilities (5 bonus points);

(4) The extent of local community support for the project and for the Sponsor's activities, including previous

experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to raise local funds (15 points); and

(5) The Sponsor's involvement of persons with disabilities (including minority persons with disabilities) in the development of the application, and its intent to involve persons with disabilities (including minority persons with disabilities) in the implementation of the program (5 bonus points).

(b) The need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control, suitability of the site, and the design of the project, considering (55 points maximum—40 base points plus 15 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. This determination will be made by considering the Sponsor's evidence of need in the area based on the guidelines in the Application Package, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and RHS) for persons with disabilities and current occupancy in such facilities, Federally assisted housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and RHS, comments from RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points);

(2) Applications containing acceptable evidence of control of an approvable site (10 bonus points);

(3) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended tenants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (site control projects only); and compliance with the site and neighborhood standards (15 points);

(4) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons with disabilities (7 points);

(5) The extent to which the proposed design will meet any special needs of persons with disabilities the housing is intended to serve (10 points); and

(6) The project will be located within the boundaries of a Place Based Community Revitalization Area defined as a Federally-designated Empowerment

Zone, Urban Supplemental Empowerment Zone, Enterprise Community, Urban Enhanced Enterprise Community, or a HUD-approved CDBG neighborhood revitalization strategy area (5 bonus points).

For the selection criterion in (6) above, the Secretary's Representative, or the Secretary's Representative in consultation with the State/Area Coordinator, may assign the 5 bonus points to an application if the site under control for the proposed project is approvable, is located within the boundaries of a Place Based Community Revitalization Area, as defined above, and the locally developed strategy for the area involves items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 25 bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 811 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4:00 p.m. local time on August 19, 1996, unless that date and time is extended by a Notice published in the Federal Register. HUD will not accept applications received after that date and time, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for disabled households.

Organizations interested in applying for a Section 811 capital advance should contact the Multifamily Housing Clearinghouse at 1-800-685-8470 (the TTY number is 1-800-483-2209) for a copy of the Application Package, and advise the appropriate HUD Office if they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place

of workshops at which HUD will explain the Section 811 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can also be obtained from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section, above). However, Sponsors must contact the appropriate HUD Office with any questions regarding the submission of applications and for any additional application requirements.

At the workshops, HUD will distribute Application Packages and will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below, of this NOFA (with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding cycles), and must be indexed and tabbed. Such previously selected Section 811 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below, of this NOFA (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 811 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office. In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously

prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties; and experience serving minorities.

B. General Application Requirements

1. Form HUD-92016-CA, Application for Section 811 Supportive Housing Capital Advance.

Note: A sponsor may apply for a Scattered site Project in one application.

2. Evidence of *each* Sponsor's legal status as a nonprofit organization, including the following:

- (a) Articles of Incorporation, constitution, or other organizational documents;
- (b) By-laws;
- (c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches).

Note: Sponsors who have received a section 811 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the latest application submitted and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term.

(e) The number of people on the Sponsor's board and the number of those people who are consumers with disabilities.

3. Sponsor's purpose, community ties, and experience, including the following:

- (a) Description of Sponsor's purpose and current activities;
- (b) Description of Sponsor's ties to the community at large and to the disabled community in particular;
- (c) Description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects (including integrated housing developments) and/

or medical facilities sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving persons with disabilities and minorities.

(d) A description of Sponsor's participation in joint ventures and experience in contracting with minority-owned businesses, women-owned businesses, and small businesses over the last three years, including a description of the joint venture, partners and the Sponsor's involvement and a summary of the total contract amounts awarded in each of the three categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(e) A certified Board Resolution acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed \$10,000), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance;

(f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application, as well as its intent to involve persons with disabilities in the implementation of the program.

4. Project information including the following:

(a) Evidence of need for supportive housing. An identification of the proposed population and evidence demonstrating sustained effective demand for the housing for the proposed population in the area to be served, such as a description of market conditions in existing Federally assisted housing for persons with disabilities (occupancy, waiting lists, etc.), State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies.

(b) Description of the project, including the following:

(1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities, and resident staff per structure.

(2) An identification of all community spaces, amenities, or features planned for the housing. A description of how the spaces, amenities, or features will be used, and the extent to which they are necessary to accommodate any special needs of the proposed residents. If these community spaces, amenities, or features would not comply with the project design and cost standards of § 891.120 and the special project standards of § 891.310, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and

(3) Description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in section IV.C., below, of this NOFA) that includes:

(1) A detailed description of whether the housing is intended to serve persons with physical, mental, or emotional impairments, developmental disabilities, or chronic mental illness. Include how and from whom/where persons will be referred and admitted to the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, no otherwise qualified individual, regardless of disability, may be denied occupancy if the person can benefit from the housing and/or services provided.

(2) A detailed description of any supportive service needs of the proposed population and the extent to which the supportive services will be needed.

(3) The manner in which such services will be provided, either by residents taking responsibility for acquiring their own services, to the extent needed, on an individual basis, or by a comprehensive service plan organized by the Sponsor.

(4) If services will be organized or provided by the Sponsor, include the following:

(i) The name(s) of the agency(s) (if other than the Sponsor) that will be responsible for providing the supportive services;

(ii) The evidence of each service provider's capability and experience in providing such supportive services;

(iii) A description of how, when, how often, and where (on/off-site) the services will be provided;

(iv) A description of residential staff, if needed;

(v) Identification of the extent of State and local funds to assist in the provision of supportive services;

(vi) Letters of intent from service providers or funding sources, indicating commitments to fund or to provide the supportive services, or indication that a particular service will be available to proposed residents. If the Sponsor will be providing any supportive services or will be coordinating the provision of any of the supportive services, a letter indicating its commitment to either provide the supportive services or ensure their provision for the life of the project;

(vii) If any State or local government funds will be provided, a description of the State or local agency's philosophy/policy concerning residential facilities for the population to be served, and a demonstration by the Sponsor that the application is consistent with State or local plans and policies governing the development and operation of facilities for the same disabled population.

(5) If the proposed residents will be taking responsibility for acquiring their own supportive services, a description of appropriate services in the community from which the residents can choose.

(6) Assurances that the proposed residents will receive supportive services based on their individual needs, and a commitment that accepting supportive services will not be a condition of occupancy.

(7) Form HUD-92013E, Supplemental Application Processing Form—Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(d) Supportive Services Certification. A certification from the appropriate State or local agency identified in the Application Package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, that the necessary supportive services will be provided on a consistent, long-term basis, and that the proposed facility is consistent with

State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category. (The name, address, and telephone number of the appropriate agency can be obtained from the appropriate HUD Office.)

(e) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding).

(1) If the Sponsor has control of the site, it must submit the following information:

(i) Evidence that the Sponsor has entered into a legally binding option agreement (which extends through the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional six months) to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC/FDIC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 811 capital advance, and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 811 project or from any other development team member.

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (e.g., a summary of the results of any requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications or acceptability from zoning bodies, etc.).

(iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities and including:

(A) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation;

(B) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(C) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528-93 and E 1527-93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. Sponsors may choose to automatically complete a Phase I Environmental Site Assessment in lieu of completing the Transaction Screen Questionnaire. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: This could be an expensive undertaking. The cost of the study will be borne by the sponsor if the application is not selected.

If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1996 funding, this information would have to be submitted to the local HUD Office *no later than thirty days after the application submission deadline date.*

Note: For properties to be acquired from the RTC/FDIC, include a copy of the RTC/FDIC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC/FDIC Environmental Guidelines.

(D) If an exception to the project size limits found in section IV.D., below, of this NOFA is being requested, describe why the site was selected and demonstrate the following:

(i) The increased number of people is necessary for the economic feasibility of the project;

(ii) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(iii) The increased number of people will not prohibit their successful integration into the community;

(iv) The project is marketable in the community;

(v) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population; and

(vi) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(D) If applicable, identify whether the site for the proposed project is located within the boundaries of a Place Based Community Revitalization Area, as defined above. If the site is in a Place Based Community Revitalization Area, briefly summarize the locally developed strategy for the area involving items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

(2) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(i) A description of the location of the site, including its street address and unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities;

(ii) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(iii) An indication as to whether the site is properly zoned. If it is not, an indication of the actions necessary for proper zoning and whether these can be accomplished within six months of fund reservation award, if approved for funding;

(iv) A status of the sale of the site; and

(v) An indication as to whether the site would involve relocation.

(f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, any sources of local funds to serve the project, minority support, and how long the Sponsor has been in existence (include any additional related information).

(g) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(1) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies;

(2) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(3) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency, and where the services are to be provided;

(4) Description of any special design features proposed for the group home that are not common to other Section 811 group homes for the proposed population, and the Sponsor's rationale for including them;

(5) Written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution to rent

and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner; and

(6) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for the Elderly (published elsewhere in today's Federal Register). Indicate, by HUD Office, the number of units requested and the proposed location by city and State for each application. Also, a list of all FY 1995 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD-2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that: (a) identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: If any of the relocation costs will be funded from sources other than the section 811 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of site acquisition, relocation, construction and other project costs).

9. SF-424. A certification on SF-424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than \$100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than \$100,000 and the applicant has made or has agreed to make any payment using

nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF LLL is applicable.

11. Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this NOFA. The Plan regulations are published in 24 CFR part 91.

12. Sponsor Certifications

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600-3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's project design and cost standards and special project standards; the Uniform Federal

Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 891.155(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 891.305) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

(f) A certification that the Sponsor will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in 24 CFR 891.325).

(g) A certification that the Sponsor will not require residents to accept any supportive services as a condition of occupancy.

IV. Additional Information

A. Development Cost Limits

(a) The following development cost limits, adjusted by locality as described in (b) below, shall be used to determine the capital advance amount to be reserved for projects for persons with disabilities:

(1) *For independent living facilities:* The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

- Non-elevator structures:*
- \$28,032 per family unit without a bedroom;
- \$32,321 per family unit with one bedroom;
- \$38,979 per family unit with two bedrooms;
- \$49,893 per family unit with three bedrooms;

\$55,583 per family unit with four bedrooms.

For elevator structures:

- \$29,500 per family unit without a bedroom;
- \$33,816 per family unit with one bedroom;
- \$41,120 per family unit with two bedrooms;
- \$53,195 per family unit with three bedrooms;
- \$58,392 per family unit with four bedrooms.

(2) *For group homes only:*

Number residents	Type of Disability	
	Physical/developmental	Chronic mental illness
3	\$128,710	\$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450
7	162,876	153,576
8	168,126	157,731

These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 891.310(a); the accessibility requirements of §§ 891.120(b) and 891.310(b); and the project design and cost standards of § 891.120.

(b) Increased development cost limits.

(1) HUD may increase the development cost limits set forth in paragraphs (a) (1) and (2) above by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(2) If HUD finds that high construction costs in Alaska, Guam, Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in paragraphs (a) (1) and (2) of this section, the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(3) For group homes only, HUD Offices may approve increases in the development cost limits in paragraph (a)(2) above, in areas where Sponsors can provide sufficient documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of

at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area where the project is to be built. The average cost of the documented sales must exceed seven percent of the development cost limit for which the project in question is eligible in order for an increase to be considered.

B. Sites

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within six months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in the Application Package. If it does not have site control, it must provide the information required in the application for identified sites as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site is not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will have 10 bonus points added to the rating of their applications. Sponsors submitting proper identification of a site will not be eligible for the 10 bonus points.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification.

In the case of a scattered site application submitted with evidence of site control for all of the sites, the evidence must be satisfactory for each site, and all the sites must be approvable for the application to receive the 10 bonus points for site control. The same applies to a scattered site application in which the Sponsor has control of some of the sites but has only identified

others. It would also not be eligible for the 10 bonus points for site control.

C. Supportive Services

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to include a supportive services plan and a certification from the appropriate State or local agency that the provision of services identified in the supportive services plan is well designed to serve the special needs of persons with disabilities. Paragraph III.B.4.(c) above outlines the information that must be in the Supportive Services Plan. Sponsors must submit one copy of their Supportive Services Plans to the appropriate State or local agency well in advance of the application submission deadline date in order for the State or local agency to review the Supportive Services Plan and complete the Supportive Services Certification (Paragraph III.B.4(d) above, to be supplied by the Sponsor from the Application Package received from the HUD Office) and return it to the Sponsor for inclusion with the application submission to HUD.

Since the appropriate State or local agency will review the Supportive Services Plan on behalf of HUD, the Supportive Services Certification, in addition to the indication as to whether the provision of supportive services is well designed, will indicate whether the Sponsor demonstrated that necessary supportive services will be provided on a consistent, long-term basis. If HUD receives an application in which the Supportive Services Certification is missing, is received by HUD after the deficiency period, or indicates that either the provision of services is *not* well designed to meet the special needs of persons with disabilities, the proposed facility is not consistent with the agency's plans/policies governing the development and operation of facilities to serve the proposed population and the agency will be a major funding or referral source for the proposed project, or that the Sponsor failed to demonstrate that any necessary services will be provided on a consistent, long-term basis, the application shall be rejected.

HUD recognizes that there will be varying degrees of need for supportive services by the potential residents of Section 811 housing, even to the degree of needing no special services at all. Sponsors must describe this in the application, in Exhibit 4. A Sponsor proposing to serve persons with disabilities who need few, if any, special services will not have its application penalized as a result. In

addition, Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

D. Project Size Limits

1. *Group home*—The minimum number of persons with disabilities that can be housed in a group home is three and the maximum number is eight.

2. *Independent living facility*—The minimum number of units that can be applied for in one application is five. The maximum number of persons with disabilities that can be housed in an independent living facility is 24.

3. *Exceptions*—Sponsors may request an exception to the above project size limits by providing the information required in the Application Package and as outlined in section III. B. 4.(e)(iii)(D) above.

V. Other Matters

A. Environmental Impact

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, SW, Washington, DC 20410. This NOFA announces the availability of funds for supportive housing for persons with disabilities.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive

housing for persons with disabilities. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). This final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the Federal Register (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access Requirements

HUD will 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, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will 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 will 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 requirements.)

2. Disclosures

HUD will 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) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All report—both applicant disclosures and updates—will 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.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR 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 limited 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 (TTY/Voice). (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.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no Federal funds have been or will be spent

on lobbying activities in connection with the assistance.

G. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number are 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, as amended (42 U.S.C. 1803), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—New England Area

Connecticut State Office, First Floor, 330 Main Street, Hartford, CT 06106-1860, (203) 240-4523

Massachusetts State Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222-1092, (617) 565-5234

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101-2487, (603) 666-7681

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903-3234, (401) 528-5351

HUD—New York, New Jersey Area

New Jersey State Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102-5260, (201) 622-7900

New York State Office, 26 Federal Plaza, New York, NY 10278-0068, (212) 264-6500

Buffalo Area Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203-1780, (716) 551-5755

HUD—MIDATLANTIC AREA

District of Columbia Office, 820 First Street, NE, Washington, D.C. 20002-4502, (202) 275-9200

Maryland State Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201-2505, (410) 962-2520

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390, (215) 656-0600

Virginia State Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230-0331, (804) 278-4507

West Virginia State Office, Suite 708, 405 Capitol Street, Charleston, WV 25301-1795, (304) 347-7000

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222-2515, (412) 644-6428

HUD—Southeast/Caribbean Area

Alabama State Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209-3144, (205) 290-7617

Caribbean Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918-1804, (809) 766-6121

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303-3388, (404) 331-5136

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201-1044, (502) 582-5251

Mississippi State Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269-1096, (601) 965-5308

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407-3707, (919) 547-4001

South Carolina State Office, Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, SC 29201-2480, (803) 765-5592

Tennessee State Office, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228-1803, (615) 736-5213

Jacksonville Area Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202-5121, (904) 232-2626

Knoxville Area Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902-2526, (615) 545-4384

HUD—Midwest Area,

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 353-5680

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204-2526, (317) 226-6303

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226-2592, (313) 226-7900

Minnesota State Office, 220 Second Street, South, Minneapolis, MN 55401-2195, (612) 370-3000

Ohio State Office, 200 North High Street, Columbus, OH 43215-2499, (614) 469-5737

Wisconsin State Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2289, (414) 297-3214

Cincinnati Area Office, 525 Vine Street, Seventh Floor, Cincinnati, OH 45202-3188, (513) 684-2884

Cleveland Area Office, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115-1815, (216) 522-4065

Grand Rapids Area Office, Trade Center Building, Third Floor, 50 Louis Street, NW, Grand Rapids, MI 49503-2648, (616) 456-2100

HUD—Southwest Area

Arkansas State Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201-3488, (501) 324-5931

Louisiana State Office, Ninth Floor, Hale Boggs Federal Building, 501 Magazine

Street, New Orleans, LA 70130-3099, (504) 589-7200

Oklahoma State Office, 500 Main Plaza, 500 West Main Street, Suite 400, Oklahoma City, OK 73102-2233, (405) 553-7400

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113-2905, (817) 885-5401

Houston Area Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098-4096, (713) 313-2274

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207-4563, (210) 472-6800

HUD—Great Plains

Iowa State Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309-2155, (515) 284-4512

Kansas/Missouri State Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406, (913) 551-5462

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154-3955, (402) 492-3100

Saint Louis Area Field Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103-2836, (314) 539-6583

HUD—Rocky Mountains Area

Colorado State Office, 633 17th Street, Denver, CO 80202-3607, (303) 672-5440

HUD—Pacific/Hawaii Area

Arizona State Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004-2361, (602) 379-4434

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102-3448, (415) 436-6532

Hawaii State Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813-4918, (808) 522-8175

Los Angeles Area Office, 1615 West Olympic Boulevard, Los Angeles, CA 90015-3801, (213) 251-7122

Sacramento Area Office, Suite 200, 777 12th Street, Sacramento, CA 95814-1997, (916) 498-5220

HUD—Northwest/Alaska Area

Alaska State Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508-4399, (907) 271-4170

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204-1632, (503) 326-2561

Washington State Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104-1000, (206) 220-5101.

[FR Doc. 96-17260 Filed 7-5-96; 8:45 am]

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Federal Register

Monday
July 8, 1996

Part IV

**Department of
Energy**

**Office of Energy Efficiency and
Renewable Energy**

**10 CFR Parts 420 and 450
State Energy Conservation Program;
Interim Rule**

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Parts 420 and 450**

[Docket No. EE-RM-96-402]

RIN 1904-AA81

State Energy Conservation Program**AGENCY:** Office of Energy Efficiency and Renewable Energy.**ACTION:** Interim final rule with opportunity to comment.

SUMMARY: The Department of Energy (Department or DOE) amends the regulations for the State Energy Conservation Program to provide for the consolidation of two formula grant programs—the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP). DOE removes prescriptive energy audit procedures that are no longer needed and conflict with the President's regulatory reform program. DOE is also incorporating in this rule provisions for competitively awarded financial assistance for a number of State-oriented special project activities.

DATES: This rule is effective July 8, 1996. Written comments [six copies and, if possible, a computer disk] on the interim final rule must be received by DOE no later than August 7, 1996, to ensure their consideration.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 8, 1996.

ADDRESSES: All written comments (six copies) are to be submitted to: Thomas P. Stapp, U.S. Department of Energy, Office of Building Technology, State and Community Programs, EE-44, Docket Number EE-RM-96-402, 1000 Independence Avenue, S.W., Washington, DC, 20585, (202) 586-2096.

Copies of the comments, as well as other parts of the record, will be available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-6020.

Copies of the material to be incorporated by reference are available from:

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, (404) 636-8400;

The Illuminating Engineering Society of North America (IESNA), 345 East 47th Street, New York, New York 10017, (212) 705-7913; and

The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931-4533.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Opportunity for Public Comment."

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5G-063, EE-44, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-2096.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Description of the Program
- II. Rationale for Interim Final Rulemaking
- III. The Revisions to the Rule
- IV. Opportunity for Public Comment
- V. Review Under Executive Order 12612
- VI. Review Under Executive Order 12866
- VII. Review Under Executive Order 12988
- VIII. Unfunded Mandate Review
- IX. Review Under the Regulatory Flexibility Act
- X. Review Under the Paperwork Reduction Act
- XI. Review Under the National Environmental Policy Act
- XII. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- XIII. The Catalog of Federal Domestic Assistance

I. Introduction and Description of the Program

The conference report accompanying the Balanced Budget Down Payment Act II of 1996, Public Law 104-134, (H.R. Conf. Rept. No. 537, 104th Cong., 2d Sess. (1996)), provided the Department with the opportunity to consolidate two of its formula grant programs consistent with recommendations made in an earlier conference report (H.R. Conf. Rept. No. 402, 104th Cong., 1st Sess. 60 (1995)), which accompanied the Interior and Related Agencies Appropriations Bill, 1996 (H.R. 1977, 104th Cong., 1st Sess. (1995)). Congress, in that earlier report, recommended such a consolidation to provide a more flexible program to be operated by the States. The Department is hereby following that recommendation by consolidating the State Energy Conservation Program (42 U.S.C. 6321 *et seq.*) and the Institutional Conservation Program (42 U.S.C. 6371 *et seq.*) under the name "State Energy Program (SEP)". These two components will constitute the formula grants part of SEP. In the other part of SEP, DOE is providing for financial assistance for a

number of State-oriented competitively awarded special project activities.

The State Energy Program Formula Grants

The approach used to apply for and implement the activities formerly funded under ICP regulations (10 CFR part 455) will be different under SEP. The process for applying for the types of activities formerly funded under SECP will essentially stay the same, and will become the standard approach.

DOE encourages all States to consider including ICP-type activities in their SEP State Plans in 1996 and future years, as appropriate. Following are brief explanations of how the component programs under the formula grants will work in the SEP context.

The State Energy Conservation Program

This program provides grants to States for a wide range of energy-related projects, and such projects will continue to be eligible for funding under SEP, using the same application process, and following the same programmatic requirements. This rulemaking is based on the SECP rule and makes only a few revisions to the SECP process, as discussed further in this document.

The Institutional Conservation Program

This program provides grants both to schools and hospitals for a variety of energy conservation measures and technical audits of buildings, and to States to administer the program and, since 1993, to provide specialized assistance to institutions. States wishing to continue to undertake such activities under SEP will apply to do so under the rule published today. Grants will no longer be issued by DOE to individual schools and hospitals; the activities would now be covered under one or more of the program activities under the SEP grant to the State, and the State would then provide the funding to the institutions using the financial mechanisms specified in its approved State Plan. The State would also specify the requirements it will place on its schools and hospitals applicants. The regulations covering ICP (10 CFR Part 455) will not apply to grants issued under SEP but States are free to adopt any of the requirements in those regulations to cover ICP-type activities under SEP. ICP-type activities also continue to be eligible for funding under the various Petroleum Violation Escrow (PVE) settlements.

For fiscal year 1996 Congress consolidated the funding for ICP and SECP. DOE believes that having these two programs consolidated into the State Energy Program Formula Grants

part of SEP will make it easier for States to apply for grants and more efficient for both DOE and the States to manage the grants. It should also simplify the process for the ultimate recipients of assistance, such as schools and hospitals, which will now be able to receive assistance directly from their States, rather than from DOE.

Special Projects Financial Assistance

Financial assistance for the special projects now being provided for in this rulemaking covers a range of State-oriented activities to be offered as options in years when funding is available. States will be invited to apply for any of a range of potential activities announced for the fiscal year concerned. The announcement will be made in special project notices of funding availability published in the Federal Register, and in detailed program guidance/solicitation documents.

Activities may include, but may not be limited to, new State-oriented programs based on existing DOE initiatives such as Motor Challenge, Climate Wise, Clean Cities, Rebuild America, and the Federal Energy Management Program, as well as programs for updating State and local government building energy codes.

DOE would then make its selection of projects based on the results of the technical evaluations and on each State's expressed interests/priorities, DOE's priorities, the amount of funding requested, geographical diversity, the responsiveness of the applications to the purposes, requirements and program policy selection factors specified in the special projects guidance/solicitation, and the total funds available for each type of project.

Providing for these projects to be undertaken as part of SEP will result in a more efficient vehicle for funding these more specialized activities, some of which may be new initiatives, and some of which were formerly funded separately. The rationale for covering these projects in a separate part of the rule, and for using a different approach for the application process, is that appropriations for these projects are from a variety of sources different from the source for the formula grants, and the funding must, therefore, be separately tracked. Projects approved for funding will be handled as amendment(s) to the SEP grant.

Energy Audit Procedures and List of Measures

Consistent with section 365(e) of the Energy Policy and Conservation Act (EPCA or the Act), 42 U.S.C. 6325(e), in the late 1970's DOE issued prescriptive

regulations, codified at 10 CFR part 450, containing a list of energy conservation measures and detailed energy audit procedures. The list of measures is no longer needed because the programs that utilized them have not been funded for more than 10 years. Prescriptive energy audit procedures are no longer needed for SEP because States are familiar with developing such procedures in light of their particular facts and circumstances. In lieu of prescriptive regulations, DOE will be providing informally energy audit guidance for States to consider and apply as they deem appropriate. This approach is consistent with the President's regulatory reform program which emphasizes removal of unnecessary categorical requirements in State grant programs.

II. Rationale for Interim Final Rulemaking

In ordinary circumstances, DOE provides an opportunity for public comment prior to making significant final changes in the rules for financial assistance programs. Similarly, DOE ordinarily provides for an effective date 30 days or more following the date of publication so that affected entities have an opportunity to learn of changes and prepare to comply. However, the unusual and extended delay in the enactment of the 1996 appropriation for the State energy conservation grants subject to today's interim rule necessitates that DOE make expedited regulatory changes in order to facilitate early completion of necessary pre-award DOE activities and State plan amendments in light of the decrease in Federal funds for FY 1996. If the appropriation had been enacted on or about October 1, 1995 (the beginning of FY 1996) rather than April 25, 1996, then there would have been enough time for DOE to conduct a normal notice and comment rulemaking, to issue annual grant guidance on applying for funds to the States, and to review State plans and award grants. There would also have been ample time for States to develop and submit their plans reflecting a significant downsizing of their programs and for their employees to begin making appropriate personal plans where necessary.

Although the magnitude of the funding reduction has been apparent for some time, DOE had to delay regulatory revisions until an appropriation act became law. It is now so late in FY 1996, which ends on September 30, 1996, that significant delay in changing existing rules could pressure the States into making hasty and ill-considered changes to their programs that would be

highly disruptive. DOE has extensively and informally consulted with the States on the content of today's rule and has reason to believe that it will prove broadly acceptable. In any event, adjustments, if warranted, will be made in the notice of final rulemaking that responds to comments on today's notice and will apply to funds for FY 1997 and thereafter. Simultaneous with publication of this rule, DOE is sending a copy of this notice to each State so that they will be aware of the revised regulations in time to comply. On the basis of the foregoing, DOE has decided to waive prior notice and opportunity for public comment because issuance of a notice of proposed rulemaking is impracticable and contrary to the public interest. For the same reasons, DOE is making today's interim final rule effective immediately.

III. The Revisions to the Rule

List of Subparts and Sections

To provide for the different approaches for the State Energy Program Formula Grants and the special projects financial assistance, DOE has divided the rule into three subparts. Subpart A covers the general provisions for all financial assistance under the program, subpart B covers the Formula Grant procedures, and subpart C covers the implementation of special projects financial assistance.

With the exceptions of § 420.1, § 420.2, § 420.3 (formerly § 420.13), § 420.4 (formerly § 420.10), and § 420.5 (formerly § 420.11), now in subpart A, the sections now found under subpart B comprised the entire former rule. Those sections have been rearranged and in some cases revised to improve the organization of the rule and to accommodate the new subpart format. The new arrangement (with former section numbers noted, if there has been a change) is as follows:

Subpart A—General Provisions for State Energy Program Financial Assistance

- 420.1 Purpose and scope. (same)
- 420.2 Definitions. (same)
- 420.3 Administration of financial assistance. (formerly § 420.13)
- 420.4 Technical assistance. (formerly § 420.10)
- 420.5 Reports. (formerly § 420.11)
- 420.6 Reference sources. (new)

Subpart B—State Energy Program Formula Grant Procedures

- 420.10 Purpose. (new)
- 420.11 Allocations among the States. (formerly part of § 420.3)
- 420.12 State matching contribution. (formerly part of § 420.3)
- 420.13 Annual State applications and State plans. (formerly § 420.4)

- 420.14 Review and approval of annual State applications and State plans. (formerly § 420.5)
- 420.15 Minimum criteria for required program activities for plans. (formerly § 420.6)
- 420.16 Extensions for compliance with required program activities. (formerly § 420.8)
- 420.17 Optional elements of State Energy Program plans. (formerly § 420.7)
- 420.18 Expenditure prohibitions and limitations. (formerly § 420.12)
- 420.19 Administrative review. (formerly § 420.9)

Throughout the rule cross-references have been revised to reflect the new section numbers. Subpart C has been added to the rule to provide for financial assistance for the new special projects. This subpart, with its respective sections, is as follows:

Subpart C—Implementation of Special Projects Financial Assistance

- 420.30 Purpose and scope.
- 420.31 Notice of availability.
- 420.32 Program guidance/solicitation.
- 420.33 Application requirements.
- 420.34 Matching contributions or cost sharing.
- 420.35 Application evaluation.
- 420.36 Evaluation criteria.
- 420.37 Selection.

Subpart A—General Provisions for State Energy Program Financial Assistance

Section 420.1 Purpose and scope

This section has been substantially reduced by eliminating the first sentence of paragraph (a) and all of paragraph (b) and moving paragraph (c) to new § 420.13. The second sentence of paragraph (a) is all that remains, modified to add the reduction of dependence on imported oil as a purpose of the program and to refer to the new State Energy Program name. The deleted wording from paragraphs (a) and (b) was essentially redundant. Former paragraph (c) more appropriately belongs under the section on State applications.

Section 420.2 Definitions

A definition for “alternative transportation fuel” has been added to reflect the program’s renewed emphasis on reducing dependence on imported oil. The text of the definition is based on the definition of alternative transportation fuel in section 301 of the Energy Policy Act of 1992 (Pub. L. 102–486).

The definition for “ASHRAE 90–75” has been deleted because it is now obsolete.

The definition of “ASHRAE/IESNA 90.1–1989” has been revised to add “NA” after “IES”, to add “as amended,” to add the Illuminating Engineering

Society of North America as co-publisher, and to reference addenda to be used as part of this standard and to cite the authority for incorporation by reference.

The definition of “Assistant Secretary” has been revised to reflect the new name of the organization, Energy Efficiency and Renewable Energy.

The definition of “Btu” has been deleted because it is more completely defined under “British thermal unit.”

The definition for “building” has been revised to include the exempted buildings formerly included under the definition of “exempted building” which has been deleted.

The definition of “CABO MEC–89” has been deleted because it is out of date; Model Energy Code, 1993 is the version of this standard that should now be used.

The definition for “Deputy Assistant Secretary” has been revised to reflect a reorganization within DOE whereby the Deputy Assistant Secretary for Building Technology, State and Community Programs has assumed responsibility for SEP.

A definition for “Director, State and Community Programs” has been added to provide for this position which has responsibility for DOE’s formula grants to States.

The definition of “energy audit” has been revised primarily to delete the reference to 10 CFR part 450 which has been removed for reasons discussed above, under Energy Audit Procedures and list of measures.

A definition for “energy conservation measure” has been added, to provide for this type of activity which may be more important under SEP now that ICP is included in the program. This definition is based on the one in Section 366 of the Act, 42 U.S.C. 6326 (4). As a conforming change, this term has been substituted for the term “energy conservation building retrofit” wherever that term appeared in the existing rule.

The definition for “exempted building” has been deleted, with types of buildings formerly listed under that definition moved to the definition of “building.”

The definition for “Governor” has been revised to conform to the definition of “State.”

The definition for “HUD minimum property standards” has been deleted because it is out of date. The Model Energy Code, 1993 should now be used instead.

The definition for “industrial plant” is being revised to “industrial facility” because that is the term now used in the rule.

The definition for “major building type” is being deleted because the term is no longer used in the rule.

A definition for “Model Energy Code, 1993” has been added. This standard replaces the former “CABO MEC–89,” which has been deleted, as previously discussed.

The definition for “National energy conservation program” is being deleted because it is no longer used in the rule.

The definition for “petroleum violation escrow funds” has been revised to clarify that the matching requirements referred to are only found in § 420.12 (formerly § 420.3(e)), whereas under § 420.18(b) (formerly § 420.12(b)), there are cost limitations.

The definition of “plan” has been revised to refer to the new State Energy Program.

The definition for “program measure” has been revised to replace the word “measure” with the word “activity.” The term “program activity” now covers what were formerly referred to as “program measures” in some parts of the rule and “programs” in other parts of the rule.

Under the definition of “public building,” a new subparagraph(e) has been added to include public and private non-profit schools and hospitals, reflecting the consolidation of ICP into SEP.

The definition of “renewable-resource energy measure” has been revised to be a definition of “renewable energy measure” and to provide a more detailed description of such measures. This definition is based on the one in section 366 of the Act, 42 U.S.C. 6326(6). In addition, the reference to subpart D (covering Energy Measures) of 10 CFR part 450, is being deleted, for reasons discussed earlier under Energy Audit Procedures and list of measures.

The definition of “State economic product” has been deleted because the term is no longer used in the rule.

The definition of “Support Office Director” has been revised to reflect the new title “Regional Support Office Director.” The new title, and the new Regional Support Office name, are now used throughout the rule wherever the former names appeared.

Section 420.3 Administration of Financial Assistance

Former paragraph (a) (now paragraph (a)(1)) of this section has been revised to provide the current references for the requirement for intergovernmental review and coordination, now found in Executive Order 12372 and its

implementing regulations at 10 CFR part 1005.

Paragraphs (b) and (c) of this section were formerly found under § 420.3 as paragraphs (c) and (e), respectively. Paragraph (b) has been revised to specify that budget periods (for both formula grants and special projects) shall be consistent with 10 CFR part 600.

Paragraph (c) has been revised to add the necessity for subawards to be consistent with this part and 10 CFR part 600.

Section 420.4 Technical Assistance

This section was formerly § 420.10.

Section 420.5 Reports

This section was formerly § 420.11. It now covers all SEP financial assistance under both subpart B and subpart C. The requirement for an annual energy savings report has been deleted because of the marginal need for this particular type of report at this time.

Section 420.6 Reference Standards

This is a new section providing information about the incorporation by reference of two standards, ASHRAE/IESNA 90.1-1989 and The Model Energy Code, 1993, which are referred to in § 420.2 and § 420.15.

Subpart B—State Energy Program Formula Grant Procedures

Section 420.10 Purpose

This is a new section to introduce the purpose of subpart B, which is to set forth the procedures that apply to the State Energy Program Formula Grants.

Section 420.11 Allocation of Funds Among the States

This section has been adapted from paragraphs (a) and (b) of former § 420.3. Paragraph (a) remains the same.

DOE has revised the process (specified under § 420.11(b)) by which grant funds are allocated to the States, to accommodate the inclusion of ICP funds which were formerly allocated to States using a formula different from that used for SECP. The only common element in the two formulas was the population of each State. The other two elements in the ICP formula were regional costs of energy and the sum of a State's heating and cooling degree days. The other two elements in the SECP formula were a provision for dividing a portion of the funds equally among all the States, and the State's estimated energy savings from SECP efforts undertaken in calendar year 1980.

The revised process involves an allocation for each State consisting of: a

base allocation calculated on the program's \$25.5 million available funding for fiscal year 1996 and divided in the same ratio as each State received in fiscal year 1995 in combined funding from appropriations for ICP and SECP, together with a provision that any available funding beyond \$25.5 million be allocated based on a new formula. This revised process serves several purposes: (1) it will reflect and incorporate in the base allocation the historical funding of the two distinct major component programs in SEP that formerly used different funding formulas; (2) it will provide for an equitable adjustment in program funding levels; and (3) it will help maintain the organizational capacity of the States to manage the programs.

Base Allocation

To achieve this, DOE is hereby replacing the former SECP formula with the two-step process discussed above. The base allocation reflects elements from the ICP and SECP formulas in such a way that each State will receive, in fiscal year 1996, a base allocation in the same ratio (based on each State's 1995 allocations from 1995 appropriated funds) as it would have received if ICP and SECP were operated as separate programs. This base allocation, which applies to the first \$25.5 million of funds available, will remain the same in future years, or be adjusted downward if available funds are less than \$25.5 million. Table 1, listing the base allocation by State using the \$25.5 million total, is added after § 420.11(b)(1). Funds available above \$25.5 million will be allocated based on the new formula described below.

Formula Allocation

Funding available for SEP beyond the base \$25.5 million ICP/SECP consolidated funds will be allocated using the new formula based on the following factors: 33 $\frac{1}{3}$ percent divided among the States equally; 33 $\frac{1}{3}$ percent divided on the basis of the population of the participating States; and 33 $\frac{1}{3}$ percent divided on the basis of the energy consumption of the participating States.

The formula for the entire annual allocation is expressed mathematically as $(PA)=(BA)+(FA)$, where (PA) is the total program allocation, (BA) is the base allocation, and (FA) is the formula allocation.

Paragraphs (c) and (e) are now found under new § 420.3, as already discussed under that section.

Paragraph (d) is now found under new § 420.12.

Section 420.12 State Matching Contribution

This section was formerly paragraph (d) of former § 420.3. It has been given a new title, and revised to replace the term "cost sharing" with "match" or "matching" because the Act uses the term "match" in the sense of a percent of the State's Federal allocation, whereas, in this context, a "cost share" would be a percent of the total project cost. To receive financial assistance, each State must contribute a match of no less than 20 percent of the Federal financial assistance allocated to the State. Cash and in-kind contributions may continue to be used to meet this requirement. The sentence in this paragraph requiring that the State's match be identified in the State's application has been moved to § 420.13 where it becomes new § 420.13(b)(4)(ii).

Section 420.13 Annual State Application and State Plans

This section was formerly § 420.4.

The title of this section has been changed to add State plans which must be included with SEP grant applications.

A new paragraph (b)(1) has been added to provide for the submission of an application face page on Standard Form 424.

Former paragraph (b)(1) has been redesignated (b)(2).

Paragraph (b)(3) has been added to this section (it was formerly § 420.1(c)). Since this paragraph refers to a requirement for State plans, DOE felt it was more appropriate to include it in the section covering applications and plans.

Former paragraph (b)(2) has been redesignated (b)(4) to provide for the addition of new paragraphs (b)(1) and (b)(3) and has been revised to add a new (b)(4)(ii) requiring that States include their matching contribution in their applications, as already discussed under § 420.12.

Former subparagraphs (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) have been redesignated (b)(4)(iii), (b)(4)(iv), and (b)(4)(v), respectively, to allow for new (b)(4)(ii).

Former paragraph (b)(3) has been redesignated (b)(5) to provide for the addition of new paragraphs (b)(1) and (b)(3).

Paragraph (b)(6) (formerly paragraph (b)(4)) of this section, which required States to specify that activities funded under SECP would supplement and not supplant activities funded under ICP or the Weatherization Assistance Program (Weatherization), has been revised by deleting the reference to ICP. Activities

formerly funded under ICP are now being funded under SEP, so supplantation is not an issue.

To continue the renumbering of paragraphs necessitated by the addition of paragraphs (b)(1) and (b)(3), former (b)(5) has been renumbered (b)(7); a new paragraph (b)(8) has been added covering State assurances; and former (b)(6) has been renumbered (b)(9).

Former paragraph (b)(7) has been deleted because it does not relate to the contents of an application.

The wording of a number of paragraphs in this section has been simplified to make the format consistent.

Section 420.14 Review and Approval of Annual State Applications and State Plans

This section was formerly § 420.5

Section 420.15 Minimum Criteria for Required Program Measures for Plans

This section was formerly § 420.6.

Paragraphs (a)(3) and (d)(3) have been revised to refer to ASHRAE/IESNA 90.1-1989 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. Paragraph (d)(4) has been revised to refer to Model Energy Code, 1993 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. The new standards are based upon the requirements of Title III of the Energy Conservation and Production Act, 42 U.S.C. 6831 et seq.

A new paragraph (e)(3) has been added to provide for left turns from one-way streets onto one-way streets at traffic lights (right turns for the Virgin Islands), where appropriate, as required by section 362(c)(5) of EPCA, 42 U.S.C. 6322(c)(5).

Former paragraph (e)(3) has been eliminated. This paragraph provided for a delay in implementing the requirement under paragraph (e)(2) until June 27, 1979. That provision is no longer necessary.

Section 420.16 Extensions for Compliance With Required Program Activities

This section was formerly § 420.8.

Section 420.17 Optional Elements of State Energy Program Plans

This section was formerly § 420.7.

Paragraph (a)(3)(ii) has been revised to add wording at the end to make clear that public and private non-profit schools and hospitals, and local government buildings, which were formerly covered by ICP, are eligible buildings under SEP. It is important to note that local government buildings,

which were eligible only for technical audits under ICP, are also eligible for energy conservation measures under SEP.

New paragraphs (a)(10), (a)(11), (a)(12) and (a)(13) are being added to provide for four new examples of optional elements of State plans which were added to EPCA by section 141(b) of the Energy Policy Act of 1992, Pub. L. 102-486 (EPACT). Those new elements are: program activities to provide training to building designers and contractors to promote energy efficiency ((a)(10)); program activities for the development of building retrofit standards ((a)(11)); support for feasibility studies to facilitate access to capital and credit for energy efficiency projects ((a)(12)); and program activities to facilitate the voluntary use of renewable energy technologies in Federal agency programs ((a)(13)).

Former paragraph (a)(10) has been renumbered (a)(14).

Section 420.18 Expenditure Prohibitions and Limitations

This section was formerly § 420.12.

This section has been renamed because the former name, "Prohibited expenditures," did not reflect the fact that a number of the paragraphs under this section cover expenditures that are, under certain circumstances, allowable.

Paragraph (e) has been revised to change the limitation of 33 percent of a State's allocation to 50 percent, and to clarify that, up to that limit, funds may be used for the purchase and installation of energy conservation measures and renewable energy measures, to allow States more flexibility in this regard. With ICP-typed activities now a component of the consolidated SEP, and with energy conservation measures and renewable energy measures the primary purpose of ICP, DOE does not want to limit States to 33 percent for such expenditures, and believes a 50 percent limit is now appropriate because approximately 50 percent of the appropriated funds for FY 1996 are attributable to ICP.

Paragraph (e)(4), which required that funds under this program be used to supplement, but not supplant, ICP or Weatherization funds, has been revised to delete the reference to ICP. The reasons were previously discussed under § 420.13.

Former subparagraphs (e)(6)(i) and (e)(6)(iv) have been deleted because they are no longer necessary, and former subparagraphs (e)(6)(ii) and (e)(6)(iii) have been redesignated new subparagraphs (e)(6)(i) and (e)(6)(ii), respectively.

Former paragraph (e)(7) has been deleted because the same limitation is covered in paragraph (d).

Section 420.19 Administrative Review

This section was formerly § 420.9. It covers decisions made under § 420.14 and does not apply to financial assistance for the special projects in subpart C.

Subpart C—Implementation of Special Projects Financial Assistance

This subpart is being added to specify how DOE will implement financial assistance for these special projects activities under SEP.

Section 420.30 Purpose

This section is being added to provide the purpose of subpart C.

Section 420.31 Notice of Availability

This section is being added to specify the process DOE will use for announcing the availability of funds for special projects financial assistance.

Section 420.32 Program Guidance/Solicitation

This section is being added to provide for the program guidance/solicitation, which will contain the relevant information necessary for States to apply for funding under this subpart.

Section 420.33 Application Requirements

This section is being added to provide general information about applying for financial assistance for these special projects. More detailed application requirements will be provided by DOE in the program guidance/solicitation document.

Section 420.34 Matching Contributions or Cost Sharing

This section is being added to address the possibility of a match or cost share requirement for some, or all, special projects financial assistance, to be specified in the program guidance/solicitation.

Section 420.35 Application Evaluation

This section is being added to provide for the technical evaluations of applications for financial assistance pursuant to this subpart.

Section 420.36 Evaluation Criteria

This section is being added to provide for the evaluation criteria to be applied to applications for financial assistance pursuant to this subpart.

Section 420.37 Selection

This section is being added to provide for program policy factors which may be

applied in selecting special projects for funding under this subpart.

IV. Opportunity for Public Comment

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies and, if possible, a computer disk) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Program, Interim Final Rule, Docket Number EE-RM-96-402." In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling (202) 586-2096.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

V. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

VIII. Unfunded Mandate Review

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) places a variety of review and consultative obligations on Federal agencies proposing regulatory actions for Federal intergovernmental mandates. Today's rule does not involve such a mandate because the Unfunded Mandates Reform Act excludes from the definition of "Federal intergovernmental mandate" provisions in a regulation that would impose conditions incident to a financial assistance program (not involving an entitlement) or a duty arising from participation in a voluntary Federal program 2 U.S.C. 658(5). This program is a standard non-entitlement financial assistance program and States are not obligated to participate in it.

IX. Review Under the Regulatory Flexibility Act

There is no need to prepare a final regulatory flexibility analysis of today's interim final regulations under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because they are not subject to a legal requirement for a general notice of proposed rulemaking.

X. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rules.

XI. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the interim final regulations published today which was sent to the States for comment on

March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

XII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. OMB has determined that the final regulations do not constitute a "major rule" under the Act, 5 U.S.C. 804. DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

XIII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041.

List of Subjects

10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assistance, Incorporation by reference.

10 CFR Part 450

Buildings, Business and Industry, Energy conservation, Housing, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 26, 1996.

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations is amended as follows:

1. Part 420 is revised to read as follows:

PART 420—STATE ENERGY PROGRAM

Subpart A—General Provisions for State Energy Program Financial Assistance

Sec.

420.1 Purpose and scope.

420.2 Definitions.

420.3 Administration of financial assistance.

- 420.4 Technical assistance.
 420.5 Reports.
 420.6 Reference standards.

Subpart B—Formula Grant Procedures

- 420.10 Purpose.
 420.11 Allocation of funds among the States.
 420.12 State matching contribution.
 420.13 Annual State applications and State plans.
 420.14 Review and approval of annual State applications and State plans.
 420.15 Minimum criteria for required program activities for plans.
 420.16 Extensions for compliance with required program activities.
 420.17 Optional elements of State Energy Program plans.
 420.18 Expenditure prohibitions and limitations.
 420.19 Administrative review.

Subpart C—Implementation of Special Projects Financial Assistance

- 420.30 Purpose and scope.
 420.31 Notice of availability.
 420.32 Program guidance/solicitation.
 420.33 Application requirements.
 420.34 Matching contributions or cost-sharing.
 420.35 Application evaluation.
 420.36 Evaluation criteria.
 420.37 Selection.

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Subpart A—General Provisions for State Energy Program Financial Assistance

§ 420.1 Purpose and scope.

It is the purpose of this part to promote the conservation of energy, to reduce the rate of growth of energy demand, and to reduce dependence on imported oil through the development and implementation of a comprehensive State Energy Program and the provision of Federal financial and technical assistance to States in support of such program.

§ 420.2 Definitions.

As used in this part:

Act means title III, part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*

Alternative transportation fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); and electricity (including electricity from solar energy).

ASHRAE/IESNA 90.1-1989, as amended means the building design standard published in December 1989 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America titled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b-1992; Addenda 90.1d-1992; Addenda 90.1e-1992; Addenda 90.1g-1993; and Addenda 90.1i-1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6(b).

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and at one atmosphere of pressure.

Building means any structure which includes provision for a heating or cooling system, or both, or for a hot water system, except for the following:

- (1) Any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;
- (2) Any building with neither a heating nor cooling system;
- (3) Any mobile home; or
- (4) Any building owned or leased in whole or in part by the United States.

Carpool means the sharing of a ride by two or more people in an automobile.

Carpool matching and promotion campaign means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

Commercial building means any building other than a residential building, including any building constructed for industrial or public purposes.

Commercially available means available for purchase by the general public or target audience in the State.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Building Technology, State and Community Programs or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

Director, Office of State and Community Programs means the official responsible for DOE's formula grant programs to States, or any official to

whom the Director's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.

Energy audit means a determination of the energy consumption characteristics of a building which:

- (1) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;
- (2) Determines appropriate energy conservation maintenance and operating procedures; and
- (3) Indicates the need and the estimated cost and energy cost savings, if any, associated with the acquisition and installation of energy conservation measures.

Energy conservation measure means an installation which modifies any building, building system, energy consuming device associated with the building or industrial facility the construction of which was completed prior to May 1, 1989, if such measure has been determined by means of an energy audit to be likely to maintain or improve the efficiency of energy use and to reduce energy costs in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure within the lesser of—

- (1) The useful life of the modification involved; or
- (2) 15 years after the purchase and installation of such measure.

Environmental residual means any pollutant or pollution causing factor which results from any activity.

Exterior envelope physical characteristics means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

Governor means the chief executive officer of a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States, or a person duly designated in writing by the Governor to act upon his or her behalf.

Grantee means the State or other entity named in the notice of grant award as the recipient.

HVAC means heating, ventilating and air-conditioning.

IBR means incorporation by reference.

Industrial facility means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

Institution of higher education has the same meaning as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Metropolitan Planning Organization means that organization required by the

Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

Model Energy Code, 1993, including Errata, means the model building code published by the Council of American Building Officials, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6(b).

Park-and-ride lot means a parking facility generally located at or near the trip origin of carpools, vanpools and/or mass transit.

Petroleum violation escrow funds. For purposes both of exempting petroleum violation escrow funds from the matching requirements of § 420.12 and of applying the limitations specified under § 420.18(b), this term means any funds distributed to the States by the Department of Energy or any court and identified as Alleged Crude Oil Violation funds, together with any interest earned thereon by the States, but excludes any funds designated as "excess funds" under section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act, subtitle A of title III of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and the funds distributed under the "Warner Amendment," section 155 of Public Law 97-377.

Plan means a State Energy Program plan including required program activities in accordance with § 420.15 and otherwise meeting the applicable provisions of this part.

Political subdivision means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority, school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

Preferential traffic control means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

Program activity means one or more State actions, in a particular area, designed to promote energy efficiency, renewable energy and alternative transportation fuel.

Public building means any building which is open to the public during normal business hours, including:

- (1) Any building which provides facilities or shelter for public assembly, or which is used for educational office or institutional purposes;
- (2) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;
- (3) Any general office space and any portion of an industrial facility used primarily as office space;
- (4) Any building owned by a State or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings; and
- (5) Any public or private non-profit school or hospital.

Public transportation means any scheduled or nonscheduled transportation service for public use.

Regional Support Office Director means the director of a DOE Regional Support Office with responsibility for grants administration or any official to whom that function may be redelegated.

Renewable energy means a non-depletable source of energy.

Renewable energy measure means a measure which modifies any building or industrial facility if such measure has been determined by means of an energy audit to—

- (1) Involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or facility from a depletable source of energy to a non-depletable source of energy; and
- (2) Be likely to reduce energy costs (as calculated on the basis of energy cost assumptions provided by DOE) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the lesser of—
 - (i) The useful life of the modification involved; or
 - (ii) 25 years after the purchase and installation of such measure.

Residential building means any building which is constructed for residential occupancy.

Secretary mean the Secretary of DOE.
SEP means the State Energy Program under this part.

Small business means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632) for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy.

Start-up business means a small business which has been in existence for 5 years or less.

State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

State or local government building means any building owned and primarily occupied by offices or agencies of a State; and any building of a unit of local government or a public care institution which could be covered by part H, title III, of the Energy Policy and Conservation Act, 42 U.S.C. 6372-6372i.

Transit level of service means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

Urban area traffic restriction means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

Vanpool means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residence or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

Variable working schedule means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ 420.3 Administration of financial assistance.

(a) Financial assistance under this part shall comply with applicable laws and regulations including, but without limitation, the requirements of:

- (1) Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR part 1005.
 - (2) DOE Financial Assistance Rules (10 CFR part 600); and
 - (3) Other procedures which DOE may from time to time prescribe for the administration of financial assistance under this part.
- (b) The budget period(s) covered by the financial assistance provided to a State according to § 420.11(b) or § 420.33 shall be consistent with 10 CFR part 600.
- (c) Subawards are authorized under this part and are subject to the requirements of this part and 10 CFR part 600.

§ 420.4 Technical assistance.

At the request of the Governor of any State to DOE and subject to the

availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

§ 420.5 Reports.

(a) Each State receiving financial assistance under this part shall submit to the cognizant Regional Support Office Director a quarterly program performance report and a quarterly financial status report.

(b) Reports under this section shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a State's activities under this part.

(c) The reports shall be submitted within 30 days following the end of each calendar year quarter.

§ 420.6 Reference standards.

(a) The following standards which are not otherwise set forth in this part are incorporated by reference and made a part of this part. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A notice of any change in these materials will be published in the Federal Register. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., suite 700, Washington, D.C.

(b) The following standards are incorporated by reference in this part:

(1) The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, (404) 636-8400/The Illuminating Engineering Society of North America (IESNA), 345 East 47th Street, New York, New York 10017, (212) 705-7913; (i) ASHRAE/IESNA 90.1-1989, entitled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b-1992; Addenda 90.1d-1992; Addenda 90.1e-1992; Addenda 90.1g-1993; and Addenda 90.1i-1993, IBR approved for § 420.2 and § 420.15.

(2) The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931-4533: (i) The Model Energy Code, 1993, including Errata, IBR approved for § 420.2 and § 420.15.

Subpart B—Formula Grant Procedures

§ 420.10 Purpose.

This subpart specifies the procedures that apply to the Formula Grant part of

the State Energy Program, which allows States to apply for financial assistance to undertake a wide range of required and optional energy-related activities provided for under § 420.15 and § 420.17. Funding for these activities is allocated to the States based on funds available for any fiscal year, as described under § 420.11.

§ 420.11 Allocation of funds among the States.

(a) The cognizant Regional Support Office Director shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify, or implement a plan.

(b) DOE shall allocate financial assistance to develop, implement or modify plans among the States from funds available for any fiscal year, as follows:

(1) If the available funds equal \$25.5 million, such funds shall be allocated to the States according to Table 1 of this section.

(2) The base allocation for each State is listed in Table 1.

TABLE 1.—BASE ALLOCATION BY STATE

State/Territory	
Alabama	\$381,000
Alaska	180,000
Arizona	344,000
Arkansas	307,000
California	1,602,000
Colorado	399,000
Connecticut	397,000
Delaware	164,000
District of Columbia	158,000
Florida	831,000
Georgia	534,000
Hawaii	170,000
Idaho	190,000
Illinois	1,150,000
Indiana	631,000
Iowa	373,000
Kansas	327,000
Kentucky	411,000
Louisiana	446,000
Maine	231,000
Maryland	486,000
Massachusetts	617,000
Michigan	973,000
Minnesota	584,000
Mississippi	279,000
Missouri	518,000
Montana	182,000
Nebraska	246,000
Nevada	196,000
New Hampshire	216,000
New Jersey	783,000
New Mexico	219,000
New York	1,633,000
North Carolina	564,000
North Dakota	172,000
Ohio	1,073,000
Oklahoma	352,000
Oregon	325,000

TABLE 1.—BASE ALLOCATION BY STATE—Continued

State/Territory	
Pennsylvania	1,090,000
Rhode Island	199,000
South Carolina	340,000
South Dakota	168,000
Tennessee	476,000
Texas	1,322,000
Utah	242,000
Vermont	172,000
Virginia	571,000
Washington	438,000
West Virginia	286,000
Wisconsin	604,000
Wyoming	155,000
American Samoa	115,000
Guam	120,000
Northern Marianas	114,000
Puerto Rico	322,000
U.S. Virgin Islands	122,000
Total	25,500,000

(3) If the available funds for any fiscal year are less than \$25.5 million, then the base allocation for each State shall be reduced proportionally.

(4) If the available funds exceed \$25.5 million, \$25.5 million shall be allocated as specified in Table 1 and any in excess of \$25.5 million shall be allocated as follows:

(i) One-third of the available funds is divided among the States equally;

(ii) One-third of the available funds is divided on the basis of the population of the participating States as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares; and

(iii) One-third of the available funds is divided on the basis of the energy consumption of the participating States as contained in the most recent State Energy Data Report available from DOE's Energy Information Administration.

(c) The budget period covered by the financial assistance provided to a State according to § 420.11(b) shall be consistent with 10 CFR part 600.

§ 420.12 State matching contribution.

(a) Each State shall provide cash, in kind contributions, or both for SEP activities in an amount totalling not less than 20 percent of the financial assistance allocated to the State under § 420.11(b).

(b) Cash and in-kind contributions used to meet this State matching requirement are subject to the limitations on expenditures described in § 420.18(a), but are not subject to the 20 percent limitation in § 420.18(b).

(c) Nothing in this section shall be read to require a match for petroleum violation escrow funds used under this part.

§ 420.13 Annual State applications and State plans.

(a) To be eligible for financial assistance under subpart B of this part, a State shall submit to the cognizant Regional Support Office Director an original and two copies of the annual application executed by the Governor. The date for submission of the annual State application shall be set by DOE.

(b) An application shall include:

(1) A face sheet containing basic identifying information, on Standard Form (SF) 424;

(2) A description of the energy efficiency, renewable energy, and alternative transportation fuel goals to be achieved, including wherever practicable:

(i) An estimate of the energy to be saved by implementation of the State plan;

(ii) Why the goals were selected;

(iii) How the attainment of the goals will be measured by the State; and

(iv) How the program activities included in the State plan represent a strategy to achieve these goals;

(3) With respect to financial assistance under subpart B of this part, a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000, as compared to the calendar year 1990, and may contain interim goals;

(4) For the budget period for which financial assistance will be provided:

(i) A total program budget with supporting justification, broken out by object category and by source of funding;

(ii) The source and amount of State matching contribution;

(iii) A narrative statement detailing the nature of amendments and of new program activities;

(iv) For each program activity, a budget and listing of milestones; and

(v) An explanation of how the minimum criteria for required program activities prescribed in § 420.15 shall be satisfied;

(5) A detailed description of the increase or decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE and an indication of how these environmental factors were considered in the selection of program activities.

(6) For program activities involving purchase or installation of materials or

equipment for weatherization of low-income housing, an explanation of how these activities would supplement and not supplant the existing DOE program under 10 CFR part 440.

(7) A reasonable assurance to DOE that it has established policies and procedures designed to assure that Federal financial assistance under subpart B of this part will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those activities set forth in the State Energy Program plan approved pursuant to this part;

(8) An assurance that the State shall comply with all applicable statutes and regulations in effect with respect to the periods for which it receives grant funding; and

(9) For informational purposes only, and not subject to DOE review, an energy emergency plan for an energy supply disruption, as designed by the State consistent with applicable Federal and State law including an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies.

(c) The Governor may request an extension of the annual submission date by submitting a written request to the cognizant Regional Support Office Director not less than 15 days prior to the annual submission date. The extension shall be granted only if, in the cognizant Regional Support Office Director's judgment, acceptable and substantial justification is shown, and the extension would further objectives of the Act.

§ 420.14 Review and approval of annual State applications and State plans.

(a) After receipt of an application for financial assistance under subpart B of this part, or application for approval of an amendment to a State plan, the cognizant Regional Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete and to bring the application into compliance with the requirements of this part. The cognizant Regional Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application and/or bring it into compliance, the cognizant Regional Support Office Director may reject the application in a written decision, including a statement of reasons, which

shall be subject to administrative review under § 420.19 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the cognizant Regional Support Office Director shall—

(1) Approve the application in whole or in part to the extent that—

(i) The application conforms to the requirements of this part;

(ii) The proposed program activities are consistent with a State's achievement of its energy conservation goals in accordance with § 420.13; and

(iii) The provisions of the application regarding program activities satisfy the minimum requirements prescribed by § 420.15 and § 420.17 as applicable;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

§ 420.15 Minimum criteria for required program activities for plans.

A plan shall satisfy all of the following minimum criteria for required program activities.

(a) Mandatory lighting efficiency standards for public buildings shall:

(1) Be implemented throughout the State, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Apply to all public buildings above a certain size, as determined by the State;

(3) For new public buildings, be no less stringent than the provisions of ASHRAE/IESNA 90.1-1989, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1-1989 which is incorporated by reference in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6; and

(4) For existing public buildings, contain the elements deemed appropriate by the State.

(b) Program activities to promote the availability and use of carpools, vanpools, and public transportation shall:

(1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized

area with a population of 50,000 or more:

(i) A carpool/vanpool matching and promotion campaign;

(ii) Park-and-ride lots;

(iii) Preferential traffic control for carpoolers and public transportation patrons;

(iv) Preferential parking for carpools and vanpools;

(v) Variable working schedules;

(vi) Improvement in transit level of service for public transportation;

(vii) Exemption of carpools and vanpools from regulated carrier status;

(viii) Parking taxes, parking fee regulations or surcharge on parking costs;

(ix) Full-cost parking fees for State and/or local government employees;

(x) Urban area traffic restrictions;

(xi) Geographical or time restrictions on automobile use; or

(xii) Area or facility tolls; and

(2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) Be implemented throughout the State, with respect to all buildings other than exempted buildings, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) For all new commercial and multifamily high-rise buildings, be no less stringent than provisions of sections 7-12 of ASHRAE/IESNA 90.1-1989, and should be updated by enactment of, or support for the enactment into local

codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1-1989; and

(4) For all new single-family and multifamily low-rise residential buildings, be no less stringent than the Model Energy Code, 1993, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to the Model Energy Code, 1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6;

(5) For renovated buildings:

(i) Apply to those buildings determined by the State to be renovated buildings; and

(ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permits the operator of a motor vehicle to make a turn at a red light after stopping shall:

(1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State;

(2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and

(3) Permit the operator of a motor vehicle to make a left turn from a one-way street to a one-way street (right turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety.

(f) Procedures must exist for ensuring effective coordination among various local, State, and Federal energy efficiency, renewable energy and alternative transportation fuel programs within the State, including any program administered within the Office of Building Technology, State and Community Programs of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

§ 420.16 Extensions for compliance with required program activities.

An extension of time by which a required program activity must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an

extension, with accompanying justification and an action plan acceptable to DOE for achieving compliance in the shortest reasonable time, shall be made to the cognizant Regional Support Office Director. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

§ 420.17 Optional elements of State Energy Program plans.

(a) Other appropriate activities or programs may be included in the State plan. These activities may include, but are not limited to, the following:

(1) Program activities of public education to promote energy efficiency, renewable energy, and alternative transportation fuels;

(2) Program activities to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;

(3) Program activities for financing energy conservation measures and renewable energy measures—

(i) Which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds and program activities which allow rebates, grants, or other incentives for the purchase of energy conservation measures and renewable energy measures; or

(ii) In addition to or in lieu of program activities described in paragraph (a)(3)(i) of this section, which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 including public and private non-profit schools and hospitals, and local government buildings;

(4) Program activities for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(5) Program activities to promote the adoption of integrated energy plans which provide for:

(i) Periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(ii) Utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(6) Program activities to promote energy efficiency in residential housing, such as:

(i) Program activities for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(ii) Program activities for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(7) Program activities to identify unfair or deceptive acts or practices which relate to the implementation of energy conservation measures and renewable energy measures and to educate consumers concerning such acts or practices;

(8) Program activities to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(9) Program activities to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;

(10) Program activities (enlisting appropriate trade and professional organizations in the development and financing of such programs) to provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency;

(11) Program activities for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;

(12) Program activities to provide support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

(13) Program activities to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural

Electrification Administration and the Farmers Home Administration; and

(14) In accordance with paragraph (b) of this section, program activities to implement the Energy Technology Commercialization Services Program.

(b) This section prescribes requirements for establishing State-level Energy Technology Commercialization Services Program as an optional element of State plans.

(1) The program activities to implement the functions of the Energy Technology Commercialization Services Program shall:

(i) Aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(ii) Encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(iii) Establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(iv) Coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(v) Assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(vi) Facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(2) Each State Energy Technology Commercialization Services Program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and National Laboratory personnel.

(3) The services provided by the Energy Technology Commercialization Services Program established under this part shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: the costs of the services received; the need of the recipient for

the services; and the ability of the recipient to pay for the services.

§ 420.18 Expenditure prohibitions and limitations.

(a) No financial assistance provided to a State under this part shall be used:

(1) For construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;

(2) To purchase land, a building or structure or any interest therein;

(3) To subsidize fares for public transportation;

(4) To subsidize utility rate demonstrations or State tax credits for energy conservation measures or renewable energy measures; or

(5) To conduct, or purchase equipment to conduct, research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.

(b) No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited by this section. Nothing in this paragraph shall be read to apply this 20 percent limitation to petroleum violation escrow funds used under this part.

(c) Demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted, and are not subject to the prohibitions of § 420.18(a)(1), or to the limitation on equipment purchases of § 420.18(b).

(d) A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with this part and which are included in the State's approved SEP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this part and which are included in the State's approved SEP plan.

(e) A State may use funds under this part for the purchase and installation of equipment and materials for energy conservation measures and renewable energy measures subject to the following terms and conditions:

(1) Such use must be included in the State's approved plan and, if funded by petroleum violation escrow funds, must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds;

(2) A State may use for these purposes no more than 50 percent of all funds allocated by the State to SEP in a given year, regardless of source, except that this limitation shall not include regular

and revolving loan programs funded with petroleum violation escrow funds, and is subject to waiver by DOE for good cause. Loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions of loan forgiveness.

(3) Subject to the restrictions of this part, State and local government buildings, as defined in § 420.2, are eligible for energy conservation measures and renewable energy measures under this section;

(4) Funds must be used to supplement and no funds may be used to supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons, under 10 CFR part 440;

(5) Subject to paragraph (e)(6) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates, and grants.

(6) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under this paragraph:

(i) Rebates for more than 50 percent of the total cost of purchasing and installing materials and equipment (States shall set appropriate restrictions and limits to insure the most efficient use of rebates); and

(ii) Loan guarantees.

§ 420.19 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 420.14 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under § 420.14 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the cognizant Regional Support Office Director and shall be accompanied by a written statement containing supporting arguments. If the cognizant Regional Support Office Director has disapproved an entire application for financial assistance, the State may request a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the cognizant Regional Support Office Director shall forward to the Deputy Assistant Secretary, the notice

requesting administrative review, the decision under § 420.14 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application for financial assistance, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the cognizant Regional Support Office Director.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.22, 600.24, 600.25, and 600.243. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

Subpart C—Implementation of Special Projects Financial Assistance

§ 420.30 Purpose and scope.

(a) This subpart sets forth DOE's policies and procedures for implementing special projects financial assistance under this part.

(b) For years in which such funding is available, States may apply for financial assistance to undertake a variety of State-oriented energy-related special projects activities in addition to the funds provided under the regular SEP grants.

(c) The types of funded activities may vary from year to year, and from State to State, depending upon funds available for each type of activity and DOE and State priorities.

(d) A number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy participate in the funding of these activities, and the projects must meet the requirements of those programs.

(e) The purposes of the special project activities are:

(1) To utilize States to accelerate deployment of energy efficiency, renewable energy, and alternative transportation fuel technologies;

(2) To facilitate the commercialization of emerging and underutilized energy efficiency and renewable energy technologies; and

(3) To increase the responsiveness of Federally funded technology development efforts to the needs of the marketplace.

§ 420.31 Notice of availability.

(a) If in any fiscal year DOE has funds available for special projects, DOE shall publish in the Federal Register one or more notice(s) of availability of SEP special projects financial assistance.

(b) Each notice of availability shall cite this part and shall include:

(1) Brief descriptions of the activities for which funding is available;

(2) The amount of money DOE has available or estimates it will have available for award for each type of activity, and the total amount available;

(3) The program official to contact for additional information, application forms, and the program guidance/solicitation document; and

(4) The dates when:

(i) The program guidance/solicitation will be available; and

(ii) The applications for financial assistance must be received by DOE.

§ 420.32 Program guidance/solicitation.

After the publication of the notice of availability in the Federal Register, DOE shall, upon request, provide States

interested in applying for one or more project(s) under the special projects financial assistance with a detailed program guidance/solicitation that will include:

- (a) The control number of the program;
- (b) The expected duration of DOE support or period of performance;
- (c) An application form or the format to be used, location for application submission, and number of copies required;
- (d) The name of the DOE program office contact from whom to seek additional information;
- (e) Detailed descriptions of each type of program activity for which financial assistance is being offered;
- (f) The amount of money available for award, together with any limitations as to maximum or minimum amounts expected to be awarded;
- (g) Deadlines for submitting applications;
- (h) Evaluation criteria that DOE will apply in the selection and ranking process for applications for each program activity;
- (i) The evaluation process to be applied to each type of program activity;
- (j) A listing of program policy factors if any that DOE may use in the final selection process, in addition to the results of the evaluations, including:
 - (1) The importance and relevance of the proposed applications to SEP and the participating programs in the Office of Energy Efficiency and Renewable Energy; and
 - (2) Geographical diversity;
 - (k) Reporting requirements;
 - (l) References to:
 - (1) Statutory authority for the program;
 - (2) Applicable rules; and
 - (3) Other terms and conditions applicable to awards made under the program guidance/solicitation; and
 - (m) A statement that DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted.

§ 420.33 Application requirements.

(a) Consistent with § 420.32 of this part, DOE shall set forth general and special project activity-specific requirements for applications for special projects financial assistance in the program guidance/solicitation.

(b) In addition to any other requirements, all applications shall provide:

(1) A detailed description of the proposed project, including the objectives of the project in relationship to DOE's program and the State's plan for carrying it out;

(2) A detailed budget for the entire proposed period of support, with written justification sufficient to evaluate the itemized list of costs provided on the entire project; and

(3) An implementation schedule for carrying out the project.

(c) DOE may, subsequent to receipt of an application, request additional budgetary information from a State when necessary for clarification or to make informed preaward determinations.

(d) DOE may return an application which does not include all information and documentation required by this part, 10 CFR part 600, or the program guidance/solicitation, when the nature of the omission precludes review of the application.

§ 420.34 Matching contributions or cost-sharing.

DOE may require (as set forth in the program guidance/solicitation) States to provide either:

(a) A matching contribution of at least a specified percentage of the Federal financial assistance award; or

(b) A specified share of the total cost of the project for which financial assistance is provided.

§ 420.35 Application evaluation.

(a) DOE staff at the cognizant Regional Support Office shall perform an initial review of all applications to ensure that

the State has provided the information required by this part, 10 CFR part 600, and the program guidance/solicitation.

(b) DOE shall group, and technically evaluate according to program activity, all applications determined to be complete and satisfactory.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise relating to the particular program activity being evaluated.

(1) DOE anticipates that evaluators will primarily be DOE employees; but

(2) If DOE uses non-DOE evaluators, DOE shall require them to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

§ 420.36 Evaluation criteria.

The evaluation criteria, including program activity-specific criteria, will be set forth in the program guidance/solicitation document.

§ 420.37 Selection.

(a) DOE may make selection of applications for award based on:

(1) The findings of the technical evaluations;

(2) The priorities of DOE, SEP, and the participating program offices;

(3) The availability of funds for the various special project activities; and

(4) Any program policy factors set forth in the program guidance/solicitation.

(b) The Director, Office of State and Community Programs makes the final selections of projects to be awarded financial assistance.

PART 450—[REMOVED]

2. Under the authority of 42 U.S.C. 7101 *et seq.* Part 450 is removed.

[FR Doc. 96-17067 Filed 7-5-96; 8:45 am]

BILLING CODE 6450-01-P

Federal Register

Monday
July 8, 1996

Part V

**Department of
Housing and Urban
Development**

Office of Assistant Secretary for
Housing—Federal Housing Commissioner

**FY 1996 Funding Availability for HUD-
Approved Housing Counseling Agencies;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner**

[Docket No. FR-4073-N-01]

**FY 1996 Funding Availability for HUD-
Approved Housing Counseling
Agencies**

AGENCY: Office of the Assistant
Secretary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Fiscal year 1996 notice of
funding availability for HUD-approved
housing counseling agencies.

SUMMARY: This notice announces the
availability of Fiscal Year (FY) 1996
funding from the U.S. Department of
Housing and Urban Development (HUD)
for HUD-approved housing counseling
agencies to provide housing counseling
to homebuyers, homeowners, and
renters. HUD announces the availability
of up to \$10.5 million dollars for
housing counseling services through
this Notice of Funding Availability
(NOFA). All housing counseling
agencies approved by HUD as of the
publication date of this NOFA may
apply for FY 1996 funding. This
includes: (1) multi-State, regional, or
national intermediary organizations,
and (2) local housing counseling
agencies that do not elect to affiliate
with a HUD-approved intermediary
organization.

This NOFA contains additional
information on the purpose and
background of the NOFA and funding
levels available to local counseling
agencies and intermediary organizations
respectively; eligible activities and
funding criteria; and application
requirements and procedures.

DATES: Completed applications must be
submitted no later than 4:00 p.m. local
time on August 7, 1996. As further
described below, any completed
application must be physically *received*
by this deadline date and hour at the
appropriate local HUD office (for local
applicants) or at the Office of Housing,
Department of Housing and Urban
Development, 451 7th Street, SW, Room
9282, Washington D.C. 20410 (for
national, regional or multi-State
applicants). In the interest of fairness to
all applicants, late applications will be
treated as ineligible for consideration.
Applicants should take this requirement
into account and make early submission
of their applications to avoid loss of
eligibility brought about by any
unanticipated delays or other delivery-
related problems. It is not sufficient for

an application to be postmarked within
the deadline. Applications sent by
facsimile (FAX) will not be accepted.
HUD will not waive this submission
deadline for any reason.

ADDRESSES: For local housing
counseling agency applicants: An
original and two copies of the
completed application must be
submitted to the local HUD office
having jurisdiction over the locality or
area in which the proposed program is
located. These copies should be sent to
the attention of the Single Family
Division Director, and the envelope
should be clearly marked, "FY 1996
Counseling Application". A list of
Single Family Division Directors and
local HUD Offices appears at the end of
this NOFA. Failure to submit an
application to the correct office in
accordance with the above procedures
will result in disqualification of the
application.

For national, regional and multi-State
housing counseling agencies: An
original and two copies of the
completed application must be
submitted to the person listed below in
HUD Headquarters. The envelope
should be clearly marked, "FY 1996
Counseling Application."

FOR FURTHER INFORMATION CONTACT: Joan
Morgan, Chief, Product Development
and Special Projects Branch, Office of
Housing, Department of Housing and
Urban Development, 451 7th Street, SW,
Room 9272, Washington D.C. 20410;
telephone (202) 708-0614, extension
2213 (voice), or (202) 708-4594 (TTY
number). (These are not toll-free
numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection
requirements contained in this NOFA
have been approved by the Office of
Management and Budget, under section
3504(h) of the Paperwork Reduction Act
of 1995 (44 U.S.C. 3501-3520), and
assigned OMB control number 2502-
0261. An agency may not conduct or
sponsor, and a person is not required to
respond to, a collection of information
unless the collection displays a valid
control number.

I. Purpose and Substantive Description

A. Authority and Purpose

HUD's housing counseling program is
authorized under section 106 of the
Housing and Urban Development Act of
1968 (12 U.S.C. 1701x). The purpose of
the program is to promote and protect
the interests of housing consumers
participating in HUD and other housing
programs, as well as to help protect the

interests of HUD and mortgage lenders.
The Housing Counseling program is
generally governed by HUD Handbook
7610.1, REV-4, dated August 9, 1995.

Section 106 authorizes HUD to
provide counseling and advice to
tenants and homeowners with respect to
property maintenance, financial
management, and such other matters as
may be appropriate to assist tenants and
homeowners in improving their housing
conditions and in meeting the
responsibilities of tenancy and
homeownership. In addition, HUD-
approved counseling agencies are
permitted and encouraged by HUD to
conduct community outreach activities
and provide counseling to individuals
with the objective of increasing
awareness of homeownership
opportunities and improving access of
low and moderate income households to
sources of mortgage credit. HUD
believes that this activity is key to the
revitalization and stabilization of low
income and minority neighborhoods.

Under the housing counseling
program, HUD contracts with qualified
public or private nonprofit
organizations to provide the services
authorized by the statute. When
Congress appropriates funds for this
purpose, HUD announces the
availability of such funds, and invites
applications from eligible agencies,
through a notice published in the
Federal Register. Currently there are
705 HUD-approved local housing
counseling agencies with 386 Branch
Offices and 10 HUD-approved
intermediary organizations. Annually,
all HUD-approved agencies are eligible
to apply for housing counseling grants.
However, an agency that is approved by
HUD does not automatically receive
HUD funding, and HUD expects that all
counseling agencies will continually
work to develop other funding
resources. In FY '95, 240 HUD-approved
local housing counseling agencies and 5
HUD-approved national/regional/multi-
state housing counseling agencies
received funding from HUD.

B. Allocation Amounts

Twelve million dollars (\$12 million)
has been appropriated from the 1996
Appropriations Act, P. L. 104-134, 110
Stat. 1321, approved April 26, 1996 for
this program. Of this amount, \$10.5
million is being made available under
this NOFA for lump-sum, performance-
based grants, as defined at 24 CFR part
84, subpart E. Approximately \$4 million
is being set aside to fund national,
regional and multi-State organizations
that apply for funding under this NOFA.
No national, regional, or multi-State
agency may receive more than \$1

million. Approximately \$6.5 million has been made available for grants to local HUD approved housing counseling agencies, and it has been allocated to each of the 10 HUD geographical areas (formerly Regions) by a formula that gives equal weight to the percentage of HUD insured single family mortgage defaults within each geographical area

as of September 30, 1995, compared to the nationwide total *and* the percentage of first-time homebuyers that were approved for FHA-insured mortgages by geographical area during FY 1995 compared to the nationwide total for that period. This formula reflects the increased emphasis that HUD is placing on the expansion of homeownership

opportunities for first-time homebuyers. For FY 1996, no individual local housing counseling agency may be awarded more than \$100,000.

Allocations for use in local agency programs, by HUD geographical area, are estimated as follows:

Geographical areas	Default data			First-time Homebuyer Data			
	No. of defaults	Nat'l defaults (Percent)	Allocation amount	No. of 1st timers	Nat'l. 1st timers (Percent)	Allocation amount	Total allocation
New England	2,836	1.95	63,465	11,887	3.26	105,959	169,424
NY/NJ	11,853	8.16	265,252	23,034	6.32	205,322	470,573
Mid-Atlantic	16,502	11.36	369,289	41,427	11.36	369,274	738,563
SE/Caribbean	36,049	24.82	806,721	72,746	19.95	648,447	1,455,168
Midwest	23,087	15.90	516,651	63,812	17.50	568,811	1,085,462
Southwest	19,834	13.66	443,854	40,238	11.04	358,676	802,530
Great Plains	4,102	2.82	91,796	14,671	4.02	130,775	222,572
Rocky Mts	3,607	2.48	80,719	21,014	5.76	187,316	268,035
Pac/Hawaii	24,685	17.00	552,412	62,277	16.25	555,128	1,107,540
NW/Alaska	2,674	1.84	59,840	13,495	3.70	120,292	180,132
Totals	145,229	100	3,250,000	364,601	100	3,250,000	6,500,000

An allocation of \$1.5 million in program funding has been set aside for Housing Counseling support which may include: Continuation of the Housing Counseling Clearinghouse, 800 service to provide information to the public regarding local HUD-approved housing counseling agencies, and/or other HUD counseling initiatives.

If funds remain after HUD has funded all approvable grant applications in a HUD geographical area, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide.

C. Eligible Applicants

1. *General.* There are two types of HUD-approved organizations that are eligible to submit applications pursuant to this NOFA: (1) national, regional, or multi-State housing counseling organizations (also known as "intermediaries" or "umbrella groups"); and (2) local housing counseling agencies.

National, regional, and multi-State nonprofit, intermediary organizations must identify all their proposed affiliates in their application. These intermediaries must assure that their proposed affiliates are unique to their team and will not undertake a separate application for funds either as an affiliate of another intermediary or directly as a HUD-approved local counseling agency. Should any

duplication occur, both the intermediary organization and the local agency involved will automatically be ineligible for further consideration to receive FY 1996 housing counseling funds. In addition, an intermediary-applicant must also assure that it has executed a sub-agreement with its affiliates that clearly delineates their mutual responsibilities for program management, incorporating appropriate timeframes for reporting results to HUD.

Once funded, the national, regional, and multi-State intermediaries will be given broad discretion in implementing their housing counseling programs. On behalf of HUD, the intermediaries will act as managers in the housing counseling process and, as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than \$100,000. HUD will hold the intermediary organization accountable for the performance of its affiliates.

Local counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary network. Since continuation of funding for housing counseling activities as a separate and discrete program for FY 1997 and thereafter is not guaranteed, HUD encourages local agencies to consider affiliating with a larger entity as one avenue of possible future funding and support for local programs. Local housing counseling agencies that are not currently HUD-approved may receive FY 1996 funding only as an affiliate of

a HUD-approved national, regional, or multi-State intermediary's application for FY 1996 funds. In this instance, the intermediary organization must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved agencies.

2. *Civil Rights Prerequisites.*

Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

- The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;
- There has been an adjudication of a civil rights violation in a civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;
- There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or
- HUD has deferred application processing by HUD under one of the following authorities:

- Title VI of the Civil Rights Act of 1964 and the implementing guidelines of the Attorney General (28 CFR 50.3) and the HUD regulations (24 CFR 1.8);

- ii. Section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);
- iii. Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107);
- iv. Title II of the Americans with Disabilities Act of 1990 and applicable regulations (28 CFR Part 36); or
- v. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations (24 CFR Part 146).

3. *Requirements Applicable to Religious Organizations.* Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

- a. It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- b. It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and
- c. It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the housing counseling program.

D. Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local counseling agency or a HUD-approved national, regional, or multi-State housing counseling intermediary.

1. *Local Housing Counseling Agencies.* Local housing counseling agencies funded under this NOFA may use HUD funds to deliver comprehensive housing counseling or to specialize in the delivery of particular housing counseling services according to the housing needs they identified for their target area in the plan that was previously approved by HUD. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

- a. Renter assistance, including information about rent subsidy programs, rights and responsibilities of

tenants, lease and rental agreements, etc.;

- b. Outreach initiatives, including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities;

- c. Pre-purchase homeownership counseling, covering such issues as purchase procedures, mortgage financing, downpayment/closing cost fund accumulation, accessibility requirements of the property—if appropriate, credit improvement, debt consolidation, etc.;

- d. Post-purchase counseling, including such issues as property maintenance, personal money management, home equity conversion mortgages, etc.; or

- e. Mortgage delinquency and default resolution, including restructuring debt, arrangement of reinstatement plans, loan forbearance, loss mitigation, etc.

HUD-funded local counseling agencies may elect to offer their services to a wide range of clients or may elect to serve a more limited audience. Potential clients include: renters; potential homebuyers; homeowners eligible for and applying for HUD-related, VA, FmHA (or its successor agency), State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to resolve a housing need (including the need of a person with a disability for accessible housing) or problem. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program but must be familiar with FHA's single family and multifamily housing programs.

2. *National, Regional, or Multi-State Counseling Intermediaries.* The primary activity of national, regional, or multi-State nonprofit housing counseling intermediaries will be to manage the use of HUD housing counseling funds, including the distribution of counseling funding to affiliated local housing counseling organizations. Local affiliates of the selected national, regional, or multi-State counseling intermediaries are eligible to undertake any or all of the housing counseling activities outlined above for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-State intermediary organization must be HUD-approved as of the NOFA publication date.

E. Selection Process

1. *Housing Counseling Agencies.* All applications meeting the requirements of this NOFA will be selected for funding within their competitive category, if sufficient funds are available: (1) in the set aside for National, Regional, or multi-State organizations, or (2) within the HUD geographic allocation area for local housing counseling agency applicants.

a. *Criteria/Ranking Factors.* All applications will be rated and ranked by staff in the appropriate local HUD Office and by the Secretary's Representative in the appropriate State office. The Secretary's Representative and the local HUD Office staff will use the same criteria and ranking factors, as follows:

- i. Capability of the applicant as determined by HUD, including competent delivery of counseling services and timely drawdown of any HUD funds awarded in the prior Fiscal Year—up to 50 points (up to 45 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative);

- ii. Adequacy of the activities proposed by the applicant in response to housing needs identified in the applicant's housing counseling plan as previously approved by HUD—up to 25 points (up to 20 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative);

- iii. Evidence of private funding sources contributing to the applicant's operating budget over the past calendar year—up to 15 points assigned by HUD's Housing staff; and

- iv. Evidence of current funding support from units of government located within the target area which the applicant intends to serve—up to 10 points.

b. *Selection Procedure.* National, regional, and multi-State applications will be rated and ranked in Headquarters and selected for funding, in rank order, until all funds for such agencies are depleted. Local agency applications will be reviewed by the Field Office and assigned points under the selection criteria. Then the Field Office will submit its recommendations for funding to HUD Headquarters for final review, to ensure appropriate geographical distribution of program funds and consistent application of the criteria described above. HUD Headquarters will then rank the local agency applications within the geographical areas and select for funding, in rank order, all acceptable applications to the point at which all funds are depleted.

i. Breaking a Tie. If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected, if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

A. If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion a.ii. (adequacy of activities) stated above will be selected, if sufficient funds remain.

B. If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion a.i. (capability) stated above will be selected, if sufficient funds remain.

ii. Reallocations. Funds remaining after applying the procedures described in paragraph E.1.b. will be reallocated to fund the highest ranking remaining applications without regard to their location.

iii. Procedural Errors. Procedural errors by HUD discovered after initial ratings, but before notification to Congress of selected applicants, will be corrected and rankings will be revised.

iv. Reductions. HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

A. The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

B. An activity proposed for funding does not qualify as an eligible activity;

C. The applicant is not able to carry out all the activities requested; or

D. Insufficient amounts remain in that funding round to fund the full amount requested in the application.

v. Limitation of Geographic Scope. HUD may reduce the geographic scope of the proposed program if it determines that:

A. Two or more fundable applications substantially overlap; or

B. The proposed geographic scope is overly large given the capacity of the organization.

2. *National, Regional, and Multi-State Counseling Organizations.* If more applications are submitted to HUD Headquarters from national, regional, and multi-State organizations that meet all the requirements of this NOFA than can be funded with the amount allocated for this purpose, they will be

rated by staff in HUD Headquarters using the above ranking criteria stated in paragraph 1.a., and the top-rated applicants will be selected. Paragraphs 1. c.iii., c.iv., and c.v., above also apply to the selection of national, regional, and multi-State counseling organizations.

3. *Notification of Approval or Disapproval.* After completion of the selection process, but no later than six months after the deadline date for submission of the applications, as stated in this NOFA, HUD will notify, in writing, the applicants that have been selected and the applicants that have not been selected.

F. Funding Levels

Funding levels will be based on the amount authorized by the Congress, geographical distribution as described above, the performance record of each counseling agency as determined by HUD's analysis of prior year counseling workload and results of the most recent biennial performance review, competent delivery of counseling services and timely drawdown of funds awarded, and the agency's needs, as specified in the application according to its housing counseling plan previously approved by HUD. In addition, applicants that can demonstrate successful efforts to obtain non-HUD funding in their applications will receive extra consideration in HUD's rating and ranking process. HUD funding provided *must* be less than the total actual cost of the agency's housing counseling program.

1. *Local Housing Counseling Agencies.* HUD will fund local agencies according to the budget submitted with the application, in an amount not to exceed \$100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the last year and existing agency capacity. To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible counseling activities described in this NOFA and included in their HUD-approved plan. FY 1996 housing counseling grant funds also may be used for "capacity building" as defined in this NOFA. Up to \$4,000 of the grant amount may be used to: purchase computer equipment that meets, or exceeds, HUD specifications;

enhance existing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using the TTY relay service); and install FAX machines. The Department will require that all grantees funded in 1996 which do not currently have adequate computer systems (and were not funded by HUD under the FY 1995 NOFA) use all or a portion of their \$4,000 capacity building portion of the grant to purchase computer hardware according to HUD specifications. Computer training for one staff person also may be paid from the \$4,000 set-aside, as may training on how to use a TTY. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Agencies funded under the FY 1995 NOFA already received an allocation of capacity building funds and *may not* request additional capacity building funds in 1996.

2. *National, Regional, or Multi-State Counseling Intermediaries.* The intermediary organization will distribute the majority of funds awarded to their proposed local housing counseling affiliates. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these counseling efforts, as well as the funding needs of their affiliates. Note that HUD housing counseling funding is not intended to fully fund either the intermediary's housing counseling program or the housing counseling programs of the local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

An intermediary may use up to \$5,000 of its total grant amount for capacity building expenses such as: purchasing computer equipment; enhancing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using TTY relay service); installing FAX machines; and preparing or publishing counseling materials. If the intermediary does not have an adequate computer system and was not funded under the FY 1995 NOFA, the Department will require that the \$5,000 capacity building portion of the grant be used to purchase necessary equipment meeting HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Intermediaries

funded under the FY 1995 NOFA *may not* request additional capacity building funds in FY 1996.

HUD will give the selected nonprofit intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates and may determine funding levels at or below \$100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary.

III. Checklist of Application Submission Requirements

A. General

Contents of an application will differ somewhat for local housing counseling agencies and for national, regional, or multi-State intermediaries; however, all applicants are expected to submit:

1. Standard Form 424, Application for Federal Assistance
2. Standard Form 424B, Assurances—Non-construction Programs
3. Drug-Free Workplace Requirements Certification
4. Applicant/Recipient Disclosure/Update Report, Form HUD-2880
5. Certification and Disclosure of Lobbying Activities, Standard Form LLL, for National Intermediaries only, if applicable
6. Certification Regarding Civil Rights
7. Form HUD-9902, Housing Counseling Agency FISCAL YEAR Activity Report for fiscal year October 1, 1994 through September 30, 1995. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1995, this report should be completed to reflect the agency's counseling workload during that period in any case. This form must be fully completed and submitted by every applicant for FY 1996 HUD funding. HUD will reject any application that does not include this form
8. Computer Equipment Inventory (if applicable)
9. Budget Worksheet. A realistic, proposed budget for use of HUD funds if awarded. This should be broken down into two categories: direct counseling costs and capacity building costs. Note that the budget submitted by a local agency *may not exceed a total of \$100,000*, including capacity building costs which may not exceed \$4,000. National, regional and multi-State organizations may submit a proposed budget up to \$1 million, including capacity building costs which may not exceed \$5,000

10. Exhibits for National, regional, multi-State or local housing counseling agencies (as described below in B1-B3 and in the application kit)

11. Evidence of Housing Counseling Funding Sources (required by all applicants)
12. Current Housing Counseling Plan
13. A description of counseling activities to be performed
14. A description of organization capability
15. Direct-labor and Hourly-labor rate and Counseling Time Per Client
16. Congressional District Information

B. National, Regional, and Multi-State Intermediaries

National, regional, and multi-State intermediaries must submit an application which covers both their network organization and their affiliated agencies. This application must include:

1. *Description of affiliated agencies.* For each, list the following information:
 - a. Organization name
 - b. Address
 - c. Director and contact person (if different)
 - d. Phone/FAX numbers (including TTY, if appropriate)
 - e. Federal tax identification number
 - f. ZIP code service areas
 - g. Number of staff providing counseling
 - h. Type of services offered (defined by renter assistance, outreach initiatives, pre-purchase counseling, post-purchase counseling, and mortgage default and delinquency counseling)
 - i. Number of years of housing counseling experience
2. *Relationship with affiliates.* Briefly describe the intermediary's relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).
3. *Oversight system.* Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

IV. Corrections to Deficient Applications

After the submission deadline, applicants may cure only non-substantial, technical deficiencies that surface during HUD screening of their application. Applicants will have a "cure period" to correct such deficiencies that are not integral to HUD's review of the application. Applicants have 14 calendar days from the date HUD notifies them of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the HUD notification

is by telephone, a written confirmation will be transmitted by HUD to the applicant. Where HUD determines that an application as initially submitted is fundamentally incomplete, or would require substantial revisions, it will not consider the application further. Note: HUD will not inform applicants regarding application deficiencies other than as described in this section.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Notice of Funding Availability published in connection with the Housing Counseling program on March 21, 1994 (59 FR 13366). That Finding is applicable to this NOFA and 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, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This NOFA only affects nonprofit or public organizations who seek funding for their housing counseling activities.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Documentation and Public Access Requirements: HUD Reform Act

HUD will 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, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will 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 will 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, 1996, for further information on these requirements.)

Prohibition Against Advance Information on Funding Decisions: 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), 24 CFR 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.) Hearing or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877-8339. 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.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of 24 CFR part 87. That regulation prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: July 1, 1996.

Nicolas P. Retsinas,
Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The title of all those listed is: Director, Single Family Division, U.S. Department of Housing and Urban Development. Telephone numbers are not toll-free.

HUD—New England Area

Connecticut state office

Mr. John Ertle
First Floor
330 Main Street
Hartford, CT 06106-1860
(203) 240-4569

Massachusetts State Office

Mr. Edward T. Bernard
Room 375
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, MA 02222-1092
(617) 565-5101

New Hampshire State Office

Mr. Loren Cole
Norris Cotton Federal Building
275 Chestnut Street
Manchester, NH 03101-2487
(603) 666-7755

Rhode Island State Office

Mr. Michael Dziok
Sixth Floor
10 Weybosset Street
Providence, RI 02903-2808
(401) 528-5351

HUD—New York, New Jersey Area

New Jersey State Office

Ms. Theresa Arce
Thirteenth Floor
One Newark Center
Newark, NJ 07102-5260

(201) 622-7900 X3500

New York State Office

Mr. Juan Baustista
26 Federal Plaza
New York, NY 10278-0068
(212) 264-0777 X3746

Albany Area Office

Mr. Robert S. Scofield, Jr.
52 Corporate Circle
Albany, NY 12203-5121
(518) 464-4200 EXT. 4205

Buffalo Area Office

Mr. Glenn Ruggles
Lafayette Court
465 Main Street
Buffalo, NY 14203-1780
(716) 846-5732

Camden Area Office

Mr. Philip Caulfield
Second Floor
Hudson Building
800 Hudson Square
Camden, NJ 08102-1156
(609) 757-5083

HUD—Midatlantic area

District of Columbia office

Ms. Carole Catineau
820 First Street, NE
Washington, D.C. 20002-4502
(202) 275-9200 X3055

Maryland state office

Ms. Candace Simms
Fifth Floor
City Crescent Building
10 South Howard Street
Baltimore, MD 21201-2505
(410) 962-2520 X3094

Pennsylvania state office

Mr. Mike Perretta
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380
(215) 656-0507

Virginia state office

Ms. Rhea G. Gwaltney
The 3600 Centre
3600 West Broad Street
P.O. Box 90331
Richmond, VA 23230-0331
(804) 278-4512

West Virginia state office

Mr. Peter Minter
Suite 708
405 Capitol Street
Charleston, WV 25301-1795
(304) 347-7064

Pittsburgh area office

Mr. Al Curotola
339 Sixth Ave., Sixth Floor
Pittsburgh, PA 15222-2515
(412) 644-6940

HUD—Southeast/Caribbean area

Alabama state office

Ms. Martha Andrus
Suite 300
Beacon Ridge Tower
600 Beacon Parkway, West
Birmingham, AL 35209-3144

(205) 290-7648
Caribbean office
Ms. Margarita Delgado
New San Juan Office Building
159 Carlos Chardon Avenue
San Juan, PR 00918-1804
(787) 766-5402
Georgia state office
Ms. Janice Cooper
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, GA 30303-3388
(404) 331-4801
Kentucky state office
Mr. David A. Powell
601 West Broadway
P.O. Box 1044
Louisville, KY 40201-1044
(502) 582-6167
Mississippi state office
Mr. Jerry F. Perkins
Suite 910
Doctor A.H. McCoy Federal Building
100 West Capitol Street
Jackson, MS 39269-1016
(601) 965-4930
North Carolina state office
Mr. Robert Dennis
Koger Building
2306 West Meadowview Road
Greensboro, NC 27407-3707
(910) 547-4053
South Carolina state office
Mr. David L. Ball
Strom Thurmond Federal Building
1835 Assembly Street
Columbia, SC 29201-2480
(803) 765-5593
Coral Gables area office
Ms. Sara D. Warren
Gables 1 Tower
1320 South Dixie Highway
Coral Gables, FL 33146-2911
(305) 662-4526
Jacksonville area office
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300-End	(869-028-00075-4)	24.00	Apr. 1, 1996
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24 Parts:			
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200-219	(869-026-00080-8)	19.00	Apr. 1, 1995
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600-End	(869-026-00105-7)	8.00	Apr. 1, 1995	790-End	(869-026-00158-8)	15.00	July 1, 1995
27 Parts:				41 Chapters:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995	1, 1-1 to 1-10		13.00	³ July 1, 1984
*200-End	(869-028-00105-0)	13.00	Apr. 1, 1996	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
28 Parts:				3-6		14.00	³ July 1, 1984
1-42	(869-026-00108-1)	27.00	July 1, 1995	7		6.00	³ July 1, 1984
43-End	(869-026-00109-0)	22.00	July 1, 1995	8		4.50	³ July 1, 1984
29 Parts:				9		13.00	³ July 1, 1984
0-99	(869-026-00110-3)	21.00	July 1, 1995	10-17		9.50	³ July 1, 1984
100-499	(869-026-00111-1)	9.50	July 1, 1995	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
500-899	(869-026-00112-0)	36.00	July 1, 1995	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
900-1899	(869-026-00113-8)	17.00	July 1, 1995	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1900-1910 (§§ 1901.1 to				19-100		13.00	³ July 1, 1984
1910.999)	(869-026-00114-6)	33.00	July 1, 1995	1-100	(869-026-00159-6)	9.50	July 1, 1995
1910 (§§ 1910.1000 to				101	(869-026-00160-0)	29.00	July 1, 1995
End)	(869-026-00115-4)	22.00	July 1, 1995	102-200	(869-026-00161-8)	15.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995	201-End	(869-026-00162-6)	13.00	July 1, 1995
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700-End	(869-026-00121-9)	30.00	July 1, 1995	1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
31 Parts:				1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
0-199	(869-026-00122-7)	15.00	July 1, 1995	4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995	44	(869-026-00169-3)	24.00	Oct. 1, 1995
32 Parts:				45 Parts:			
1-39, Vol. I		15.00	² July 1, 1984	1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
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1-190	(869-026-00124-3)	32.00	July 1, 1995	1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995	46 Parts:			
400-629	(869-026-00126-0)	26.00	July 1, 1995	1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
630-699	(869-026-00127-8)	14.00	⁵ July 1, 1991	41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
700-799	(869-026-00128-6)	21.00	July 1, 1995	70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995	90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
33 Parts:				140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
1-124	(869-026-00130-8)	20.00	July 1, 1995	156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995	166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995	200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
34 Parts:				500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
1-299	(869-026-00133-2)	25.00	July 1, 1995	47 Parts:			
300-399	(869-026-00134-1)	21.00	July 1, 1995	0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995	20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
35	(869-026-00136-7)	12.00	July 1, 1995	40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
36 Parts				70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
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1-51	(869-026-00143-0)	40.00	July 1, 1995	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
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53-59	(869-026-00145-6)	11.00	July 1, 1995	49 Parts:			
60	(869-026-00146-4)	36.00	July 1, 1995	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
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72-85	(869-026-00148-1)	41.00	July 1, 1995	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995	400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
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300-399	(869-026-00154-5)	21.00	July 1, 1995	1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
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² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.